

in the law

Criminal exposure for civil wrongs in foreign countries

By Wendy Heimann-Nunes Esq., Daniel Rodríguez-Bravo Esq., and Patrick Del Duca Esq.

Hypothetical: Your company owns an interest in a park in Africa, Asia, Europe or Latin America. When a popular park ride in the park malfunctions, a 12-year-old boy is seriously injured. The next thing you know, a criminal investigation into the accident has begun, two of your on-site employees have been arrested and jailed, and there is a warrant out for your arrest as well.

If this incident occurred in the U.S., a common law country, you might brace yourself for a fat personal injury lawsuit and jury trial brought by the boy and his family. But in civil law countries, many incidents that would normally be treated as civil disputes in the U.S. (both torts and contract disputes) become criminal matters, giving government prosecutors broad authority to investigate and arrest material parties and witnesses as they find necessary.

It's important to learn the difference between a common law and a civil law jurisdiction, understand the risk of criminal exposure in those countries, and know what steps you can take to minimize your risk when doing business in civil law countries.

Common Law v. Civil Law

In common law countries like the U.S. and the U.K., attorneys protect the interests of the parties and judges act as impartial referees, serving to protect the parties' due process and other rights. In this "adversarial" system, victims have no legal status in criminal proceedings, but can separately hire an attorney to file a civil lawsuit to recover damages for any civil wrongs committed. Defendants are presumed innocent until proven guilty.

Civil law countries, on the other hand, traditionally have an "inquisitorial" system in which judicial officials take an active role in determining the facts of the case. Judges follow the criminal code strictly and usually make decisions without reliance on precedent or the use of a jury. The trial only takes place after the investigating body has reached a determination that there is foundation to support the presumption that a crime has occurred. Moreover, in civil law countries, victims have legal status in criminal actions, usually as civil claimants, and they typically have the ability to initiate the criminal proceeding.

Due in large part to the absence of juries for civil matters, punitive damages and outrageous compensatory damages are rare in civil law countries. However, more incidents and disputes that would be construed as civil matters in common law countries are subject to criminal investigation and prosecution in civil law countries.

The majority of countries around the world are civil law countries, including most of the non-English-speaking countries in Europe, Asia, Latin American and Africa.

Steps you can take to minimize the risk of criminal liability

With the significant risk of criminal exposure in civil law countries for conduct that we would classify as a civil wrong only in the U.S., it's important to minimize the criminal liability risk. The following steps, among others, can help reduce your criminal exposure:

- *Choose your foreign business partners wisely.* Perform appropriate due diligence to make sure your foreign business partners are well-established, reputable companies.
- *Form an in-country corporate entity.* By establishing a local entity, you obviate the "foreign business" stigma and create a corporate veil for your parent company. Increase this protection even further by staffing your in-country entity with local executives who are experienced and familiar with local civil law rules and principles.
- *Draft contracts with clear allocation provisions.* Solid drafting of pertinent contracts with your foreign

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AMERICAN IDOL, CONTINUED

guests at Disney's Hollywood Studios can audition each day for one of several shows presented throughout the day. The audience-voted winner from each of those shows is invited to come back for the last show of each day, to compete against each other in a sort of finals competition. That winner receives a Dream Ticket that grants them a spot at a future audition for one of the actual TV shows.

While the contestant's experience is certainly one to make their Disney trip more than memorable, the audience's role is quite enjoyable. The show moves quickly, with performers selecting their song from a short list of sure crowd pleasers. Video taken throughout the show and during the audition process each day is woven seamlessly into the production, along with canned clips of past Idol contestants and winners. The judges can be a little corny, but that's part of the fun and they do their best at fitting into the archetypal roles long established by Randy, Paula and Simon.

Not everyone is a true rock star, but even the aspiring ones look amazing when surrounded by the glittering lights and constantly moving cameras. And the truly talented ones are able to bring the entire house to their feet and dance. That sort of exhilaration and excitement is more typically found at the bottom of a roller coaster drop, rather than in a theater. But that's what makes The American Idol Experience a must-see stop on everyone's trip to Walt Disney World. **ipm**

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counterparts should include clear allocation of contractual rights, responsibilities, and methods of redress in conformity with local civil law provisions.

- *Purchase appropriate insurance.* If you plan to do business in a civil law country, it is wise to purchase an insurance policy that will cover both the costs of liability and of providing a defense if you are subject to an investigation.

There may be significant financial benefits of expanding your business into a foreign country, despite the risk of criminal exposure. By retaining legal counsel who has experience helping international businesses minimize their risks, you can protect your company, your assets, and perhaps even your own liberty.

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Wendy Heimann-Nunes, Daniel Rodríguez-Bravo, and Patrick Del Duca, attorneys with Zuber & Taillieu LLP, offer expertise in the location-based entertainment sector, doing business in common and civil law jurisdictions. The ability of this globally-active team to work in English, French, Italian, Portuguese and Spanish corresponds to its members' advanced studies in law and economics in the civil law countries of Colombia, France, and Italy, as well as the United States. Their biographies may be viewed at www.zuberlaw.com.

SMALL WORLD, CONTINUED

quickly discredited within minutes of arriving at the park. In attraction after attraction, guests from all walks of life were thrilled by what they were seeing - even though the characters may have been completely new to them. It really is the story itself and the way it is presented that is the key to any great attraction. If the tale is unique and strong, even people hearing it for the first time can be instantly captivated.

While waiting in the queue for Hong Kong Disneyland's own version of "it's a small world", I thought back to the diverse themed experiences I'd enjoyed in China. I watched the sense of anticipation on the faces around me as they boarded their bateaus and pictured the millions of others who'd felt exactly the same way in parks thousands of kilometres away. It really is a small world after all. **ipm**

*Michael Reid is Director of **ICONPATH**, a Themed Experience consultancy specializing in research, concept development, master planning, production and marketing.*

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