

SESSION PREVIEW

The Growing Challenge of Subrogating Globally

By Bevrlee J. Lips

Last month, China was said to have overtaken the U.S. as the world's largest economy in terms of purchasing power. In the face of growing foreign economies, the issue of foreign manufacturers and the products they send to the U.S. is not going away. Some estimate that 75 to 80 percent of recalled products are made overseas. The numbers are telling and show that more and more products with failures are being manufactured abroad, leaving subrogators to navigate tricky strategies for recovery.

In today's session, "Pursuing Foreign Manufacturers in Products Cases After the Supreme Court's *Nicastro* Case," presenters Joseph Rich and Daniel Luccaro, of Cozen O'Connor,



Joseph Rich



Daniel Luccaro

and Richard Schuster, of Matthiesen, Wickert & Lehrer S.C., will discuss the numbers of foreign-made products, service of process, and getting jurisdiction

over a foreign manufacturer in the U.S. courts. The presentation also will address the cost-benefit analysis and other considerations associated with pursuing such cases.



Richard Schuster



Part one of the two-part session will deal with pursuing foreign manufacturers, sorting out the logistics, and some of the legal hurdles that will be faced, including a look at the U.S. Supreme Court's decision in *J. McIntyre v. Nicastro*. Part two will cover what to do from a practical perspective when litigating in the U.S. against these companies is not a realistic option.

"A large part of subrogation cases involves product failures, whether they are a result of defects or installation issues," says Rich. "It is important to understand that a big part of product cases now involves foreign manufacturers."

When faced with global dealings, it is important for those in the subrogation world to understand logistical issues, existing laws, and what has changed over the last couple of years, with an eye toward what can be accomplished. This type of subrogation is not something that you should give up on; you simply need to understand that it may take a different path than what would typically be used with domestic companies.

"I think this is probably one of the most, if not the most, pressing and fastest growing areas of property subrogation in the industry," says Schuster, who spent five years in Asia and understands the unique details of interacting with Asian entities.

When tackling these types of claims, you must collect as much information about the potential target as possible at the outset and determine the specific laws in the

federal jurisdiction where the case will be filed. Each jurisdiction has a slightly different take on getting personal jurisdiction over foreign defendants, so it is critical before you start the process to know the applicable law. For example, if you are going to file in Florida, you'll want to know how the 11th U.S. Circuit Court of Appeals interpreted the recent Supreme Court cases versus filing in California, where you'll want to know the 9th U.S. Circuit Court of Appeal's interpretation. You'll want to build a road map of what you'll need to establish to get them into the U.S. courts.

Attendees also will be given resources to help them beyond the session, including state-specific information, vendors, and help identifying which companies can be served easily under The Hague Convention versus companies that present challenges.

"It might never be the case that you can collect as much on a percentage basis against a foreign manufacturer as you can against a U.S. company," says Schuster. "But we can certainly do better than we're doing now as an industry."

The most important takeaway is that attendees who think pursuing foreign manufacturers is either not worth the effort or can only be done with the standard approach leave knowing that is not the case. They can achieve success with the right knowledge and tools.

For the ins and outs of facing global subrogation challenges, head to Gatlin A3 at 12:45pm. *