

Alert | Equine Industry Group



October 2020

Hurdling Cross-Border Challenges in Equine Litigation

“Do what you can, with what you have, where you are.”

Theodore Roosevelt

Equine disputes are not simple. Indeed, they are getting more complex as American buyers look further afield to find the perfect horse, and overseas breeders increasingly export their stock to the United States. There are many hurdles that must be cleared before a horse can safely arrive in the United States. A horse may pass through several countries en route to the United States from its country of origin, implicating along the journey multiple parties and laws, raising a multitude of legal issues relating to transportation, insurance, title, customs, export/import, permitting and licensing, not to mention health and quarantine requirements.

Given this extensive process it is predictable that a wide variety of disputes will arise which present many pitfalls to buyers and other interested parties when litigating equine disputes in U.S. courts. This GT Alert aims to identify and educate U.S. persons involved in the equine industry about some of the more significant potential pitfalls should something go wrong with the myriad of transactions along the way.

Jurisdictional Issues

The first hurdle that must be overcome is jurisdiction. If a party in an equine dispute files suit in the United States, it must show that the court has subject matter jurisdiction over the case and personal jurisdiction over one or more defendants. If either is lacking, the case is subject to dismissal, not only initially but also at the appellate and enforcement phases.

To ensure a lawsuit is filed in a court that has subject matter jurisdiction over an equine dispute, parties should consider the following:

- Is there a dollar amount at issue? If so, what is it?
- Is there real estate in dispute? If so, where is it?
- Is there a contract which might govern the dispute? If so, does it contain any choice of law or venue clauses? What specific language does it include?
- Where are the parties to the dispute located?
- Based on the above, and other facts, is there a statute which confers jurisdiction on a given court?

To ensure a court has personal jurisdiction over a defendant, parties should look to the applicable law, including case law and statutes, where they want to file suit. Generally, with few exceptions, a plaintiff should expect to show that the exercise of personal jurisdiction over a defendant comports with the long-arm statute of the state in which he is initiating litigation and with the U.S. Constitution's due process clause. In the equine sector, personal jurisdiction can often be found, even where the party may not live in the United States. *See, e.g., Ganis Credit Corp. v. M/V HONOURABLE*, No. 03-60103-CIV, 2005 WL 8165437, at *6-7 (S.D. Fla. Feb. 22, 2005) (Defendant was subject to personal jurisdiction in Florida based in part on his contacts with the state, "his personal horse business," and because he "continuously, systematically and purposefully availed himself of the privilege of conducting activities connected to his horse business within Florida."); *M & L of Delaware, Inc. v. Wallace*, No. CIV.A.03-521-KAJ, 2004 WL 2370708, at *3 (D. Del. Oct. 18, 2004) (Defendant horse trainer was subject to personal jurisdiction under Delaware's long-arm statute and could "fairly be haled into court in Delaware," as he "trained horses that have won a more than *de minimis* sum in Delaware," derived compensation from horses' winnings in Delaware, and acquired name recognition among race enthusiasts in the state.).

Service of Process

Once a party in an equine dispute files suit, it must ensure defendants are properly served, because proper service (or waiver) is required for a court to acquire jurisdiction over a defendant. In cases where a breeder or another party is outside the United States, service of process may need to comport with certain treaties. For example, 75 countries, including most of Europe, are currently party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (or the Hague Service Convention), and some countries are party to the Inter-American Service Convention on Letters Rogatory and Additional Protocol (IACAP), which can also govern service of process.

Service under these treaties can be expensive, protracted, and may even require the translation of all documents to be served, depending on the country in question, but properly effectuating service of process is critical, because like failure to establish personal jurisdiction, failure properly serve may lead to a judgment subject to attack and being vacated.

Evidentiary Considerations

In addition, for parties involved in any dispute related to the purchase of a horse, as in any litigation, it is important to identify which parties might have information, and where they and any physical evidence might be located. If evidence or witnesses, like veterinarians, consultants, employees of a transportation company or the breeder are in other countries, depending on the country, different rules or restrictions will apply.

For example, over 60 countries, including most of Europe, are currently party to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the Hague Evidence Convention), a multilateral treaty addressing transmission of evidence from one country to another. Certain parties to the Hague Evidence Convention, however, have objected to certain pretrial discovery, or restricted its applicability, further complicating matters. Some of those countries may require authorization from the Federal Department of Justice and Police prior to taking depositions, and others may only allow depositions at certain locations. Some countries may not allow depositions at all – even if a witness is willing to testify voluntarily – for use in foreign courts, restricting litigants to the use of letters of request or letters rogatory.

Judgment Enforcement

Finally, since there is no bilateral treaty or multilateral convention currently in force between the United States and any other country regarding reciprocal recognition and enforcement of judgments, collections and judgment enforcement abroad may also pose unique challenges, depending on the country or countries where parties and assets are located.

Parties with United States judgments have thus found that they are often difficult to enforce. Traditionally, three issues in particular have served as obstacles to enforcement:

1. Jurisdiction;
2. Public policy concerns about punitive damages; and
3. Reciprocity.

Parties in equine disputes involving cross-border parties and assets which might ultimately come into play at the judgment enforcement phase should consult with an experienced lawyer and consider the above to develop a tailored strategy from the moment they start planning to file suit. “Almost only counts in horseshoes and hand grenades,” so looking at these issues in each case from the beginning can help avoid potential problems collecting sums due or obtaining possession of a horse down the line.

Author

This GT Advisory was prepared by:

- [Vanessa Palacio](#) | +1 305.579.0817 | palaciov@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.[~] Houston. Las Vegas. London.* Los Angeles. Mexico City.* Miami. Milan.* Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. Salt Lake City. San Francisco. Seoul.[∞] Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.[^] Tokyo.* Warsaw.[~] Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Advisory is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*