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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 22-30168

KHOLKAR VISHVESHWAR GANPAT,

Plaintiff—Appellee,

versus

EASTERN PACIFIC SHIPPING PTE, LIMITED, DOING BUSINESS AS EPS,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC 2:18-CV-13556

April 28, 2023

Before JONES, HO, and WILSON, *Circuit Judges*.

JAMES C. HO, *Circuit Judge*:

Litigating in a foreign country can be fraught with peril. The basic procedural and substantive protections guaranteed litigants in American courts are often taken for granted here—yet sharply limited or missing entirely before tribunals in foreign lands.

This case provides a vivid illustration: An individual brings tort and contract claims in federal court in Louisiana against a foreign corporation. In response, the corporation evades service and brings a countersuit in India, before a court where the individual lacks

counsel and is instead forced to take legal advice from the corporation's own attorneys.

Predictably, the corporation's attorneys act in direct conflict with the individual's interests. The corporation's attorneys not only pressure him to settle—they even manage to convince the foreign court to place him in prison, based on a bizarre claim that the individual does not object to imprisonment without bail while the case is pending.

In response to these alarming developments abroad, the federal district court in Louisiana unsurprisingly enters an anti-suit injunction to prevent the foreign corporation from litigating the same issues simultaneously before the court in India.

Our circuit precedents have long authorized district courts to enter anti-suit injunctions like the one entered here. *See, e.g., Bethell v. Peace*, 441 F.2d 495, 498 (5th Cir. 1971). And our review of such anti-suit injunctions is limited to abuse of discretion. *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 626 (5th Cir. 1996). Finding no abuse, we affirm.

I.

Kholkar Vishveshwar Ganpat, a citizen of India, worked as a crew member on the *Stargate*, a merchant ship managed by the Singapore-based shipping company Eastern Pacific. When the *Stargate* stopped at Savannah, Georgia, in spring 2017, Eastern Pacific allegedly failed to stock up on anti-malarial medicine, despite warnings that the supply was low. Ganpat then contracted malaria in Gabon, the *Startage*'s next stop—and a predictably high-risk area for malaria. When the *Stargate* arrived at Rio de Janeiro, the stop after Gabon, Ganpat went to the hospital, where his

gangrenous toes—a complication of malaria—were amputated.

In December 2018, Ganpat brought suit against Eastern Pacific in the Eastern District of Louisiana, alleging tort claims under the Jones Act and general maritime law, as well as contract claims arising from a collective bargaining agreement.

Eastern Pacific waived objections to personal jurisdiction and venue. However, "[o]ver a period of approximately two and a half years, [Ganpat] attempted multiple times to perfect service upon Eastern Pacific," but the corporation "did not accept service, and, instead, filed several motions to dismiss [Ganpat's] claims . . . for insufficient service of process." *Ganpat v. E. Pac. Shipping, PTE. LTD*, No. CV 18-13556, 2022 WL 1015027, at *1 (E.D. La. Apr. 5, 2022). Ganpat thus did not perfect service on the company until August 2021.

In March 2020—after Ganpat brought his complaint and Eastern Pacific consented to federal court jurisdiction, but before Ganpat perfected service—Eastern Pacific sued Ganpat in Goa, India. In the Indian suit, Eastern Pacific sought an anti-suit injunction to prevent Ganpat from litigating in American court.[1]

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[1] Strangely, the dissent characterizes Ganpat as evasive and inept. *See post*, at 16, 23. Yet it was Eastern Pacific that was evasive and coercive. Ganpat simply declined to dismiss the pre-existing American suit when Eastern Pacific foisted papers on him that would have had that effect. *See Ganpat*, 2022 WL 1015027, at *3. Eastern Pacific, by contrast, sought to slow down the American suit by repeatedly refusing service. *See id.* at *1. And Eastern Pacific aimed to thwart American jurisdiction by coercing Ganpat into dropping his suit. *See id.* at *3. Eastern Pacific's whole course of

The Indian court enjoined Ganpat from continuing his lawsuit in the United States. The court then issued an arrest warrant against Ganpat when he failed to comply.[2] Police officers, accompanied by the court bailiff and an Eastern Pacific attorney, subsequently arrested Ganpat and brought him before the court.

As Ganpat's uncontradicted testimony shows, the post-arrest hearing was procedurally stacked against him. *See id.* at *3. Eastern Pacific had multiple lawyers. He had none. *See id.* What's worse, the judge instructed one of the Eastern Pacific attorneys to advise Ganpat. *See id.* In response, the Eastern Pacific lawyer took Ganpat aside and pressured him to settle. The lawyer then lied to the judge, absurdly claiming that Ganpat opposed his own release on bail. *See id.* Ganpat was then placed in a prison for violent criminals, where he was strip searched and held in a cramped cell. *See id.*[3]

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conduct thus "smacks of cynicism, harassment, and delay." *Kaepa*, 76 F.3d at 628.

[2] The dissent claims that Ganpat was "jailed for his *continued refusal* to participate in the legal proceedings." *Post*, at 16. But Ganpat was actually jailed because he refused to be bullied into dropping the American suit. As the factual findings of the district court indicate, Eastern Pacific and the Indian court demanded that Ganpat sign papers acknowledging the American suit was "stopped." *Ganpat*, 2022 WL 1015027, at *3. Had Ganpat given in and signed these papers, he would not have gone to jail. *See id.*

[3] The dissent does not dispute that the Indian judge instructed the attorney of Eastern Pacific, the opposing party, to advise Ganpat. Nor does the dissent dispute that the Eastern Pacific attorney then claimed that Ganpat opposed his own release on bail. And the dissent does not deny—how could it?—that this is a bizarre way for a court of law to proceed.

In August 2021, back in the Eastern District of Louisiana, Ganpat sought an anti-suit injunction to prohibit Eastern Pacific from prosecuting its Indian suit against him. Finding the Indian litigation vexatious and oppressive, and determining that it need not show comity to the Indian court that had attempted to enjoin the American suit, the district court granted the injunction in favor of Ganpat. Eastern Pacific now appeals the district court's grant of the anti-suit injunction.

II.

We review the district court for abuse of discretion. "Under this deferential standard, findings of fact are upheld unless clearly erroneous, whereas legal conclusions are subject to broad review and will be reversed if incorrect." *Kaepa,* 76 F.3d at 626 (cleaned up).

Our standard for the grant of an anti-suit injunction weighs the vexatiousness of the foreign litigation against considerations of comity. *See id.* at 627; *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 366 (5th Cir. 2003). In this case, the vexatiousness of the foreign suit is severe—the comity considerations are, by contrast, weak. Accordingly, we see no basis to conclude that the district court abused its discretion in granting the anti-suit injunction.

A.

Our circuit precedents authorize district courts to grant anti-suit injunctions "to prevent vexatious or oppressive litigation." *Kaepa,* 76 F.3d at 627. Three factors help courts determine whether to enjoin foreign litigation as vexatious: "(1) 'inequitable hardship' resulting from the foreign suit; (2) the foreign

suit's ability to 'frustrate and delay the speedy and efficient determination of the cause'; and (3) the extent to which the foreign suit is duplicitous of the litigation in the United States." *Karaha Bodas*, 335 F.3d at 366 (footnotes omitted).

The district court here found that the Indian suit was vexatious and oppressive under our precedents.

First, the district court correctly concluded that the Indian litigation would result in inequitable hardship. As the district court noted, Ganpat "has already been jailed once for violating the ex parte antisuit injunction, and . . . faces a real possibility of being sent back to jail and having his property seized, as Eastern Pacific . . . seeks to have the Indian court enforce sixteen counts of contempt against [Ganpat]." *Ganpat*, 2022 WL 1015027, at *8 n.104.[4]

Indeed, this is as strong a case of inequitable hardship as the previous cases where we have upheld injunctive relief. Under our caselaw, "unwarranted inconvenience [and] expense" can suffice to constitute hardship meriting an anti-suit injunction. *Kaepa,* 76 F.3d at 627. *See also In re Unterweser Reederei, Gmbh,* 428 F.2d 888, 896 (5th Cir. 1970) ("[A]llowing simultaneous prosecution of the same action in a foreign forum thousands of miles away would result in 'inequitable hardship.'"), *rev'd on other grounds by M/S Bremen v. Zapata Off-Shore Co*., 407 U.S. 1 (1972); *Bethell*, 441 F.2d at 498 ("[T]he court was within its discretion in relieving the plaintiff of expense and

[4] The dissent claims that "any future threat of Ganpat's being jailed is wholly speculative." *Post*, at 22. But the likelihood of Ganpat's future arrest—not to mention the prospective seizure of his property—is the kind of factual issue on which we defer to the district court. *See Kaepa,* 76 F.3d 624 at 626.

vexation of having to litigate in a foreign court."). If unwarranted inconvenience and expense present sufficient hardship to support an anti-suit injunction, surely jailtime and seizure of property also suffice.

The second vexatiousness factor—"the foreign suit's ability to 'frustrate and delay the speedy and efficient determination'" of the American suit, *Karaha Bodas*, 335 F.3d at 366—likewise favors the injunction. The Indian court has sought to prevent Ganpat from litigating in the United States, even though the American suit was filed first. This "attempt to enjoin [Ganpat] effectively translates into an attempt to enjoin the [American] court itself and to interfere with the sovereign actions of the [United States]." *Id.* at 372.

When a foreign court tries to keep an American court from hearing a case, that frustrates the American litigation. We have reversed a district court injunction where the foreign litigation was "ineffective in curtailing the ability of . . . U.S. courts[] to enforce" the rights of the plaintiff. *Id.* at 369. There, an American court could enforce the plaintiff's rights regardless of what the foreign court did, so there was no frustration of American litigation. *See id.* Here, by contrast, the Indian court seeks to prevent the American litigation from proceeding. The district court's injunction is thus "necessary to protect the court's jurisdiction." *MacPhail v. Oceaneering Intern., Inc.*, 302 F.3d 274, 277 (5th Cir. 2002).

The Indian litigation imposes a hardship on Ganpat while frustrating the American litigation, and that is ample justification to find the Indian litigation vexatious and oppressive. Accordingly, we need not consider the third vexatiousness factor, "the extent to which the foreign suit is duplicitous of the litigation

in the United States." *Karaha Bodas*, 335 F.3d at 366. *See Bethell*, 441 F.2d at 498 (upholding an anti-suit injunction on the basis of the "expense and vexation of having to litigate in a foreign court" without analyzing whether the foreign suit was duplicative).

In any event, we agree with the district court that the Indian suit is indeed duplicative. The Indian suit rests on "the same or similar legal bases" as the American suit. *Karaha Bodas*, 335 F.3d at 370. Eastern Pacific seeks to establish in Indian court by declaratory judgment the very same legal theory it raises as an affirmative defense in U.S. court—namely, that an employment agreement limits its liability to Ganpat.[5]

Accordingly, all three relevant factors indicate that the Indian litigation is vexatious and oppressive.

B.

