ILLINOIS STATE BAR ASSOCIATION

DECEMBER 2017 VOL 55 NO. 4

The Globe

The newsletter of the Illinois State Bar Association's Section on International & Immigration Law

Editor's comments

BY LEWIS F. MATUSZEWICH

In this fourth issue of *The Globe* for the current ISBA year, we are fortunate to have received submissions from attorneys who are all repeat contributors and are strong supporters of *The Globe*. Patrick M. Kinnally, past Chair of the International and Immigration Law Section Council, is a prolific writer having had published, according to the ISBA archives, 89 different articles in various ISBA publications. The first article on the ISBA list was published in October, 2000 in the *Civil Practice and Procedure* newsletter. Articles by Pat, in addition to appearing in *The Globe* and *Civil Practice and Procedure*, have appeared in *Bench and Bar, Administrative Law, General Practice, Solo, and Small*

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Who gets to make the call: U Visas, Immigration Judges and the Seventh Circuit Court of Appeals

BY PATRICK M. KINNALLY

No one would argue with the proposition that actual criminal offenders in our midst should be prosecuted. This does not only include a judge and prosecutor, but most importantly, people who are unafraid in coming forward and saying what they witnessed. Our immigrant community whether documented or not, is an important segment within that process. Ask any cop on the street or State's Attorney.

Congress recognized this fact 15 years ago when it passed the Victims of Trafficking and Violence Protection Act. This legislation created a U nonimmigrant visa to not only to protect but promote a benefit for non-citizen victims of serious crimes of qualifying criminal activity, who have assisted in the prosecution and

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Editor's comments

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Firm, Labor and Employment Law, Young Lawyers Division, Traffic Laws and Courts, Human Rights, and Diversity Leadership Council. In this issue of *The Globe,* appears what might be Pat's 90th article for the ISBA (perhaps more than that since the ISBA list only goes back so far), "Who Gets to Make the Call: U Visas, Immigration Judges and the Seventh Circuit Court of Appeals."

Michael R. Lied, former CLE Committee Liaison to the International and Immigration Law Section Council, has had 201 articles published in ISBA newsletters, the first of which being in the March, 1999 issue of *Labor and Employment Law* dealing with Recent Human Rights Commission decisions. He has contributed several articles to *The Globe* dealing with employment and labor issues and this issue features his article, "Immigration Support Affidavit Enforceable in Divorce Proceedings."

Howard L. Stovall has had 13 articles published in The Globe, the first of which appeared in the August, 2001 issue and was a summary of Arab labor law rules and practices. This issue includes his article, "Summary of 'Revolving Door' Restrictions in the Arab Middle East."

David W. Aubrey, currently serving as Secretary of the International and Immigration Law Section Council, has provided his 6th article for *The Globe*, "Challenges Litigators Face Serving Discovery in Europe." David's first article, "The International Criminal Court and other forms of international justice" appeared in the February, 2010 issue of *The Globe*.

I hope other readers of *The Globe* accept the challenge to submit articles from time to time to catch up to David Aubrey, Howard Stovall, Michael Lied and Patrick Kinnally.

As always, thank you to all of our contributors.

Lewis F. Matuszewich
Matuszewich & Kelly, LLP
Telephone: (815) 459-3120
(312) 726-8787
Facsimile: (815) 459-3123
Email: lfmatuszewich@mkm-law.com

Who gets to make the call

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investigation of a long list of serious crimes or similar activities which are substantially similar to the crimes listed. See, 8 USC 1101 (a)(15)(U)(iii).

The legislation provides 10,000 visas per year to persons who have suffered substantial physical or mental abuse as a result of qualifying criminal activity. The person must have knowledge of the criminal activity, and assist to a certifying agency which is prosecuting the crime. *(i.e.* local prosecutors). The process is uncomplicated. A petition is filed (Form I-918) with a certification from the prosecuting authority and a waiver application on form I-192. The latter waives almost all grounds of inadmissibility including no lawful entry. *Matter of Sanchez-Sosa* 25 I&N Dec. 807 (BIA, 20012) 8 USC 1182 (3)(A). Family members, spouses, and unmarried children under 21, count as dependents and, an unmarried U applicant who is under 21 may include as family members, parents, and unmarried siblings under 18. (Kurzban, Immigration Law Sourcebook, (2016) Fifteenth Edition pp 1152-1154).