Although our anti-suit injunction test "focuses on the potentially vexatious nature of foreign litigation, it by no means excludes the consideration of principles of comity." *Kaepa,* 76 F.3d at 627. That said, the comity considerations are not overly strict. "We decline . . . to require a district court to genuflect before a vague and omnipotent notion of comity every time that it must decide whether to enjoin a foreign action." *Id.*

Our precedents make clear that comity concerns are at a minimum where—as here—"no public international issue is implicated by the case" and "the

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[5] The dissent invokes *MacPhail*, where we vacated the injunction in part because the foreign suit was not duplicative. *See* 302 F.3d at 277–78. There, however, the similarity between the two suits was merely factual: the legal theories at issue in the two suits were different. *See id.* Here, by contrast, the legal theories at issue in the two suits are the same.

dispute has been long and firmly ensconced within the confines of the United States judicial system." *Id.*

To begin with, no public international issues are implicated in this case. As in *Kaepa,* where we upheld the injunction, this case involves "a private party engaged in a . . . dispute with another private party." *Id.* In *Karaha Bodas*, by contrast, substantial comity concerns militated against the injunction. *See* 335 F.3d at 371–74. That's because the anti-suit injunction posed significant ramifications for a treaty to which the United States was a signatory, and one of the parties to the foreign case was a foreign state-owned enterprise. *See id.* at 373 ("[A]n injunction here is likely . . . to demonstrate an assertion of authority not contemplated by the [treaty]."); *see id.* at 372; ("[The defendant company] is wholly owned by the [foreign government]."); *id.* at 374 (upholding the district court injunction could result in "diplomatic[]" problems). Here, no party is a government entity, and the injunction has no obvious consequences for international relations.[6]

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[6] The dissent points to the fact that "India, Singapore, and Liberia are all signatories of the 2006 Maritime Labour Convention." *Post,* at 23. The dissent then proceeds to argue that "any decision regarding Ganpat's claims will . . . necessarily implicate an international treaty." *Post,* at 24. There are two fatal problems with this argument.

First, as the dissent concedes, "the United States is not a signatory to the [Maritime Labour Convention]." *Post*, at 24 n.19. In *Karaha Bodas*, we reversed an anti-suit injunction that affected a United States treaty. *See* 335 F.3d at 373–74. The problem there was that enjoining the foreign litigation would "demonstrate an assertion of authority not contemplated by" a treaty to which the United States was party. *Id*. at 373. *See also id*. at 359–60 ("Given . . . the responsibilities of the United States

In addition, Ganpat's case has long been ensconced in the American judicial system. Under our precedent, a case becomes ensconced in the United States when a party consents to American jurisdiction and appears in the case. *See Kaepa,* 76 F.3d at 627 (suit ensconced in the United States when defendant "consented to jurisdiction in Texas" and "appeared in an action brought in Texas"). In April 2019, Eastern Pacific appeared and waived objections to personal jurisdiction and venue. Only in March 2020, almost a year after Ganpat's suit had already become ensconced within the United States, did Eastern Pacific file its Indian lawsuit against Ganpat.

Despite the fact that the American suit was well underway before the Indian litigation began, the Indian court sought to enjoin the American litigation. It would be strange to "require a district court to genuflect," *Kaepa,* 76 F.3d at 627, before a foreign court that refuses to respect the American court. In light of the "not-insubstantial" vexatiousness of the Indian litigation and the "scant" comity interests at stake, *Karaha Bodas*, 335 F.3d at 371, the district court was well within its discretion to grant the injunction.

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under that treaty, we conclude that the district court abused its discretion."). Here, by contrast, there is no such problem.

Second, no party has argued that granting Ganpat relief under American law would cause India to violate its obligations under the 2006 Maritime Labour Convention. Eastern Pacific merely points out that an Indian legal regime, enacted pursuant to a treaty, regulates some of the relationships in this case. But the fact that India has its own "regulatory regime," *post*, at 23, does not mean that "public international issues" are in play. *Karaha Bodas*, 335 F.3d at 371. All it means is that there is a run-of-the-mill choice-of-law question—a question outside the scope of this appeal.

III.

The dissent points out that an anti-suit injunction is an "extraordinary remedy." *Post*, at 14. That is true enough. *See Karaha Bodas*, 335 F.3d at 363. Yet this extraordinary remedy was amply warranted by the extraordinary conduct of Eastern Pacific and the Indian court toward Ganpat. The dissent also makes several arguments that misconstrue our anti-suit injunction precedents. And it is to these arguments that we now turn.

A.

The dissent first argues that this court errs by failing to employ the traditional four-part preliminary injunction test—including the requirement of irreparable injury. *Post,* at 17.

But the international anti-suit injunction precedents in our circuit do not require a showing of irreparable injury. When affirming an international anti-suit injunction, we have never discussed the traditional four-part test. *See Unterweser*, 428 F.2d at 895–96; *Bethell*, 441 F.2d at 497–99; *Kaepa,* 76 F.3d at 626–29. Nor have we ever reversed an anti-suit injunction on the basis that the district court failed to apply the traditional preliminary injunction test, including the irreparable injury prong. *See MacPhail* 302 F.3d at 277–78; *Karaha Bodas*, 335 F.3d at 364 ("[T]he suitability of such relief ultimately depends on considerations unique to antisuit injunctions.").[7]

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[7] Of our circuit's five published anti-suit injunction cases, four do not so much as mention the four-part test. *See Unterweser*, 428 F.2d at 895–96; *Bethell*, 441 F.2d at 497–99; *Kaepa*, 76 F.3d at 626–28; *MacPhail* 302 F.3d at 277–78. *Karaha Bodas* briefly alludes to the "four prerequisites to the issuance of a traditional preliminary

We recognize that other federal courts are currently split on anti-suit injunctions—some circuits such as ours take a more permissive approach, while others take a more restrictive approach. *See* Kathryn E. Vertigan, *Foreign Antisuit Injunctions: Taking A Lesson from the Act of State Doctrine,* 76 GEO. WASH. L. REV. 155, 164–73 (2007). But even the more restrictive circuits do not necessarily require analysis of the traditional four-part test for injunctive relief. *See Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren,* 361 F.3d 11, 17–18 (1st Cir. 2004) (rejecting the Fifth Circuit's more permissive approach and adopting the more restrictive approach); *id.* at 19 ("The lower court applied the traditional four-part test for preliminary injunctions. Because this generic algorithm provides an awkward fit in cases involving international antisuit injunctions, district courts have no obligation to employ it in that context.") (citation omitted).

B.

The dissent also argues that "[t]his case bears the hallmarks of those [cases] in which we vacated antisuit injunctions." *Post,* at 20. In particular, the dissent emphasizes two issues: Ganpat is an alien, and the underlying facts involve few contacts with the United States.

But only twice has this circuit vacated an international anti-suit injunction in a published opinion. *See MacPhail,* 302 F.3d at 278; *Karaha Bodas*, 335 F.3d at 375–76. And neither case makes the nationality of the party seeking the injunction, or the contacts with

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injunction"—but only because district court and the parties had discussed them. *See* 335 F.3d at 364. And *Karaha Bodas* ultimately concludes that international anti-suit injunctions are "unique." *Id.*

the United States, part of its anti-suit injunction analysis. *See MacPhail,* 302 F.3d at 277–78; *Karaha Bodas*, 335 F.3d at 366–74.

Our precedents do not ask whether the party seeking the injunction is a foreigner—or whether the underlying facts were related to the American forum. Rather, our precedents weigh the vexatiousness of the foreign litigation against considerations of comity.

If we were undertaking an analysis of personal jurisdiction or venue, contacts with the United States would surely be an appropriate consideration. *See, e.g., Douglass v. Nippon Yusen Kabushiki Kaisha*, 46 F.4th 226, 235 (5th Cir. 2022) (en banc) ("[T]he Fifth Amendment due process test for personal jurisdiction requires . . . 'minimum contacts' with the United States."); 28 U.S.C. § 1391(b) (establishing venue where "a substantial part of the events or omissions giving rise to the claim occurred" or where "defendant is subject to the court's personal jurisdiction").

But Eastern Pacific waived its objections to both personal jurisdiction and venue. Only the merits of the anti-suit injunction are at issue in this appeal.

C.

Finally, the dissent argues that the injunction is overbroad: "It purports to bind [Eastern Pacific] India, which"—unlike Eastern Pacific—"is not a party to the U.S. action." *Post,* at 26. But the Federal Rules permit issuance of an injunction against "persons who are in active concert or participation" with parties, as well as against parties themselves. FED. R. CIV. P. 65(d)(2)(C). "[An] injunction not only binds the parties defendant but also those identified with them in interest . . . or subject to their control. . . . [D]efendants may not nullify a decree by carrying out prohibited

acts through aiders and abettors, although they were not parties to the original proceeding." *United States v. Jenkins*, 974 F.2d 32, 36 (5th Cir. 1992) (quoting *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945)).

As the district court found, "[Eastern Pacific] India is a subsidiary of Eastern Pacific . . . [and] is 99.99% owned by Eastern Pacific." *Ganpat*, 2022 WL 1015027, at *12. The district court also found "complete identity of interests and positions" between Eastern Pacific and Eastern Pacific India. *Id.* "The district court did not err in finding that it was necessary to bind" Eastern Pacific India. *Jenkins*, 974 F.2d at 36.

* * *

The district court was well within its discretion to conclude that the vexatiousness of the Indian litigation outweighed any comity concerns. We accordingly affirm the anti-suit injunction.

EDITH H. JONES, *Circuit Judge*, dissenting:

This circuit, to be sure, takes a more permissive approach to foreign antisuit injunctions than many of our sister circuits. *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 626–27 (5th Cir. 1996).[1] Nonetheless, a foreign antisuit injunction is "an extraordinary remedy" fraught with "unique" concerns regarding

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[1] This approach is probably wrong and should be reconsidered at an appropriate time. *See, e.g.*, *Kaepa,* 76 F.3d at 629–34 (Garza, J., dissenting); *Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355, 359–60 (8th Cir. 2007) ("The First, Second, Third, Sixth, and District of Columbia Circuits have adopted the 'conservative approach,' under which a foreign antisuit injunction will issue only if the movant demonstrates (1) an action in a foreign jurisdiction would prevent United States jurisdiction or threaten a vital United States policy, and (2) the domestic interests outweigh concerns of international comity."); *id.* at 360 (adopting the conservative approach because it "(1) recognizes the rebuttable presumption against issuing international antisuit injunctions, (2) is more respectful of principles of international comity, (3) compels an inquiring court to balance competing policy considerations, and (4) acknowledges that issuing an international antisuit injunction is a step that should be taken only with care and great restraint and with the recognition that international comity is a fundamental principle deserving of substantial deference." (internal quotation marks and citation omitted)).

Our precedents commence with *In re Unterweser Reederei, GmbH,* 428 F.2d 888, 890 (5th Cir. 1970), which approved a federal district court's antisuit injunction to prevent litigation in London in an admiralty dispute, while disregarding, as against "public policy," the parties' forum selection clause. *Id.* at 894. Holding that in the modern era, such clauses are to be enforced between sophisticated parties, the Supreme Court overturned this court's decision. *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 92 S. Ct. 1907 (1972). The Supreme Court's ruling gravely undermined the basis for the injunction. *See also Kaepa,* 76 F.3d at 633 n.13 (Garza, J., dissenting) (distinguishing *Unterweser* and *Bethell v. Peace*, 441 F.2d 495 (5th Cir. 1971), from modern cases).

international comity. *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara,* 335 F.3d 357, 363, 364 (5th Cir. 2003). Yet the district court wheeled out this extraordinary remedy so that a sailor from India can sue a Singaporean ship management company under the Jones Act, claiming that he got malaria in Africa after his Liberian-flagged vessel docked briefly in Savannah, Georgia and received insufficient anti-malaria pills. The district court's decision and the majority's basis for affirming deviate severely from our precedent. I respectfully dissent.

A. Background

It is just as inaccurate for the majority to assert that Ganpat's being sued in India, in a court located one hour from his home, is "fraught with peril," as it is to conclude that he is entitled to the potential windfall of a Jones Act recovery. The majority's criticisms of the Indian court procedures, which derive from English law, may be required to sustain their result but are unsupported by the facts.

Ganpat alleges he contracted malaria because the Liberian-flagged vessel on which he sailed was insufficiently supplied with anti-malaria pills at port in Savannah, Georgia. Falling ill at sea after docking in Africa, he was treated in Brazil, some toes were removed, and he went back home to Goa, India. Eastern Pacific Shipping India (EPS India), an Indian entity that oversaw the execution of Ganpat's seafarer employment agreement (SEA), coordinated and furnished Ganpat's medical care in Brazil and his continued care in India. In December 2018, Ganpat sued Eastern Pacific Shipping (EPS), the Singaporean ship manager for the vessel, in the New Orleans federal district court, but he failed to make proper service of process for twenty-seven months (until August 2021).

The majority has no basis in the record to assert that EPS "continually evaded service of process," as EPS had every right to rely on being served according to the letter of American law and international protocol.[2]

EPS and EPS India sued Ganpat in Goa fifteen months after the U.S. suit was filed and was going nowhere. These entities sought a declaration enforcing his employment contract, which is based on Liberian and Indian law. They obtained a temporary injunction order (in March 2020, on *forum non conveniens grounds*) to prevent Ganpat from pursuing the American suit. Ganpat admits that he repeatedly evaded service by the Indian court and was ultimately held in contempt. At the court hearing in March 2021, the Indian court offered Ganpat a court-appointed lawyer, but he rejected the offer because he did not want to pay the expense. A lawyer for EPS then spoke with Ganpat, who was accompanied by his father and brother-in-law, in an apparent attempt to negotiate his acceptance of the contracted-for injury payment. Upon reentering the courtroom, Ganpat admitted, he *refused* "three or four additional times" the judge's demand that he "sign the papers, take a bond, or hire a lawyer." *Ganpat v. Eastern Pacific Shipping, Pte. Ltd.,* 2022 WL 1015027, *3 (E.D. La. Apr. 5, 2022). He was thus jailed for his *continued refusal* to participate in the legal proceedings, not, as the majority contends, because he "refused to be bullied into dropping the American suit." The next day, he obtained counsel and

[2] The majority erroneously imply that waiver of jurisdiction and venue require a defendant also to waive correct service of process.

bonded out. He has been represented by counsel since and has not again been threatened with jail.[3]

Ganpat further ignored the Indian court's order by pursuing the U.S. litigation in his many fruitless attempts to serve EPS properly. His efforts culminated in the U.S. district court's April 2022 antisuit injunction against both EPS and the non-party to that case, EPS India.[4]

The district court described EPS's Indian suit as a "stratagem," and the majority imply without any record evidence that the Indian legal system lacks legal protection for Ganpat. When this tortured procedural history is considered in toto, it is more accurate to describe the district court's rulings as an attempt to compel domestic jurisdiction over a suit with highly tenuous domestic connections.

B. Standard for Foreign Antisuit Injunctions

Antisuit injunctions in this circuit are described as a subspecies of injunctions. *Karaha Bodas*, 335 F.3d at 364. The majority discounts that Ganpat, like any movant for equitable relief, must ultimately satisfy a four-part test and show a likelihood of success on the merits.[5] The fact that unique considerations

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[3] He admits as well that his American lawyer provided the money to hire the Indian lawyer.

[4] The district court speedily denied EPS's *forum non conveniens* motion to dismiss despite the lack of any substantial connection of this litigation to the United States. EPS and EPS India, unlike Ganpat, have complied with the foreign antisuit injunction order, and the Indian litigation is in limbo pending this dispute.

[5] *See Karaha Bodas*, 335 F.3d at 364 & n.19 (asserting that the court's anti-suit injunction standard acts as a substitute for the traditional standard's "likelihood of success" prong but

affect the propriety of foreign court antisuit injunctions should not detract from the recognition that equitable relief requires an extraordinary justification. Consequently, our cases explain the need to weigh preventing "vexatious or oppressive litigation" and "protecting the court's jurisdiction" against deference to principles of international comity. *See, e.g.*, *id.* at 366; *see also Kaepa,* 76 F.3d at 627; *MacPhail v. Oceaneering Int'l,* 302 F.3d 274, 277 (5th Cir. 2002).[6] Elaborating on what is vexatious, we have identified: (1) inequitable hardship resulting from the foreign suit; (2) the foreign suit's ability to frustrate and delay the speedy and efficient determination of the cause; and (3) the extent to which the foreign suit is duplicitous of the U.S. litigation. *Karaha Bodas*, 335 F.3d at 366. And *Karaha Bodas* clarified that this inquiry goes to the first traditional factor: likelihood of success on the merits. *Id.* at 364 & n.19. Ultimately, the unique aspects of foreign antisuit injunctions must relate to the challenging tests for equitable relief.

The majority opinion, unfortunately, reduces this "extraordinary remedy" essentially to a routine order under a routine multifactor test. The majority's analysis finds "inequitable hardship" if Ganpat must endure litigating the Indian lawsuit; and it finds "frustration" of the American litigation because the "Indian court has sought to prevent Ganpat from litigating in

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intimating that the remaining factors of the traditional standard may be applicable); *see also MWK Recruiting, Inc. v. Jowers*, 833 F. App'x 560, 562 (5th Cir. 2020) (per curiam).

[6] The factors to be weighed seem to compress a four-factor test articulated by this court in *Unterweser*, *i.e.*, whether the foreign litigation would (1) frustrate a policy of the U.S. forum; (2) be vexatious or oppressive; (3) threaten the issuing court's in rem or quasi in rem jurisdiction; or (4) cause prejudice or offend other equitable principles. *See* 428 F.2d at 890.

the United States, even though the American suit was filed first." With these sole prerequisites, the majority declares it unnecessary to consider "the extent to which the foreign suit is duplicitous of the litigation in the United States." *Karaha Bodas*, 335 F.3d at 366. But the majority then endorses the district court's statement that the Indian suit rests on "the same or similar legal bases." Each of these findings is incorrect, as is the majority's minimization of international comity concerns and its further refusal to apply traditional equitable principles. A look at our previous case law concerning foreign antisuit injunctions readily demonstrates the majority's departure from the underlying standards we have used.

1. "Vexatiousness"

First, contrary to the majority's dismissive math, half of the antisuit injunctions issued in this circuit have been vacated on appeal. Of this circuit's six opinions covering antisuit injunctions, three upheld and three vacated district court orders.[7]

Our cases share several common themes, and they uniformly point toward rejecting the district court's injunction in this case. Where we have upheld antisuit injunctions, the defendant in the foreign

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[7] Those cases in which we have upheld antisuit injunctions are *Unterweser*, 428 F.2d 888 (5th Cir. 1970), *rev'd by M/S Bremen*, 407 U.S. 1, 92 S. Ct. 1907 (1972); *Bethell*, 441 F.2d 495 (5th Cir. 1971); and *Kaepa*, 76 F.3d 624 (5th Cir. 1996). Those cases in which we have vacated antisuit injunctions are *MacPhail*, 302 F.3d 274 (5th Cir. 2002); and *Karaha Bodas*, 335 F.3d 357 (5th Cir. 2003). The most recent such case vacating an injunction is well reasoned but unpublished. *MWK Recruiting*, 833 F. App'x 560 (5th Cir. 2020) (per curiam).

proceeding was a United States citizen or company[8]; the facts giving rise to the dueling actions bore a substantial relationship to the United States forum[9]; and the dueling actions involved identical parties and nearly identical, if not identical claims.[10] In contrast, where this court vacated antisuit injunctions, the defendant in the foreign proceeding was a foreigner[11]; the facts underlying the actions were largely unrelated to the United States forum[12]; the parties were

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[8] *Unterweser*, 428 F.2d at 889; *Bethell*, 441 F.2d at 496; *Kaepa*, 76 F.3d at 625.

[9] *Unterweser*, 428 F.2d at 889 (ship docked in Florida after accident in Gulf of Mexico while transporting drilling barge from Louisiana to Italy); *Bethell*, 441 F.2d at 496 (contract signed in Florida by Florida residents while defendant was acting in capacity as Florida real estate broker, which gave rise to fiduciary duties under Florida law); *Kaepa*, 76 F.3d at 625–26 (Japanese company contracted with U.S. company and agreed to litigate disputes in United States).

[10] *Unterweser*, 428 F.2d at 889 (U.S. company sued German company in federal district court for damages; German company then sued U.S. company in England for moneys due under towage contract and for breach of contract); *Kaepa*, 76 F.3d at 625–26 (U.S. company sued Japanese company in federal district court for fraudulent and negligent inducement as well as breach of contract; Japanese company sued U.S. company in Japan on identical claims); *see also Bethell*, 441 F.2d at 496 (Florida real estate broker sued owners in Bahamas to enforce contract to sell property and to quiet title; Texas co-owner sued real estate broker in federal district court for fraud and declaratory judgment as to validity of the contract); *id.* at 498–99 (narrowing scope of injunction because it "attempt[ed] to affect rights between [real estate broker] and co-owners who were not parties to the [U.S.] action").

[11] *MacPhail*, 302 F.3d at 276 & n.2; *Karaha Bodas*, 335 F.3d at 360.

[12] *MacPhail*, 302 F.3d at 275–76 (injuries in South China Sea resulted in settlement agreement between U.S. company and Australian that was signed in Australia and confirmed by

not identical[13]; and, though the dueling cases arose out of the same underlying facts, they involved different legal claims.[14]

This case bears the hallmarks of those in which we vacated antisuit injunctions. First, all parties are foreign to the United States. The only connection this case has to the United States, besides Ganpat's lawyer, is Ganpat's allegation that EPS, a Singaporean ship manager, failed to supply the *M/V Stargate*, a Liberian-flagged vessel, with enough anti-malaria medication while briefly in port at Savannah, Georgia. Ganpat has remained in India since his repatriation. He couldn't even be bothered to personally attend the dispositive hearing on the district court's antisuit injunction. The court permitted him to appear by Zoom from India.

Even more significant, the parties to each action are *not* the same and the cases involve *different* legal claims. In the New Orleans district court, Ganpat sued only EPS for damages under the Jones Act, the collective bargaining agreement, and general maritime law. In India, EPS and EPS India filed suit for a

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Australian court); *Karaha Bodas*, 335 F.3d at 360–61 (arbitration award from Switzerland arising out of failed construction contract between Caymanian company and state-owned Indonesian company).

[13] *Karaha Bodas*, 335 F.3d at 362. *But see MacPhail,* 302 F.3d at 277 (identical parties).

[14] *MacPhail*, 302 F.3d at 277 (U.S. action sought damages from maritime tort claim, whereas Australian action sought specific performance of settlement agreement); *Karaha Bodas*, 335 F.3d at 361 (U.S. action sought confirmation of award, whereas Indonesian action sought annulment of award); *see also MWK Recruiting,* 833 F. App'x at 564 (rejecting use of the "logical relationship test" to determine duplicative claims).

declaration that Ganpat's damages are limited by the SEA Ganpat executed with Ventnor Navigation, Inc. through Ventnor's authorized representative, EPS India.[15] But EPS India is not a party to the U.S. litigation.

Although the majority assert that it is unnecessary to discuss whether the parties' claims in each case are "duplicitous," they go on to endorse the district court's finding that the cases rest on the same or similar legal claims. What the majority means is thus unclear. But the inquiry into legal overlap between the domestic and foreign proceedings has been a basic and indispensable feature of previous cases. Indubitably, the parties here are proceeding on distinct legal claims. Ganpat has no recourse to the Jones Act's remedies in Indian courts. And although EPS in the district court asserted as an affirmative defense that the SEA limited Ganpat's damages, these actions "share the same or similar legal bases" only to the extent that the resolution of one case *may* serve "as the basis for a plea of res judicata" in the other case. *Ganpat*, 2022 WL 1015027 at *10, *11. Res judicata is hard to imagine, however, because any rejection of the SEA by the district court (were that to occur) is unlikely to be enforced against *EPS India*, a nonparty over which the district court lacked jurisdiction, via its judgment solely against EPS.