Once a U-nonimmigrant has obtained such status he/she may adjust to lawful permanent resident status, when:

The Globe

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OFFICE
ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS
Lewis F. Matuszewich
Geeta M. Shah

MANAGING EDITOR / PRODUCTION
Katie Underwood
kunderwood@isba.org

physically present in the United States continuously for three years; and the individual's continued presence is justified on humanitarian grounds, to insure family unity, or otherwise, is in the public interest. Sound like good policy? It is: unfortunately, the administrators do not see it that way. In re *L.D.G. v. Holder* 744 F.3d 1022 (7th Cir. 2014) [*LDG*].

In this regard Section 212(d)(3) applies to a waiver for a nonimmigrant visa, not a permanent one. This historical criteria which has been used in determining whether the waiver should be granted are: the harm to society if the applicant is not admitted; the gravity of the applicant's prior violations of immigration or criminal laws; the nature of the reason that the applicant wants to enter the United States. It is a forgiving standard. *The Waivers Book* [2d ed. 2016, *AILA*] pp. 354-355, citing *Matter of Hranka* 16 I&N Dec. 491 [BIA, 1978] For U nonimmigrants the applicable provision for the waiver is Section 212(d)(14) of the Immigration and Nationality Act. It says the Department of Homeland Security has authority to grant the waiver, not the Attorney General. Under the Section 212(d)(3) regime the statutory text says the Attorney General has the authority to grant a waiver. These criteria do not match, in their respective, statutory texts. A congressional oversight? Perhaps.

It seems to me the *Hranka* analysis is an archival marker, for at least two reasons. First, the goal of obtaining U nonimmigrant status is to become a permanent resident, not a temporary visitor. U Visas were not on the immigration landscape when *Hranka* was decided, thirty years past. That is the elephant in the room which is unacknowledged. Accordingly, this is why we see different discretionary standards being applied to those who apply for U status and whom have serious immigration or criminal histories. (See, *Jean v. Gonzalez* 452 F. 3d 392 (5th Cir. 2006). Furthermore, 212 (d)(3) waivers have traditionally been adjudicated by immigration examiners, not immigration judges. (See, *Matter of Khan* 26 I&N Dec. 797 (*Khan*) Finally, DHS regulations state quite plainly, "refusal of a district director ***to grant an application for benefits of *** Section 212 (d)(3)*** shall be without prejudice to renewal of such application or the authorizing of such admission by the immigration judge. ***8 CFR 235.2(d). The language is plain: renewal of the claim before an immigration judge. You cannot renew a claim before a judge if s/he has no authority to consider it. Immigration judges are lawyers: they should get the last word. They are trained to do so.

LDG highlights that dichotomy. It held that Attorney General had the authority to waive an alien's inadmissibility where that alien is in a removal proceeding before an immigration judge. In other words, both immigration judges (IJS) and immigration examiners have concurrent jurisdiction to consider waivers for U applicants. The Seventh Circuit remanded the case to the Board of Immigration Appeals (BIA) to determine the applicability of 212(d)(3) waiver to U applicants. See *Practice Advisory the U Visa Inadmissibility Waiver*, National Immigrant Justice Center (January 2016, p.3) *LDG* assumed that in removal proceedings IJS could exercise all of the Attorney General's discretionary powers. The BIA after *LDG* was decided, concluded otherwise in *Khan* and held IJS are without authority to adjudicate 212(d)(3) waivers for U nonimmigrants in removal proceedings. [*Baez-Sanchez v. Sessions* (10-16-17, 7th Cir. 16-3784 (*Baez*)

The Seventh Circuit Court of Appeals saw it quite differently in *Baez*. The court looked at it this way.

Delegation from the Attorney General (AG) to immigration judges is a matter, of course, of regulation. The AG gets to control the process and whom is appointed as an immigration judge (IJ). The regulation which addressed the authority of an IJ says.