The district court reasoned otherwise by asserting simply that the SEA is at issue in both the U.S. and Indian fora. Such a superficial factual analogy has been repeatedly rejected by this court because "the duplicative factor [relating to vexatiousness] is about

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[15] That agreement is governed by Liberian and Indian law and covered work on the *M/V Stargate*, which EPS managed.

legal, not *factual,* similarity." *MWK Recruiting, Inc. v. Jowers*, 833 F. App'x 560, 564 (5th Cir. 2020) (per curiam) (emphasis in original); *see also Karaha Bodas*, 335 F.3d at 370; *Kaepa*, 76 F.3d at 626 ("mirror-image" claims in foreign suit and U.S. suit). *MacPhail*, in fact, rejected the exact argument made by the district court here, holding the assertion of a *defense* in U.S. proceedings that serves as the basis for a *claim* in foreign proceedings does not render the actions duplicitous. 302 F.3d at 277. And indeed, preventing these parties from proceeding on different claims in the U.S. and India makes no sense. The district court is powerless to compel a complete resolution of the three parties' dispute before its bench; and the parties are prevented from going forward in India's dispositive litigation with EPS India. The majority's analysis thus evades what should be a *sine qua non* to justify a foreign antisuit injunction.[16]

Properly applying our precedents to the facts at hand, it seems plain that Ganpat does not suffer "inequitable hardship" from being involved in parallel litigation, a course his actions foreordained. Parallel proceedings, alone, are insufficient to show vexation or oppression. *Karaha Bodas*, 335 F.3d at 372 & n.59; *see also MWK Recruiting,* 833 F. App'x at 564. The Indian court is doubtlessly a *forum conveniens*. And any future threat of Ganpat's being jailed is wholly speculative, as he has obtained counsel in India. *Karaha Bodas*, 335 F.3d at 368–69 (no inequitable

[16] Contrary to the majority's assertion, this court has never found that "inconvenience [and] expense" alone can justify a foreign anti-suit injunction. By that standard, *any* foreign suit could be enjoined. The inconvenience and expense of foreign litigation is instead only "unwarranted" where the foreign action is duplicative of the domestic action. *Kaepa*, 76 F.3d at 627–28.

hardship where asserted harm was speculative). It is likewise speculative that the Indian suit could have frustrated or delayed the district court's proceedings. The district court certainly had means to defend its jurisdiction that fell short of requiring EPS and EPS India to abandon the Indian action entirely. *See id.* at 361–62 (district court required the plaintiff in foreign case to withdraw application for antisuit injunction and prohibited plaintiff from taking any substantive action in foreign case, but it allowed plaintiff to "take any ministerial steps necessary to maintain the cause of action."). And it was Ganpat, not EPS or the Indian court, who delayed his American case for over two years with inept dithering about proper service of process. Finally, the current posture of these cases prevents either court from fully resolving the three parties' differences, and this means the legal claims cannot be substantially similar. It was error to deem the pendency of the Indian lawsuit "vexatious and oppressive" to Ganpat.

2. Comity

On the other side of the equitable ledger, international comity concerns here decidedly outweigh the need to "prevent vexatious or oppressive litigation" and "to protect the court's jurisdiction."[17] To begin, India, Singapore, and Liberia are all signatories of the 2006 Maritime Labour Convention (MLC).[18] That

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[17] *Karaha Bodas* makes clear that while "notions of comity do not wholly dominate our analysis," the court must still weigh the "need to defer to principles of international comity." 335 F.3d at 366; *see also Kaepa,* 76 F.3d at 627.

[18] *Ratifications of MLC, 2006*, International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INS TRUMENT_ID:312331 (last visited Apr. 13, 2023).

treaty embodies "as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour Conventions." MLC, 2006, preamble. In accordance with its duties under the treaty, India promulgated a complex regulatory regime that governs the relationship among EPS, EPS India, and Ganpat. For instance, EPS India exists because Indian law prevents a foreign company from employing Indian nationals to work on a foreign flagged ship without the involvement of a locally licensed placement service. Consequently, any decision regarding Ganpat's claims will, as in *Karaha Bodas*, necessarily implicate an international treaty and foreign states' rules promulgated thereunder.[19]

Comity concerns, however, do not only arise where public international relations are at stake. Such a holding would place this court's precedent well outside the norm. Indeed, even circuits friendly to this court's approach to antisuit injunctions acknowledge there are "international-comity concerns inherent in enjoining a party from pursuing claims in a foreign court." *1st Source Bank v. Neto*, 861 F.3d 607, 613 (7th Cir. 2017).[20] Those inherent concerns are on full

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[19] Although the United States is not a signatory to the MLC, surely U.S. courts ought to proceed carefully before ignoring treaties and foreign statutes, especially those governing employment relationships. Yet the majority seem to deride this aspect of comity. *See, e.g., Goss Int'l*, 491 F.3d at 366 (vacating injunction because "[i]nternational comity requires us to give deference to the Japanese courts to interpret Japanese laws").

[20] As the Sixth Circuit observed, an antisuit injunction in and of itself "conveys the message, intended or not, that the issuing court has so little confidence in the foreign court's ability to adjudicate a given dispute fairly and efficiently that it is unwilling

display here. In March 2020, seventeen months *before* service was perfected in the district court, the Indian court determined that it had jurisdiction over the dispute and the parties, was a convenient forum, and should temporarily enjoin Ganpat from his U.S. litigation. In April 2022, two years *after* the Indian court's order, the district court issued its foreign antisuit injunction in the face of Ganpat's ongoing disregard of the Indian court's order.[21] Had Ganpat instead litigated on the merits in the Indian court, this case might have been concluded already, albeit on terms he might not have found attractive. But as noted above, the district court's injunction forced EPS and EPS India to dismiss the Indian action. In short, the district court's actions not only clashed "with the general principle that a sovereign country has the competence to determine its own jurisdiction and grant the kinds of relief it deems appropriate," but also "effectively attempt[ed] to arrest the judicial proceedings of another foreign sovereign." *Karaha Bodas*, 335 F.3d at 371, 372–73. The fact that the Eastern District of Louisiana maintains absolutely zero factual connection to the dispute only exacerbates the violation of comity.

The *MacPhail* case provides an excellent parallel. There, an Australian citizen suffered injuries while working in the South China Sea. 302 F.3d at 275. Three years later, he brought a general maritime tort claim against an American company in federal district court. *Id.* at 276. The company proffered a prior settlement agreement between the parties as a defense.

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even to allow the possibility." *Gau Shan Co. v. Bankers Trust Co.*, 956 F.2d 1349, 1355 (6th Cir. 1992).

[21] Indeed, the district court's course of conduct greenlit Ganpat's contempt by allowing him to continue prosecuting the U.S. action in apparent defiance of the Indian court's order.

Id. When the district court rejected the agreement as unenforceable, the company brought an action in Australia seeking specific performance of the agreement. *Id.* at 277. The district court issued an antisuit injunction, and the company appealed. *Id.* This court first held that the actions were not duplicitous: Although both actions arose "out of facts contemplated" by the agreement, the actions did not involve identical claims. *Id.* It also held that the foreign action was not vexatious considering the Australian citizen had previously resorted to Australia's courts to confirm the agreement. *Id.* And it rejected the contention that the antisuit injunction was necessary to protect the district court's jurisdiction because the Australian court established "prima facie jurisdiction" before the federal district court and nothing prevented the Australian citizen from opposing the validity of the agreement in the Australian courts. *Id.* at 277–78. The court consequently vacated the antisuit injunction. *Id* at 278.

Like *MacPhail,* the case at hand bears almost no relationship to the United States. The claims at issue in the domestic and foreign litigation are not identical. And though the district court here assumed jurisdiction over the case earlier than the Indian court, the domestic case lay dormant for years due to Ganpat's dilatory conduct. In the meantime, the Indian court established jurisdiction and preliminarily found itself to be a *forum conveniens*. The significant international comity interests at issue here, which were not present in *McPhail,* go well beyond those inherent in enjoining foreign litigation and further weigh in favor of vacating the antisuit injunction.

3. Equitable Considerations

As a final instance of abuse, the district court failed to balance the equities traditionally important to granting injunctive relief, as it should have done after finding Ganpat had shown a likelihood of success on the merits. Moreover, the district court failed to "narrowly tailor" the injunction "to remedy the specific action" that gave rise to its order. *John Doe #1 v. Veneman,* 380 F.3d 807, 818 (5th Cir. 2004). The injunction purports to bind EPS India, which is not a party to the U.S. action. Though Rule 65 of the Federal Rules of Civil Procedure permits a court to bind non-parties "who are in active concert or participation with" a party against whom an injunction is issued, the district court must first find that the non-party is "so identified in interest with those named in the decree that it would be reasonable to conclude that their rights and interests have been represented and adjudicated in the original injunction proceeding." *Harris Cnty. v. CarMax Auto Superstores, Inc*., 177 F.3d 306, 314 (5th Cir. 1999) (citation omitted). Despite the fact that EPS India is a wholly owned subsidiary of EPS, EPS India may have different obligations to Ganpat and might have claims EPS is unable to assert. For instance, Ganpat has argued the SEA does not govern his relationship with EPS. Consequently, it was an abuse of discretion to bind EPS India. *See Bethell*, 441 F.2d at 498 (scope of injunction overbroad where it "attempts to affect rights between" defendant in U.S. action and those "who were not parties to the" district court action). The court also brazenly required EPS and EPS India to dismiss the Indian action, as opposed to requiring them, for example, to ask the Indian court to abandon its injunction. *See Karaha Bodas*, 335 F.3d at 361. The injunction's terms are abusive, especially if the Indian statute of limitations

could prevent EPS and EPS India from refiling their claim.

Returning to the theme that injunctive relief is to be sparingly granted, and only when the balance of hardships clearly weighs in favor of the movant and against the respondent,[22] I believe the foregoing discussion demonstrates the legal and factual errors underpinning the district court's foreign antisuit injunction. I respectfully dissent.

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[22] *See Karaha Bodas*, 335 F.3d at 363–64 & n.19; *see also MacPhail*, 302 F.3d at 277–78; *MWK Recruiting*, 833 F. App'x at 562, 564–65.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KHOLKAR VISHVESHWAR GANPAT,

Plaintiff

VERSUS

EASTERN PACIFIC SHIPPING, PTE. LTD,

Defendant

CIVIL DOCKET
NO. 18-13556
SECTION: "E" (4)

April 5, 2022

ORDER AND REASONS

Before the Court is a Motion for Preliminary and Permanent Injunction, filed by Plaintiff Kholkar Vishveshwar Ganpat ("Plaintiff").[1] Defendant Eastern Pacific Shipping, PTE. LTD ("Eastern Pacific Singapore") filed an opposition.[2]

On January 31, 2022, the Court issued a scheduling order setting a hearing on Plaintiff's motion for preliminary and permanent injunction and setting a briefing schedule for the parties to file pre-hearing memoranda.[3] On March 16, 2022, Plaintiff filed a pre-hearing memorandum in support of his request for

[1] R. Doc. 199.

[2] R. Doc. 218.