***

> (a) Appointment. The immigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the [Immigration and Nationality Act]. Immigration judges shall act as the Attorney General's delegates in the cases that come before them.

***

8 CFR 1003.10(a).

The court held under 8CFR 1003.10(a) that IJS shall act as the Attorney General's delegates in all cases that come before them. The court held this was a general grant and it was unaware of any limitation that diminished such delegation. It sent the case back to the BIA for the second time to state why IJS do not have authority to adjudicate 212()d)(3) waiver application to U nonimmigrants.

Regrettably, this tug of war has become one of attrition. The Executive Branch makes rules which declare what they say. It becomes policy. The rules are based on a statute which is not analogous to the administrative rule. The judiciary is asked to interpret the rule(s) which is adverse to the Executive Branch's perspective. Twice, the Administration will not concede. This is where we are with U visas, waivers and who gets to make the call. The text of a statutory precept should control, not a rule which is inconsistent with it.

Stay tuned. ■

Patrick Kinnally concentrates in general and commercial litigation, immigration and citizenship and administrative, environmental and local government law. Pat, immediate past Chair of the International and Immigration Law Section Council, can be reached at Kinnally Flaherty Krentz Loran Hodge & Masur PC by phone at (630) 907-0909 or by email to pkinnally@kfkllaw.com.

Patrick M. Kinnally
Kinnally Flaherty Krentz Loran Hodge & Masur PC
2114 Deerpath Road
Aurora, IL 60506-7945
Pkinnally@kfkllaw.com

Immigration support affidavit enforceable in divorce proceedings

BY MICHAEL R. LIED

In most cases, a U.S. citizen seeking to "sponsor" a foreign relative must file an affidavit of support on USCIS form I-864. A court in California recently held that a foreign spouse may enforce the affidavit of support in a divorce proceeding.

Vikash Kumar is a United States citizen. Ashlyne Kumar is a citizen of Fiji. On September 22, 2012, Vikash and Ashlyne married in Fiji in an arranged marriage.

Vikash filed A visa petition for alien relative on behalf of Ashlyne. In connection with bringing his new wife to the United States, Vikash signed a form I-864 affidavit of support. The purpose of the I-864 affidavit is "to ensure that an immigrant does not become a public charge."

Ashlyne entered the United States in July 2013. According to Ashlyne, Vikash began abusing her almost immediately.

In December 2013, Vikash and his family tricked Ashlyne into going to Fiji with Vikash. After they arrived in Fiji, Vikash abandoned her. It got worse. Ashlyne also discovered that the page with her legal permanent resident stamp had been torn out of her passport.

Ashlyn obtained temporary travel documents from the United States Embassy in Fiji, and returned to the United States on December 29, 2013. On January 14, 2014, Vikash filed a petition for annulment and, in the alternative, dissolution of marriage. On September 3, 2014, Vikash filed a request for an order terminating spousal support and dissolving the marriage.

Ashlyne opposed Vikash's request to terminate spousal support. In her brief, Ashlyne asked the court to enforce the specific support requirements of the I-864 affidavit, requesting an order that Vikash pay support of $1,196.15 per month.

The trial court entered a judgment restoring the parties to single status and terminating spousal support. Ashlyne appealed, and the appellate court reversed.

An I-864 affidavit is a legally enforceable contract between the sponsor and the sponsored immigrant. *Shumye v. Felleke,* 555 F. Supp. 2d 1020, 1023 (N.D. Cal. 2008). Federal courts have consistently found that a form I-864 constitutes a legally binding and enforceable contract between sponsor and a sponsored immigrant. (*Id.* at 1024.)

A sponsor's obligations under an I-864 affidavit terminates only if one of five conditions is met: (1) the sponsor dies, (2) the sponsored immigrant dies, (3) the sponsored immigrant becomes a U.S. citizen, (4) the sponsored immigrant permanently departs the U.S., or (5) the sponsored immigrant is credited with 40 qualifying quarters of work. (See 8 U.S.C. § 1183a(a)(2).) Divorce is not a condition under which the sponsor's obligations under Form I-864 can be terminated. (*Shumye* at 1024).