[3] R. Doc. 227.

injunction.[4] On March 21, 2022, Eastern Pacific Singapore filed a pre-hearing memorandum in opposition to Plaintiff's request for injunction.[5] On March 24, 2022, Plaintiff filed a reply memorandum.[6]

On March 28, 2022, the Court held a hearing on Plaintiff's motion for preliminary and permanent injunction. Plaintiff testified at the hearing.

BACKGROUND

Plaintiff is a resident and citizen of the Republic of India.[7] Eastern Pacific Singapore is an international ship management company incorporated under the laws of the Republic of Singapore with its principal place of business in the Republic of Singapore.[8]

On December 12, 2018, Plaintiff filed suit in this Court, bringing claims against Eastern Pacific Singapore under the Jones Act, general maritime law, and for breach of the contractual duty to provide disability benefits in accordance with the "TCC" Collective Agreement.[9] Plaintiff alleges he sustained injuries as a result of tortious conduct that occurred in Savannah, Georgia.[10] Plaintiff alleges he contracted malaria while working as a crew member aboard the M/V STARGATE, which Plaintiff alleges is managed and

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[4] R. Doc. 251.

[5] R. Doc. 253.

[6] R. Doc. 259.

[7] R. Doc. 212 at p. 1.

[8] R. Doc. 1 at ¶ 2. *See also* R. Doc. 204-1 at p. 1, 18; R. Doc. 204-2 at ¶¶ 2, 4.

[9] R. Doc. 1.

[10] *See generally id.*

operated by Eastern Pacific Singapore.[11] Specifically, Plaintiff alleges Eastern Pacific Singapore (1) failed to provision the M/V STARGATE with sufficient anti-malaria medication while the M/V STARGATE was docked at port in Savannah, Georgia, and (2) failed to administer prophylactic anti-malaria medication to the crew of the M/V STARGATE before the vessel arrived in Gabon, a region with a high risk of contracting malaria.[12] Plaintiff further alleges he began to suffer malaria symptoms on the high seas as the vessel sailed from Gabon to Brazil,[13] was hospitalized and treated for malaria in Rio de Janeiro, Brazil,[14] and was subsequently repatriated to India where he received further medical treatment for malaria and complications arising therefrom.[15]

Eastern Pacific Singapore waived its objections to personal jurisdiction and venue in this Court.[16] Over a period of approximately two and a half years, Plaintiff attempted multiple times to perfect service upon Eastern Pacific Singapore. Eastern Pacific Singapore did not accept service and, instead, filed several motions to dismiss Plaintiff's claims under Federal Rule of Civil Procedure 12(b)(5) for insufficient service of process.[17] On August 10, 2021, the Court entered an Order and Reasons holding that Plaintiff had

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[11] *Id.* at ¶¶ 6, 32.

[12] *Id.* at ¶¶ 17–10, 25–28.

[13] *Id.* at ¶ 30.

[14] *Id.* at ¶ 39.

[15] *Id.* at ¶ 45.

[16] R. Docs. 68 and 122.

[17] *See* R. Docs. 16, 69, 187.

perfected service upon Eastern Pacific Singapore at its headquarters in Singapore.[18]

On August 12, 2021, Plaintiff filed a motion for leave to file his first supplemental and amended complaint for damages ("amended complaint") against Eastern Pacific Singapore.[19] Plaintiff's amended complaint retains his Jones Act, general maritime law, and contractual disability benefits claims set forth in the original complaint, and adds an additional claim against Eastern Pacific Singapore for "an intentional general maritime law tort."[20] Plaintiff's new claim arises out of a lawsuit filed in India against Plaintiff by Eastern Pacific Singapore and Eastern Pacific Shipping (India) Private Limited ("EPS India"), a subsidiary 99.99% owned by Eastern Pacific Singapore.[21] Plaintiff alleges the actions of Eastern Pacific Singapore in the Indian court amount to "deliberate and malicious efforts to intimidate [Plaintiff] from seeking legal redress in this Court," and that these actions constitute an intentional general maritime law tort.[22]

Fifteen months after Plaintiff filed suit in this Court, Eastern Pacific Singapore and EPS India filed suit against Plaintiff in South Goa, India on March 2, 2020, for, among other things, an "injunction restraining vexatious and oppressive foreign legal proceedings."[23] Specifically, Eastern Pacific Singapore and

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[18] *See* R. Doc. 196.

[19] R. Doc. 198.

[20] R. Doc. 212 at ¶¶ 101–102.

[21] R. Doc. 142-2 at p. 5–6, at ¶ 1–2.

[22] R. Doc. 212 at ¶ 101. Hereinafter, the Court will refer to this claim as Plaintiff's "malicious prosecution" claim, for the sake of brevity.

[23] R. Doc. 142-2 at p. 1.

EPS India applied for a temporary injunction seeking ex parte interim relief in the form of a temporary antisuit injunction to restrain Plaintiff from prosecuting this lawsuit in the United States.[24] Eastern Pacific Singapore and EPS India also seek a permanent prohibitory injunction in the nature of an antisuit injunction against Plaintiff, restraining him permanently from taking any steps in the United States proceedings.[25]

In their application for injunctive relief, Eastern Pacific Singapore and EPS India

> submit that the US Proceedings have been instituted with an intention to circumvent the pre-existing contractual relationship between Plaintiff No. 1/EPS India and the Defendant [Kholkar Vishveshwar Ganpat] pursuant to the Mumbai Employment Agreement which expressly quantifies the maximum compensation payable to the Defendant [Kholkar Vishveshwar Ganpat] in the event of 100% disability resulting from an injury sustained on board the Vessel.[26]

The Court notes Eastern Pacific Singapore and EPS India allege in their filings in the Indian proceedings that there is a "contractual relationship" between Plaintiff and EPS India pursuant to the "Mumbai Employment Agreement."[27] In reality, however, the parties to that agreement are Plaintiff and Ventnor

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[24] *See generally id.*

[25] *Id.* at p. 7.

[26] *Id.* at p. 23, at ¶ 15.

[27] *Id.*

Navigation, Inc. ("Ventnor").[28] EPS India signed the agreement on behalf of Ventnor as agent for Ventnor.[29]

On March 7, 2020, the court in South Goa, India issued an order temporarily restraining Plaintiff from "continuing/prosecuting/taking steps and/or any further steps in the proceedings before the United States District Court, Eastern District of Louisiana, New Orleans" pending the hearing and the disposal of the application for temporary injunction.[30] The Indian court's order granting the temporary antisuit injunction notes that

> [t]he plaintiffs [Eastern Pacific Singapore and EPS India] have instituted the instant suit for a decree of declaration that the convenience of the parties and ends of justice would be better served if any trial and adjudication relating to liability and quantum of compensation payable to the defendant [Kholkar Vishveshwar Ganpat] in relation to his purported disability/injury sustained by having contracted malaria working on board MV Stargate IMO No. 9493212 (Vessel) pursuant to Searer Employment Agreement dated 27.12.2016 signed in Mumbai is held before this Court [in South Goa, India] rather than the United States District Court, Eastern District of Louisiana, New Orleans.[31]

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[28] R. Doc. 215-1 at p. 1.

[29] R. Doc. 204-2at ¶¶ 10–12.

[30] R. Doc. 142-1 at p. 11, at ¶ 24.

[31] *Id.* at p. 2.

In this Court, on August 18, 2021, Plaintiff filed the instant motion for preliminary and permanent injunction.[32] Plaintiff asks this Court to issue a preliminary and permanent injunction "enjoining the prosecution by Eastern Pacific [Singapore] and its affiliates and subsidiaries," namely, EPS India, "of the litigation now pending in the District Court of South Goa, Margao, Republic of India."[33] Plaintiff argues a foreign antisuit injunction is appropriate "because the Indian Court proceedings seek to pass upon identical liability and damage claims which were asserted here on December 12, 2018, about fifteen months before EPS filed its Indian lawsuit on March 2, 2020."[34] Plaintiff argues that, in addition to directly challenging the jurisdiction and orders of this Court, the foreign litigation places him at risk of imprisonment and of having his personal financial assets seized.[35] Plaintiff argues Eastern Pacific Singapore is using the proceedings in India as a means "to thwart this Court, to compel Plaintiff to abandon his rights under the Jones Act, and to force him to dismiss the above-captioned matter or go to jail."[36] Plaintiff characterizes the Indian lawsuit as an attempt to "ram a paltry foreign settlement down [his] throat," and to ultimately force Plaintiff to "dismiss his U.S. lawsuit because it was settled in India."[37] Plaintiff argues "[t]he Indian Court

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[32] R. Doc. 199.

[33] R. Doc. 199-1 at p. 1.

[34] *Id.* at p. 2.

[35] *Id.*

[36] *Id.* at p. 12–13.

[37] *Id.* at p. 13.

pleadings touch upon all of the issues raised in Plaintiff's complaint" filed in this Court.[38]

At the injunction hearing held in this Court on March 28, 2022, Plaintiff testified a bailiff came to his home in India three or four times attempting to serve him with papers connected to the lawsuit in India. Plaintiff testified the first time the bailiff came to his house was in March of 2020. Plaintiff testified he refused to accept the papers. Plaintiff further testified an EPS lawyer came to his house and told Plaintiff his case in the United States was "stopped," and that the case was to continue in Goa, India. The EPS lawyer attempted to provide Plaintiff with papers showing his suit in the United States was "stopped," but Plaintiff refused to accept the papers. Plaintiff testified he was told if he did not accept the papers the court in India would issue an arrest warrant and arrest him. Plaintiff testified that on or about March 16, 2021, the EPS lawyer, the bailiff, and police officers came to Plaintiff's house and informed him an arrest warrant was issued by the court in India. Plaintiff testified he was taken into custody that day in front of his wife and child. Plaintiff testified the police officer took him to the South Goa, India court where he was brought in front of a judge. Plaintiff testified there were three or four lawyers there on behalf of EPS and that he did not have a lawyer there to represent him. Plaintiff further testified the judge asked him why he would not accept the papers and told Plaintiff to sign the papers or hire a lawyer, and that, if he refused, he would go to jail. After that, Plaintiff testified the judge instructed one of the EPS lawyers to take Plaintiff outside the courtroom and advise him. Plaintiff testified

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[38] *Id.*

the EPS lawyer told him there was no reason for this case to go forward in the United States, and that the case could be resolved in India, and they could possibly reach a settlement. Plaintiff testified when he and the EPS lawyer returned to the courtroom, the EPS lawyer told the judge Plaintiff did not want to cooperate and that he did not want to drop his lawsuit in the United States. Plaintiff further testified that the EPS lawyer told the judge Plaintiff did not want bail or a bond, despite the fact that Plaintiff never discussed bail or a bond with anyone and did not understand what those terms meant. Plaintiff testified the judge told him three or four additional times to sign the papers, take a bond, or hire a lawyer, but Plaintiff refused and the judge informed Plaintiff she was sending him to jail.

Plaintiff testified he was taken to a holding cell for some time and then transported to a prison, which Plaintiff characterized as a prison for murderers and rapists. Plaintiff testified he was strip searched upon arrival at the prison and was thereafter transferred to the I-block, which is the part of the prison used to incarcerate criminal defendants. Plaintiff testified he was placed in a four-by-five-meter cell with five other inmates.

Plaintiff testified the following morning he was transported from the prison back to the courthouse in South Goa, India. Plaintiff testified he was brought back before the same judge who sent him to jail the day before and that he asked her for a bond, and she told him he lost his chance at a bond and that he needed to hire a lawyer to obtain bail. Plaintiff testified the judge gave him a short time to find a lawyer, and that he eventually found one. Plaintiff testified

his lawyer informed the judge he was going to apply for bail.

Plaintiff testified that because of the legal proceedings in India he is afraid he will be arrested again, and that he has fear and apprehension about testifying in open court because of what could happen to him in India. Plaintiff testified he has been to court eleven or twelve times in India, and that he hired an attorney to represent him in the proceedings in India. Plaintiff testified the EPS lawyers are asking the court in India to enforce 16 counts of contempt against him in connection with the proceedings in India. Plaintiff testified he has received threats of being sent back to jail in India if he does not drop his case in the United States. Plaintiff testified EPS is asking the Indian court to hold him in contempt and send him back to jail, and that EPS is threatening his freedom and his safety, threatening to separate him from his wife and child, and threatening to seize his property.

LEGAL STANDARD

Ordinarily, to obtain a preliminary injunction, a movant must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) the threatened injury outweighs any potential harm to the non-movant; and (4) the injunction will not undermine the public interest.[39] In most situations, for a court to grant a permanent injunction, a

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[39] *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1051 (5th Cir. 1997).

plaintiff must show actual success on the merits, in addition to demonstrating the other three factors.[40]

On the other hand, "[a] foreign antisuit injunction is a special application of [the general] injunction rules,"[41] and the "suitability of such relief ultimately depends on considerations unique to antisuit injunctions."[42] "It is well established that 'federal courts have the power to enjoin persons subject to their jurisdiction from prosecuting foreign suits.'"[43] The district court's decision to grant injunctive relief is reviewed for abuse of discretion.[44]

A court deciding whether to issue a foreign antisuit injunction must "balance domestic judicial interests against concerns of international comity."[45] In determining whether such a foreign antisuit injunction is necessary, the court "weigh[s] the need to prevent vexatious or oppressive litigation and to protect the court's jurisdiction against the need to defer to principles of international comity."[46] The Fifth Circuit has adopted an approach to antisuit injunctions which "emphasize[s] the need to prevent foreign or vexatious

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[40] *See Amoco Prod. Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 546 n.12 (1987).

[41] *MWK Recruiting Inc. v. Jowers*, 833 F. App'x 560, 562 (5th Cir. 2020) (citing *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 364 (5th Cir. 2003), for the proposition that a foreign antisuit injunction is a "particular subspecies of preliminary injunction.").

[42] *Karaha Bodas Co.*, 335 F.3d at 364.

[43] *Id.* (quoting *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 626 (5th Cir. 1996)).

[44] *Kaepa, Inc.,* 76 F.3d at 626.

[45] *Karaha Bodas Co*., 335 F.3d at 366.

[46] *Id.*

litigation," and rejects the approach employed by some other circuits which emphasizes principles of comity over other considerations.[47]

In the Fifth Circuit, antisuit injunctions have been granted when the foreign litigation would: (1) frustrate a policy of the forum issuing the injunction; (2) be vexatious or oppressive; (3) threaten the issuing court's in rem or quasi in rem jurisdiction; or (4) cause prejudice or offend other equitable principles.[48]

Over the past fifty years or so, the Fifth Circuit has addressed the propriety of antisuit injunctions on several occasions. In *In re Unterweser Reederei, Gmbh*, the Fifth Circuit reviewed the district court's order granting an antisuit injunction against a vessel owner in a limitation of liability action, thereby restraining the vessel owner from proceeding with litigation concerning the same subject matter in an English court.[49] Unterweser Reederei, Gmbh, ("Unterweser") entered a contract of towage with Zapata Off-Shore Company ("Zapata") which called for Unterweser's tug, the Breman, to tow Zapata's drilling barge from Venice, Louisiana to Italy.[50] While the towage was underway in the Gulf of Mexico, Zapata's drilling barge was damaged.[51] Thereafter, Zapata filed

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[47] *Kaepa, Inc.* 76 F.3d at 627.

[48] *In re Unterweser Reederei, Gmbh*, 428 F.2d 888, 890 (5th Cir. 1970*), on reh'g en banc sub nom. In the Matter of the Complaint of Unterweser Reederei, GmbH*, 446 F.2d 907 (5th Cir. 1971), *rev'd and vacated on other grounds sub nom. M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972).

[49] *See generally id.*

[50] *Id.* at 889.

[51] *Id.*

a complaint in admiralty in federal court against Unterweser and the tug, arrested the tug, and served a copy of its complaint upon the tug's master.[52] Unterweser filed a motion asking the district court to dismiss Zapata's complaint or stay further prosecution of the action, but the district court denied the motion.[53] Subsequently, Unterweser initiated suit against Zapata in England, claiming monies due under the contract of towage.[54] Thereafter, Unterweser filed a complaint in federal district court seeking exoneration from or limitation of liability, and Zapata filed its claim in the limitation action, asserting the same causes of action as in its original federal court action.[55] In the limitation action, Unterweser filed an objection to Zapata's claim and also filed a counterclaim against Zapata, asserting the same claims as in the English action.[56]

Zapata filed a motion for an antisuit injunction in the limitation action, asking the district court to restrain Unterweser from continuing with its suit in England.[57] The district court granted the motion for antisuit injunction, and Unterweser appealed.[58] In granting the motion, the district court explained that, because suit was initially filed in the district court, and because the district court has jurisdiction over the parties and the subject matter, "[t]he proposition that the case should at the same time be prosecuted in

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[52] *Id.*

[53] *Id.*

[54] *Id.* at 890.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

another forum is not well received."[59] The district court further held that allowing the same action to be prosecuted simultaneously in a foreign country would cause inequitable hardship and would tend to frustrate and delay the speedy and efficient determination of the cause in the district court.[60] On appeal, the Fifth Circuit—observing that courts have the power to enjoin parties properly before it from litigating in another court—held that "[i]t was within the court's discretion to determine, as it did, that allowing simultaneous prosecution of the same action in a foreign forum thousands of miles away would result in inequitable hardship and tend to frustrate and delay the speedy and efficient determination of the cause."[61]

One year later, in *Bethell v. Peace*,[62] the Fifth Circuit "reemphasized the vexatiousness of parallel proceedings by approving the lower court's injunction."[63]

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[59] *In re Unterweser Reederei, Gmbh*, 296 F. Supp. 733, 735 (M.D. Fla. 1969), *aff'd*, 428 F.2d 888 (5th Cir. 1970), *on reh'g en banc sub nom. In the Matter of the Complaint of Unterweser Reederei, GmbH*, 446 F.2d 907 (5th Cir. 1971), *vacated on other grounds sub nom. M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972).

[60] *Id.*

[61] *In re Unterweser Reederei, Gmbh*, 428 F.2d at 896. The Supreme Court granted a writ of certiorari and vacated and reversed the decision of the Fifth Circuit, holding that a forum selection clause in the contract of towage providing for the litigation of any dispute under the contract to take place before the High Court of Justice in London, England, was valid and binding on the parties. *See M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972).

[62] 441 F.2d 495 (5th Cir. 1971).

[63] Steven R. Swanson, *The Vexatiousness of A Vexation Rule: International Comity and Antisuit Injunctions*, 30 GEO. WASH. J. INT'L L. & ECON. 1, 25 (1996).

In *Bethell,* seven individuals co-owned land in the Bahamas.[64] Veronica Peace, a real estate broker in Florida, induced six of the seven co-owners to sign a contract to sell the Bahamian real estate to her.[65] In November 1967, Peace filed two lawsuits in the Bahamas, a quiet title action and an action for specific enforcement of the contract.[66] Edward Bethell, a successor in title to one of the six co-owners who signed the contract, filed suit in federal court seeking a declaration that the contract was invalid, damages based on Peace's fraudulent practices, and an injunction against Peace prosecuting her lawsuits in the Bahamas.[67] The district court granted Bethell's partial motion for summary judgment that the contract was invalid, and granted the antisuit injunction against Peace.[68] Issues relating to fraud and breach of a confidential relationship remained pending and were set to be resolved at trial.[69] Peace appealed the district court's order, alleging, among other things, that the district court erred in enjoining her from prosecuting her lawsuits in the Bahamas.[70] The Fifth Circuit, noting that in "certain circumstances it is proper for courts of equity to enjoin parties from prosecuting claims before courts of another jurisdiction," held that because the district court found the contract invalid on its face, the district court acted within its discretion in relieving Bethell from the "expense and vexation of

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[64] 441 F.2d at 496.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

having to litigate in a foreign court," and that the district court "could properly enjoin [Peace] from future harassment through litigation based on a contract that was inoperative."[71]

In *Kaepa, Inc. v. Achilles Corp.*, the Fifth Circuit again affirmed the lower court's grant of an antisuit injunction.[72] A United States company, Kaepa, Inc., entered into an exclusive distributorship agreement with Achilles Corporation, a Japanese entity, pursuant to which Achilles was to market Kaepa's products in Japan.[73] The distributorship agreement contained a choice of law provision calling for the application of Texas law, and a forum selection clause specifying that litigation concerning the contract was to take place in Texas.[74] In July 1994, Kaepa sued Achilles in Texas state court, alleging breach of contract, fraudulent inducement, and negligent misrepresentation.[75] Achilles removed the action to federal court.[76] In February 1995, Achilles filed suit against Kaepa in Japan, "alleging mirror-image claims: (1) fraud by Kapea to induce Achilles to enter into the distributorship agreement, and (2) breach of contract by Kaepa."[77] Kaepa filed a motion in the district court, asking the court to enjoin Achilles from prosecuting its claims in Japan, and the district court granted the motion, ordering Achilles to refrain from litigating the Japanese action and to file its counterclaims in the federal district

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[71] *Id.* at 498.

[72] 76 F.3d 624 (5th Cir. 1996).

[73] *Id.* at 625–626.

[74] *Id.*

[75] *Id.* at 626.

[76] *Id.*

[77] *Id.*

court.[78] Achilles appealed the grant of the antisuit injunction, arguing primarily that the district court erred in not giving proper deference to principles of international comity.[79] On appeal, the Fifth Circuit explained that in *Unterweser* and *Bethell*, the court, focusing on the need to prevent vexatious and oppressive foreign litigation,

> concluded that a district court does not abuse its discretion by issuing an antisuit injunction when it has determined that allowing simultaneous prosecution of the same action in a foreign forum thousands of miles away would result in inequitable hardship and tend to frustrate and delay the speedy and efficient determination of the cause.[80]

The Fifth Circuit in *Kapea* distinguished its approach from that taken by other circuits which "have employed a standard that elevates principles of international comity to the virtual exclusion of essentially all other considerations."[81] The Fifth Circuit declined "to require a district court to genuflect before a vague and omnipotent notion of comity every time that it must decide whether to enjoin a foreign action."[82] The Fifth Circuit explained that, while the standard espoused in *Unterweser* and *Bethell* focuses on "the potentially vexatious nature of the foreign litigation," the standard does not exclude considerations of comity.[83]

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[78] *Id.*

[79] *Id.*

[80] *Id.* at 627.

[81] *Id*.

[82] *Id*.

[83] *Id.* (internal quotations omitted).