According to the appeals court, the statute and regulation are clear. A sponsored immigrant has independent standing to enforce the obligations of an I-864 affidavit against her sponsor, and may bring such an enforcement claim in state or federal court.

When Ashlyne's counsel asked whether her contract claim under the I-864 affidavit was being denied, the trial court responded, "Yes, I'm denying your request because I find the respondent is not using best efforts to find work."

On appeal, Ashlyne urged the court to follow the Seventh Circuit Court of Appeals, which held that a sponsored immigrant seeking to enforce the support obligation created by an I-864 affidavit has no duty to mitigate damages. (*Liu v. Mund,* 686 F.3d 418, 420, 422-123 (7th Cir. 2012).

The Seventh Circuit reasoned that the stated statutory goal is to prevent the admission to the United States of any alien who 'is likely at any time to become a public charge.' The only beneficiary of the duty to mitigate would be the sponsor—and it is not for his benefit that the duty of support was imposed; it was imposed for the benefit of federal and state taxpayers and of the donors to organizations that provide charity for the poor.

The appellate court found *Liu* persuasive, and held that an immigrant spouse seeking to enforce the support obligation of an I-864 affidavit has no duty to seek employment to mitigate damages.

The case is *In re: Marriage of Ashlyne and Vikash Kumar*, 220 Cal. Rptr.3d 863 (Cal. Ct. App., 2017). ■

Howard & Howard Attorneys PLLC
One Technology Plaza, Suite 600
211 Fulton Street
Peoria, IL 61602-1350
Telephone: 309-672-1483
Facsimile: 309-672-1568
mlied@howardandhoward.com

Summary of 'revolving door' restrictions in the Arab middle east

BY HOWARD L. STOVALL

The term 'revolving door' refers to the movement of individuals back and forth between government sector and private sector employment, often in order to exploit their prior employment to benefit their current employer.[1] This movement between government and private sectors is not necessarily bad (and in some cases might be beneficial, for example, to bring different perspectives into government and business). However, a lack of regulation can also lead to conflicts of interest.

A former government official might be attracted to a private sector position due to his prior government experience, insider information and influence that could be used to unfairly benefit his new employer. Conflicts of interest may also arise when the official is still in public office, for example, if a government official makes biased decisions to benefit a prospective private sector employer.[2]

On the other hand, a former private sector employee who moves to a government position might exhibit bias favoring his former employer in forming public policy, making procurement decisions, and enforcing regulations.[3]

Of those Western countries with 'revolving door' laws, very few have enacted any restrictions governing an employee's movement from the private sector to the public sector. However, a number of countries require 'cooling-off' periods to address potential conflicts caused by an employee's movement from the public sector to the private sector. This means that, for a specified period of time, former government employees are prohibited from work in the private sector relating to their previous duties in the public sector.[4]

'Cooling-off' periods are based on the notion that the interval between two jobs is relevant to the intensity of any potential conflict. By requiring the passage of a certain period of time after leaving government office, the former public official will theoretically have a decreased ability to benefit his new private sector employer with his previous government connections and inside information.

Most countries in the Arab Middle East have not enacted any 'revolving door' restrictions, whether in any criminal code, civil service law, or anti-conflict of interest law.[5] Although many Arab countries have enacted civil service regulations that place restrictions on the outside commercial activities of *current* government employees, these restrictions do not extend beyond the employee's term in government service.

As a notable exception, Egypt has enacted multiple laws containing 'revolving door' restrictions. For example, Article 3 "First" (E) of the Egyptian Commercial Agency Law[6] provides that former employees of the government, local government units, public organizations, or public sector units and companies, may not engage in commercial agency activities for a two-year 'cooling off' period from the date of leaving government service.

In addition, under Article 178 of the Egyptian Companies Law,[7] former government officials who were members of the executive management at their government departments or agencies prior to terminating their government employment, are prohibited for three years following their termination from owning an interest in, or working for, any company which is granted special benefits, subsidies, guarantees or which is party to concession agreements with any government entity.

Finally, the Egyptian government has enacted a relatively new Law Prohibiting Conflict of Interest ("Egyptian Conflicts Law"),[8] shortly after former President Mohamed Morsi was overthrown. Under the Egyptian Conflicts Law, certain government officials (including the heads of public entities) are prohibited from certain activities, including working within six months from leaving office for a private company that operates in the government official's field of expertise. According to Article 1 of the Egyptian Conflicts Law, the law is applicable not only to the President and members of the cabinet, but also to other government and public entity officials.

In Jordan, the Ministry of Public Sector Development has prepared a Code of Ethics and Professional Conduct in Public Service. Article 9E of that Code, dealing with Conflicts of Interest, states that civil servants shall

> Undertake not to accept job offers, within one year after leaving work at the [government] department, to work at any institution with which the department had substantial transactions, unless upon a written approval from the department. After leaving work at the department, individuals may not offer any advice to such institutions based on private information related to the programs and policies of the department.[9]

Lebanon has also enacted a 'revolving door' restriction on government employees, under Article 100 of the Lebanese Law on Civil Servants,[10] which provides in relevant part:

> The civil servant is prohibited, for five years as of termination of his [government] service, from working in any establishment that was subject to his oversight in the [government] department where he used to work, or that had regularly supplied products to such department, or had provided works to such department during the civil servant's employment. The civil servant is also prohibited, during the same period, from having any

> interest in such establishment, represent it or defend it before courts in litigation filed by such establishment against public departments and establishments. ...

For instance, a civil servant who was in charge of supervising the operation of restaurants and bakeries would be prohibited for five years from working for such business establishments after termination of his government service. This prevents the civil servant from using his authority (while in government service) to obtain private sector benefits following termination of his government employment.

Through application of Article 149 of the Lebanese National Defense Law,[11] Lebanese military personnel are subject to the same 'revolving door' restrictions. (Article 149 states that "Military personnel shall be governed by the Rules on Civil Servants in all matters that are not addressed by the present Decree Law.")

By way of contrast in Qatar, Article 72 of the Military Service Law[12] states that a military person shall not perform any paid work for others, or engage in commercial activities *during* his military service; however, these prohibitions are not expressly applicable after his discharge, and we believe they do not extend after that time. Article 72 of that law also states that a military person shall not serve *another country* for five years after the end of his service, unless upon approval from the competent authority. However, that law does not expressly prohibit a military officer from working in the *private sector* after ending his Qatari military service.

Moreover, we are not aware of any general 'revolving door' restrictions in internal regulations, guidelines or standard employment contract terms imposed by any government ministry or department in the Arab Middle East. (In the event such internal rules exist, they would not be generally available for public review. In our view, any such internal rules would only bind the relevant former government official, not the company hiring that former official).

Thus, in the case of hiring a former military official upon his retirement from military service, most Arab Middle Eastern countries do not require any special permission or approval. The end of service certificate that is customarily issued to the employee in each case by the relevant Ministry of Defense specifies the scope of prohibited activities, which usually are limited to a prohibition on serving in a foreign army. The former military officer is otherwise usually permitted to engage in all other civil or commercial activities without any need to apply for a special government approval.

In accordance with many civil service laws in the Arab Middle East, former government employees are forbidden from making personal use of confidential information obtained during government employment. For example, Article 25 of the Kuwaiti Civil Service Law[13] forbids a government employee from divulging any information that should remain secret due to its nature or according to any special instructions. In addition, the government employee is forbidden from publicizing such information unless after obtaining written permission from the relevant Minister. These restrictions continue to apply even after government employment has ended, *i.e.*, a former government employee may not subsequently use confidential information obtained during his government employment.[14]

Similar rules apply to military personnel in many Arab Middle Eastern countries. For example, Article 72 of the Qatari Military Service Law states that a military person shall not disclose any information related to his work, which obligation is expressly stated to continue even after the end of his service.[15] ■

Howard L. Stovall is a Chicago-based attorney, devoting his practice exclusively to advising companies on commercial matters throughout the Arab Middle East. He has provided Arab commercial law advice in U.S. Federal Courts in Washington D.C., Virginia, Florida, as well as courts in Brussels, The Hague, and Amsterdam. He was an Adjunct Professor at The John Marshall Law School from 1999-2015. A graduate of the University of Texas Law School (Austin, Texas), he was admitted to practice law in Illinois and has been a member of the Illinois State Bar Association since 1981. He is a frequent contributor of material to *The Globe*. He may be reached at Howard@Stovall-Law.com."