Turning to the circumstances of the case before it, the Fifth Circuit concluded that it could not be said that the lower court's antisuit injunction tramples on notions of comity, or threatens relations between the United States and Japan, for two reasons.[84] First, there were no public international issues involved in the case before it, which involved a private contractual dispute between private parties.[85] Second, the case had "long and firmly been ensconced within the confines of the United States judicial system."[86] The Fifth Circuit further concluded that the prosecution of the lawsuit in Japan would result in an absurd duplication of effort, vexation, and unwarranted inconvenience and expense.[87]

In *MWK Recruiting Inc. v. Jowers*, MWK Recruiting, Inc., Robert Kinney, Kinney Recruiting Limited, Michelle Kinney, Recruiting Parties GP, Inc., Kinney Recruiting LLC, and Counsel Unlimited LLC (collectively, the "MWK parties") sued Evan Jowers ("Jowers") in Texas state court for misappropriation of trade secrets, among other claims, in connection with his former position as an employee of a predecessor

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[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *Id.* In *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Nebara,* the Fifth Circuit reversed the district court's order granting the plaintiff's motion for foreign antisuit injunction. 335 F.3d 357 (5th Cir. 2003). In *Karaha Bodas Co.*, the Fifth Circuit based its decision on "the structure and purpose of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards," which, among other things, "necessarily envisions multiple proceedings that address the same substantive challenges to an arbitral award." *Id.* at 359–360, 367.

entity of MWK Recruiting, Inc.[88] Jowers removed the action to federal court.[89] Jowers thereafter sued his former employer and its principal, Kinney Recruiting Ltd., H.K. and Robert Kinney for defamation in Hong Kong.[90] In response to Jowers's Hong Kong lawsuit, the MWK parties filed a motion for a foreign antisuit injunction and the district court granted the motion.[91] The Fifth Circuit, in an unpublished opinion, reversed the district court's order granting the antisuit injunction.[92] The Fifth Circuit confirmed that the test set forth in *Kaepa* governs whether a court may issue a foreign antisuit injunction.[93] Specifically, the court stated that

> [i]t is well established that federal courts are empowered to enjoin persons subject to their jurisdiction from prosecuting foreign suits. Generally, to obtain a preliminary injunction, a movant must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any potential harm to the non-movant; and (4) that the injunction will not undermine the public interest. For a court to grant a permanent injunction, a plaintiff

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[88] 88 *MWK Recruiting, Inc. v. Jowers*, No. 1:18-CV-444-RP, 2019 WL 5927288, at *1 (W.D. Tex. Nov. 12, 2019), *modified*, No. 1:18-CV-444-RP, 2019 WL 7759522 (W.D. Tex. Dec. 11, 2019), *vacated and remanded*, 833 F. App'x 560 (5th Cir. 2020).

[89] *Id.* at *6.

[90] *Id*. at *1.

[91] *Id.*

[92] 833 F. App'x at 561.

[93] *Id.* at 562.

must succeed on the merits, in addition to demonstrating the other three factors. Injunctive relief is considered an extraordinary remedy, to be granted only when the movant has clearly carried the burden of persuasion on all four requirements.

A foreign antisuit injunction is a special application of these injunction rules. Thus, the suitability of such relief ultimately depends on considerations unique to antisuit injunctions. The Fifth Circuit has adopted a test that weighs the need to prevent vexatious or oppressive litigation and to protect the court's jurisdiction against the need to defer to principles of international comity. An injunction against the prosecution of a foreign lawsuit may be appropriate when the foreign litigation would: (1) frustrate a policy of the forum issuing the injunction; (2) be vexatious or oppressive; (3) threaten the issuing court's in rem or quasi in rem jurisdiction; or (4) cause prejudice or offend other equitable principles. In applying the test, this court has rejected the approach taken by some other circuits, which elevates principles of international comity to the virtual exclusion of essentially all other considerations. Instead, the Fifth Circuit has noted that notions of comity do not wholly dominate the analysis to the exclusion of these other concerns.

To determine whether proceedings in another forum constitute vexatious or oppressive litigation that threatens the court's jurisdiction, the domestic court considers whether the following interrelated factors are present:

> (1) inequitable hardship resulting from the foreign suit; (2) the foreign suit's ability to frustrate and delay the speedy and efficient determination of the cause; and (3) the extent to which the foreign suit is duplicative of the litigation in the United States.[94]

In light of the Fifth Circuit precedent set forth above, the Court must now determine whether Plaintiff has demonstrated the factors specific to antisuit injunctions weigh in favor of granting an injunction in this case.

LAW AND ANALYSIS

At the outset, because "federal courts have the power to enjoin persons subject to their jurisdiction from prosecuting foreign suits," the Court briefly address personal jurisdiction. During a telephone status conference on April 18, 2019, Eastern Pacific Singapore's counsel expressly withdrew its objections to personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2).[95] As a result, the Court has personal jurisdiction over Eastern Pacific Singapore. Turning to the merits of the instant case, Plaintiff argues the lawsuit in India is vexatious and oppressive litigation that threatens this Court's jurisdiction.

The lawsuit in India constitutes vexatious and oppressive litigation that threatens this Court's jurisdiction.

The Fifth Circuit has identified three interrelated factors showing that foreign litigation is vexatious or oppressive: (1) inequitable hardship resulting from the foreign suit; (2) the foreign suit's ability to

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[94] *Id.* (internal quotations and citations omitted).

[95] R. Doc. 68.

frustrate and delay the speedy and efficient determination of the cause; and (3) the extent to which the foreign suit is duplicative of the litigation in the United States.[96]

With respect to the first factor, this Court has personal jurisdiction over Eastern Pacific Singapore and subject matter jurisdiction over this dispute. The Court finds it would "entail an absurd duplication of effort and would result in unwarranted inconvenience, expense, and vexation"[97] to require that the dispute be litigated in two courts thousands of miles apart. The Court has the power to restrain the parties before it from litigating the same matters elsewhere in order to protect its jurisdiction.[98] Furthermore, the Court has already determined the balance of convenience weighs in favor of litigation in this forum,[99] and the Court has the power to protect Plaintiff from the expense and burden concomitant to prosecuting the

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[96] *Karaha Bodas Co*., 335 F.3d at 366.

[97] *Kaepa, Inc. v. Achilles Corp*., 76 F.3d 624, 627 (5th Cir. 1996).

[98] *In re Unterweser Reederei, Gmbh*, 296 F. Supp. 733, 735 (M.D. Fla. 1969), *aff'd*, 428 F.2d 888 (5th Cir. 1970), *on reh'g en banc sub nom. In the Matter of the Complaint of Unterweser Reederei, GmbH*, 446 F.2d 907 (5th Cir. 1971), *vacated on other grounds sub nom. M/S Bremen v. Zapata Off-Shore Co*., 407 U.S. 1 (1972). *See also Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 927 (D.C. Cir. 1984) (stating that "[c]ourts have a duty to protect their legitimately conferred jurisdiction to the extent necessary to provide full justice to litigants. Thus, when the action of a litigant in another forum threatens to paralyze the jurisdiction of the court, the court may consider the effectiveness and propriety of issuing an injunction against the litigant's participation in the foreign proceedings.")

[99] *See* the Court's January 25, 2022 Order and Reasons denying Eastern Pacific Shipping's motion to dismiss for forum non conveniens, at R. Doc. 221.

same action in the courts of two countries thousands of miles apart.[100]

Furthermore, unlike the plaintiff in *Karaha Bodas,* Plaintiff has not initiated foreign proceedings related to this dispute.[101] "Such voluntary invocation of a foreign forum, which is absent here, would militate against a finding that litigating a foreign action amounts to an inequitable hardship."[102] Far from voluntarily invoking a foreign forum, Plaintiff not only filed his claims in this Court, he has refused to bring his claims before the Indian court and has not willingly participated in the Indian proceedings. Eastern Pacific Singapore's action in suing Plaintiff in India was taken in direct response to Plaintiff filing this case here. Eastern Pacific Singapore's stratagem "smacks of cynicism, harassment, and delay."[103] The Court finds that the suit in India has caused, and threatens to continue to cause, inequitable hardship to Plaintiff.[104]

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[100] *In re Unterweser Reederei, Gmbh,* 428 F.2d 888, 896 (5th Cir. 1970).

[101] *Karaha Bodas Co*., 335 F.3d at 368 (stating that "it is difficult to envision how court proceedings in Indonesia could amount to an inequitable hardship. Not only did KBC contract to arbitrate its dispute in a foreign country (Switzerland), but it also instituted enforcement proceedings in several countries, including the United States.").

[102] *Commercializadora Portimex, S.A. de CV v. Zen-Noh Grain Corp*., 373 F. Supp. 2d 645, 649 (E.D. La. 2005).

[103] *Kaepa, Inc. v. Achilles Corp*., 76 F.3d 624, 628 (5th Cir. 1996).

[104] Plaintiff's testimony at the hearing detailed the injustice and hardship he has experienced as a result of Eastern Pacific Singapore's actions in the Indian proceedings. Plaintiff has already been jailed once for violating the ex parte antisuit injunction, and Plaintiff faces a real possibility of being sent back to jail and

Turning to the second factor the Indian lawsuit has a real ability to frustrate and delay the speedy and efficient determination of the cause in this Court.[105] There is a scheduling order in place and this matter is set for trial in November 2022.[106] The antisuit injunction issued by the Indian court against Plaintiff complicates his prosecution of the action in this Court, and this action cannot continue without Plaintiff's participation. With Plaintiff hamstrung by an injunction from the Indian court, this Court's ability to reach a final determination is not only delayed but is seriously frustrated. Not only do the Indian proceedings have a real potential to frustrate and delay the determination of the matter in this Court, the Indian proceedings also threaten the integrity of this Court's jurisdiction.

The Court must now address the third factor, which examines the extent to which the foreign suit is duplicative of the litigation in the United States. Eastern Pacific Singapore concedes that "[l]itigation involving the same facts has been proceeding for over a year and a half in the South Goa Court."[107] However, the Fifth Circuit has recently held, in *MWK Recruiting Inc. v. Jowers*, that factual similarity alone is not

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having his property seized, as Eastern Pacific Singapore seeks to have the Indian court enforce sixteen counts of contempt against Plaintiff

[105] *See, e.g., Ericsson Inc. v. Samsung Elecs. Co.,* No. 2:20-CV-00380-JRG, 2021 WL 89980, at *6 (E.D. Tex. Jan. 11, 2021) (concluding that proceedings in a court in China which had issued an antisuit injunction against the plaintiff in the United States case "would frustrate and delay the speedy and efficient determination of legitimate causes of action before this Court.")

[106] R. Doc. 228.

[107] R. Doc. 204-1 at p. 1.

sufficient for a foreign lawsuit to be duplicitous; instead, the lawsuits must involve the same legal bases for the suits to be duplicitous.[108] In *MWK Recruiting*, the Fifth Circuit, in an unpublished opinion, reversed the district court's grant of an antisuit injunction because the district court applied an inappropriate test—the logical relationship test—for determining whether the foreign suit was duplicative of the domestic suit.[109] The district court granted the plaintiff's motion for antisuit injunction because it found that adjudication of the issues in the Hong Kong defamation suit necessarily would duplicate determinations that the district would make on the merits in the domestic case filed by the MWK parties.[110] Although the district court determined the Hong Kong proceedings would not pose an inequitable hardship to the MWK parties and that the Hong Kong proceedings would not frustrate and delay the district court's determination of the domestic case, it granted the motion for foreign antisuit injunction because the claims in the Hong Kong suit "substantially and logically duplicate" the issues in the domestic case.[111] The district court reasoned that "the Hong Kong [defamation] suit appears to *exclusively* involve claims about Jowers's conduct during his employment—the precise subject of the domestic [trade secret misappropriation] case. The same operative facts serve as the basis of both sets of

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[108] *MWK Recruiting Inc. v. Jowers*, 833 F. App'x 560 (5th Cir. 2020).

[109] 833 F. App'x at 561.

[110] *MWK Recruiting, Inc. v. Jowers*, No. 1:18-CV-444-RP, 2019 WL 5927288, at *4–*5 (W.D. Tex. Nov. 12, 2019), *modified*, No. 1:18-CV-444-RP, 2019 WL 7759522 (W.D. Tex. Dec. 11, 2019), *vacated and remanded*, 833 F. App'x 560 (5th Cir. 2020).