Law Office of Howard L. Stovall
2131 North Racine Avenue
Chicago, Illinois 60614
Telephone: (773) 248-8896
Facsimile: (773) 248-8897
E-mail: Howard@Stovall-Law.com
Website: www.stovall-law.com

1. Transparency International, "Regulating the Revolving Door," Working Paper #6/2010, accessed at https://www.transparency.org/whatwedo/publication/working_paper_06_2010_regulating_the_revolving_door

2.Transparency International, "Cooling-Off Periods: Regulating the Revolving Door", Anti-Corruption Helpdesk (5 June 2015), accessed at https://www.transparency.org/whatwedo/answer/cooling_off_periods_regulating_the_revolving_door

3.Id.

4.See, generally, Jack Maskell, Congressional Research Service, "Post-Employment, 'Revolving Door', Laws for Federal Personnel" (January 7, 2014), accessed at https://fas.org/sgp/crs/misc/R42728.pdf. U.S. federal laws generally restrict only certain representational activities for private employers, such as lobbying, and which attempt to influence, current federal officials.

5.For example, none of the following Omani laws contains any 'revolving door' restrictions: Omani Royal Decree No. 7 of 1974 (criminal code), accessed at http://policehumanrightsresources.org/wp-content/uploads/2016/07/Penal-Code-Oman-1974.pdf; Omani Royal Decree No. 120 of 2004 (civil service law), accessed at http://www.oman.om/wps/wcm/connect/6d60e960-c690-42ea-838a-3c99ee25a25a/Civil+Service+Law.pdf?MOD=AJPERES; and Omani Royal Decree No. 112 of 2011 (law for avoidance of conflict of interests), accessed at http://www.pogar.org/publications/ac/compendium/oman/related-national-laws/conflict%20of%20interests-a.pdf

6. Egyptian Law No. 120 (1982), accessed at http://www.comercio.gob.es/es-ES/comercio-exterior/politica-comercial/obstaculos-comercio/con-terceros-paises/PDF/documentos-relacionados-portal-barreras-comercio-sec/Code94_1CommercialAgencyLaw120_1982.pdf

7. Egyptian Law No. 159 (1981) as amended, accessed at http://www.gafi.gov.eg/English/StartaBusiness/Laws-and-Regulations/Documents/Lawno159oftheyear1981.pdf

8. Egyptian Law No. 106 of 2013, accessed at https://www.egypt.gov.eg/english/laws/

9. This Code was issued pursuant to Article 67A of the Jordanian Civil Service Regulation No. 82 (2013), and accessed at http://www.mopsd.gov.jo/en/PDF%20Files/Code%20of%20Ethics%20and%20Professional%20Conduct%20in%20Civil%20Service.pdf

10. Lebanese Decree Law No. 112 (1959), copy available in the author's Chicago office.

11. Lebanese Decree Law No. 102 (1983), copy available in the author's Chicago office.

12. Qatari Law No. 31 of 2006, accessed at http://almeezan.qa/LawPage.aspx?id=3996&language=ar

13. Kuwaiti Law No. 15 (1979), accessed at

www.ilo.org/dyn/natlex/docs/ELECTRONIC/39896/102917/F-2052937373/KWT39896%20Arab.pdf

14. See also Article 34(2)e of the Bahrain Decision No. 51 (2012), the executive regulations to the Civil Service Law, accessed at https://www.csb.gov.bh/media/document/Regexeeng-51-2012.pdf; and Article 68 of the UAE Federal Human Resources Law, Federal Decree Law No. 11 (2008) as amended, accessed at https://www.fahr.gov.ae/Portal/Userfiles/Assets/Documents/38e702a7.pdf

15. See also Article 104 of Egyptian Law No. 232 of 1959 as amended, regarding Service of Military Personnel, copy available in the author's Chicago office.

Challenges litigators face serving discovery in Europe

BY DAVID W. AUBREY, GORI JULIAN & ASSOCIATES, P.C.

Litigators seeking discovery from European parties encounter a minefield of hazards if one attempts to enforce United States norms abroad outside of the Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters (hereafter, Hague Convention). Because of varied judicial systems in Europe, as well as, diverse cultural values, many European states have enacted what are called, "blocking statutes," to protect their citizens' privacy rights from foreign discovery. Thus, litigators benefit from remaining within the established treaty framework of the Hague Convention.

This article will discuss a few examples of the various European Blocking Statutes, specifically those of France, Germany, and Switzerland. These three states have robust blocking statutes, which even include criminal sanctions for those who improperly disclose information in foreign proceedings. These laws exist in the context of the European Union's findings that the United States provides inadequates protection of private information. *See e.g.*, Testimony of Robert E. Litan: The European Union Privacy Directive, Brookings, 1998, *available online* at www.brookings.edu/testimonies/the-european-union-privacy-directive/.

France

By statute, French nationals are barred from complying with discovery requests from Courts in the United States. *See* Article 5 of Council Regulation (EC) No. 2271/96 of 22 (November 1996). Further, France has determined the United States lacks adequate privacy protections for personal data and has barred the sending of personal data to the United States. Notably, however, France lists compliance with international treaties and the Hague Convention as exceptions to this blocking statute. *Id. at* Article 6. In addition, the statute provides an expedited procedure in instances where the denial of discovery requested would cause serious damage to a person. *Id. at* Article 5.

Switzerland

In Switzerland, collection of evidence is viewed as a governmental role as opposed to in the United States, where litigants rely on the integrity of the opposing counsel produce a party's evidence. Indeed, collecting evidence for a foreign lawsuit in Switzerland might violate the criminal code of Switzerland. *See* Swiss Criminal Code (RS 311.0). This purportedly protects the privacy of Swiss citizens, Swiss sovereignty, as well as, the integrity of the Swiss judicial system. The private nature of Swiss banking is a famous example of a Swiss blocking statute. Specific statutes protect the privacy of Swiss residents as well as customers of Swiss banks. Violation of these statute breaks Swiss criminal law. Nevertheless, Switzerland allows exceptions to its blocking statutes for it calls "international mutual assistance proceedings." *See e.g.*, Swiss Criminal Code, Article 321; *also* Swiss Criminal code Article 28(a). These provisions allow Swiss judges to cooperate with other foreign courts in evidentiary findings.

Germany

German law protects personal privacy via a federal statute, which also works with the privacy states of German states. *See* Bundesdatenschutzgesetz *available online at* https://germanlawarchive.iuscomp.org/?p=712 (hereafter, "German Privacy Statute"). The German Privacy Statute restricts the transmission of private information of Germans to foreign governments, in cases where the foreign government does not have adequate protection of private information. Because the European Commissions found the United States lacks adequate protection of private information, the German Privacy Statute would prohibit disclose to courts in the United States. *See* Brookings *supra*.

Differing views of data protection continue to exist between the United States and the European Union. As a result, European Countries often rely on "blocking statutes" to bar discovery propounded by courts in the United States from seeking discovery of their citizens. Learning these statutes is important as violating these laws can result in criminal sanctions. As mentioned in the introduction, reliance on the Hague Convention's treaty on discovery is the best method of obtaining discovery in the European Union. ■

David W. Aubrey primarily represents clients diagnosed with mesothelioma and their families. In addition, David represents those injured in commercial trucking accidents, whistle blowers in qui-tam actions, and prisoners in civil rights cases. His contact information follows.

Gori Julian & Associates, P.C.
156 North Main Street
Edwardsville, Illinois 62025
Phone: 618-659-9833
Fax: 618-659-9834
E-Mail: David@gorijulianlaw.com
www.gorijulianlaw.com

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Illinois Bar Center
Springfield, Illinois 62701-1779
December 2017
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