[111] *Id.* at *3.

claims; a logical relationship exists between them."[112] Jowers appealed the district court's order granting the foreign antisuit injunction.[113]

On appeal, the Fifth Circuit concluded, "for two reasons, that the court erred in applying the logical-relationship test."[114] First, the Fifth Circuit explained the logical- relationship test is inconsistent with Fifth Circuit precedent because, under that test, two claims are duplicative so long as they share underlying operative facts.[115] The Fifth Circuit explained, under Fifth Circuit precedent, the "duplicative factor is about *legal* not *factual*, similarity," meaning that the Fifth Circuit finds suits to be duplicative when they involve the same or similar legal bases or identical claims.[116] As an example, the Fifth Circuit cited to its prior decision in *Kaepa, Inc. v. Achilles Corp.*,[117] wherein the court found the two suits involved mirror-image claims because both the United States suit and the lawsuit in Japan claimed fraudulent inducement and breach of contract.[118] Second, the Fifth Circuit explained the logical relationship test would, contrary to Fifth Circuit precedent, lower the bar for antisuit injunctions and render antisuit injunctions commonplace.[119]

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[112] *Id.* at *5 (emphasis in original).

[113] *MWK Recruiting Inc. v. Jowers*, 833 F. App'x 560, 563 (5th Cir. 2020).

[114] *Id.* at 564.

[115] *Id.*

[116] *Id.*

[117] 76 F.3d 624, 626 (5th Cir. 1996).

[118] *MWK Recruiting Inc.*, 833 F. App'x at 564.

[119] *Id.* at 564–565.

The instant case is distinguishable from *MWK Recruiting* on two separate grounds. First, in *MWK Recruiting,* the Fifth Circuit found that the district court incorrectly "based its injunction *solely* on the premise that the two suits shared some operative facts, even where the two other factors that help to establish vexatious or oppressive litigation—inequitable hardship along with frustration and delay—were admittedly absent."[120] In this case, not only do this action and the Indian action share the same operative facts, the Court has found there is inequitable hardship resulting from the Indian suit and the Indian suit has the ability to frustrate and delay the speedy and efficient determination of this case.

Second, unlike in *MWK Recruiting*, this suit and the Indian suit involve the same or similar legal bases. The Fifth Circuit in *MWK Recruiting* cited the following out of circuit cases as applying a higher bar than the logical-relationship test: *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc*.,[121] *Paramedics Electromedicina Comercial, Ltda v. GE Med. Sys. Info. Techs., Inc*.,[122] and *E. & J. Gallo Winery v. Andina Licores S.A*.[123] In *Allendale Mutual*, the Seventh Circuit concluded the district court properly issued a foreign antisuit injunction because it would be an "absurd duplication of effort" for the parties to litigate "parallel lawsuits" in the United States and France.[124] The

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[120] *Id.* at 564 (emphasis added).

[121] 10 F.3d 425 (7th Cir. 1993).

[122] 369 F.3d 645 (2d Cir. 2004).

[123] 446 F.3d 984 (9th Cir. 2006).

[124] *Allendale Mut. Ins. Co.*, 10 F.3d at 431. In that case, two insurers of equipment destroyed by a fire in France filed suit against the insured in federal district court, seeking a

Allendale court also noted that "ordinarily a [party] who obtains a final judgment in a mirror-image suit uses the judgment as the basis for a plea of res judicata in the parallel proceeding."[125] In *Paramedics Electromedicina Comercial, Ltda.*, the Second Circuit held that "an anti- suit injunction may be proper if resolution of the case before the enjoining court would be dispositive of the enjoined action."[126] In *E. & J. Gallo Winery*, the Ninth Circuit explained that the claims in the United States lawsuit were the same as the claims in the Ecuadorian lawsuit because "[i]n the Ecuadorian court, Andina sued [Gallo] for breach of contract. In the district court, Gallo sought, among other things, a declaration that Gallo did not breach the distributorship agreement. Therefore, all the issues before the court in the Ecuador action are before the court in the California action."[127]

Applying the standard set forth in *MWK Recruiting* and the above-cited out-of-circuit cases, the

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declaration that they were not liable under the policy because the insured intentionally set the fire. The insured, seeking to enforce the insurance policies, filed a separate action in federal district court against one of the insurers and the insurance broker, and initiated litigation against the second insurer in the Commercial Court of Lille, France. The federal district court consolidated the two United States lawsuits, and the insured filed additional counterclaims against the insurance companies in the consolidated action. The insurers sought and received an antisuit injunction from the federal district court, restraining the insured from taking steps in the litigation in France. *Id.* at 425–28.

[125] *Id.* at 433.

[126] *Paramedics Electromedicina Comercial, Ltda,* 369 F.3d 645, 653 (2d Cir. 2004).

[127] *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 991 (9th Cir. 2006).

proceedings in this Court and the proceedings in India are duplicative because they share the same or similar legal bases. First, the Court notes that Eastern Pacific Singapore has conceded, in its filings in the Indian court, the two proceedings involve the same legal bases by stating that "[t]he pendency of the US Proceedings and the proceedings before this Hon'ble Court [in India] on the *same cause of action* would undoubtly (sic) be multiplicity of proceedings."[128] Moreover, in the proceedings in this Court, Plaintiff alleges he is a seaman suing his purported employer, Eastern Pacific Singapore, and asserts tort claims under the Jones Act and general maritime law, and a claim for breach of the collective bargaining agreement.[129] In its Answer to Plaintiff's complaint and first amended complaint in this Court, Eastern Pacific Singapore includes an affirmative defense that "Plaintiff has agreed to limit his damages as a part of his contractual agreement to be employed aboard the Vessel."[130] Eastern Pacific Singapore puts Plaintiff's tort claims and his claim under the collective bargaining agreement directly at issue in the Indian proceedings by asking that court to rule that Plaintiff's tort claims and his claims under the collective bargaining agreement are circumscribed by the Seafarer Employment Agreement.[131] Specifically, in the complaint and application for injunction filed with the Indian court, Eastern Pacific Singapore and EPS India expressly ask the court to "grant a decree of declaration that the Defendant's [Kholkar Vishveshwar Ganpat] purported claim

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[128] R. Doc. 142-2 at p. 42 (emphasis added).

[129] *See generally* R. Doc. 1 and R. Doc. 212.

[130] R. Doc. 230 at p. 16.

[131] R. Doc. 142-2 at p. 46.

for compensation of disability for having contracted malaria working on board MV Stargate cannot exceed the sum contractually due under the Seafarer Employment Agreement dated 27 December 2016."[132] At the injunction hearing held in this Court, counsel for Eastern Pacific Singapore stated that Eastern Pacific Singapore argues in the U.S. proceedings that the Jones Act and collective bargaining agreement do not apply, that the law of India and the employment agreement apply, and that, as a result, Plaintiff's damages are limited to $120,860. Counsel for Eastern Pacific Singapore further stated that the argument lodged by Eastern Pacific Singapore and EPS India in the Indian proceedings is that Plaintiff's recovery is limited by the terms of the employment agreement. The logical inference of Eastern Pacific Singapore's argument, made both in this Court and in the Indian court, is that the employment contract applies *to the exclusion of* the Jones Act, the general maritime law, and the collective bargaining agreement. Although Plaintiff has not brought any claims in the Indian proceedings, his claims here, as described above, are brought under the Jones Act, general maritime law, and the collective bargaining agreement. As a result, this action and the Indian action involve the same legal bases.

In sum, whether Plaintiff may proceed on his tort claims and his claim for breach of the collective bargaining agreement, or whether Plaintiff's recovery is limited by the employment contract, is an ultimate legal question at issue in both this case and in the suit in India. A ruling by this Court that Plaintiff is entitled to recover under the Jones Act, general maritime

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[132] *Id.*

law, and under the collective bargaining agreement against Eastern Pacific Singapore would be dispositive of the merits in the Indian case, because such a ruling would preclude Eastern Pacific Singapore's contention that the employment agreement is Plaintiff's exclusive remedy. Additionally, pursuit of the litigation in India could result in inconsistent rulings in the two suits on the question of whether the employment agreement provides Plaintiff's exclusive remedy, further demonstrating that the two suits involve the same legal bases. The party to first obtain a favorable judgment, either this Court or the Indian court, on the question of the exclusivity of the remedy under the employment contract, would thereafter use that judgment as the basis for a plea of res judicata in the court which had not yet reached final judgment.[133]

As a result, the Court—having found that the Indian suit threatens to cause inequitable hardship, has a real ability to frustrate and delay the determination of the instant case, and has the same legal bases as instant case—concludes the Indian proceedings are vexatious and oppressive. The Court now turns to the issue of international comity.

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[133] *See, e.g., Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.,* 10 F.3d 425, 433 (7th Cir. 1993) (explaining that "[o]rdinarily a plaintiff who obtains a final judgment in a mirror-image suit uses the judgment as the basis for a plea of res judicata in the parallel proceeding. If Allendale obtained a judgment [from the federal district court] that its and FMI's policies do not cover the fire loss . . . , it would interpose the judgment in BDS's suit against FMI in the [French court.]").

Concerns of international comity do not counsel against the issuance of a foreign antisuit injunction.

The Fifth Circuit has impliedly recognized the importance of international comity when a case implicates public international issues and when prior steps in resolving a dispute have taken place in the foreign forum.[134] Although the facts of this case reflect contacts with several nations, this is a private dispute between private parties, and no public international issues are implicated in this case. Furthermore, it cannot be said that the grant of the antisuit injunction actually threatens relations between the United States and India.[135] This lawsuit has been pending in the United States for almost three and a half years and is now "firmly ensconced within the confines of the United States judicial system."[136] The Fifth Circuit, elevating the need to prevent vexatious or oppressive litigation over concerns of international comity, has advised that district courts are not required to "genuflect before a vague and omnipotent notion of comity every time that it must decide whether to enjoin a foreign action."[137] Granting Plaintiff's motion for antisuit injunction will not unduly trample on notions of comity, particularly in light of the Indian court's preliminary ex parte injunction restraining Plaintiff from prosecuting his claims in this Court.

Accordingly, the Court concludes that, in this case, the need to prevent vexatious or oppressive

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[134] *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 371 (5th Cir. 2003).

[135] *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 627 (5th Cir. 1996).

[136] *Id.*

[137] *Id.*

litigation and to protect the Court's jurisdiction is significant and outweighs the need to defer to principles of international comity. As a result, the Court concludes Plaintiff's motion for antisuit injunction should be granted.

Plaintiff is not required to post security under Federal Rule of Civil Procedure 65(c).

Federal Rule of Civil Procedure 65(c) states that the court may issue a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained."[138] "In holding that the amount of security required pursuant to Rule 65(c) is a matter for the discretion of the trial court," the Fifth Circuit has ruled that the court "may elect to require no security at all."[139] In *Kaepa*, the Fifth Circuit, after affirming the district court's issuance of a foreign antisuit injunction, held the district court did not violate Rule 65(c) by failing to require the movant to post a bond.[140] Noting that it was appropriate not to require the movant to post security because it was the enjoined party who created the "risk of damages for delay or duplication by filing the second, mirror-image suit in Japan," the Fifth Circuit stated that the district court did not abuse its discretion in refusing to require the movant

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[138] Fed. R. Civ. P. 65(c).

[139] *Kaepa, Inc. v. Achilles Corp*., 76 F.3d 624, 628 (5th Cir. 1996) (citing *Corrigan Dispatch Company v. Casa Guzman*, 569 F.2d 300, 303 (5th Cir. 1978)).

[140] *Id.*

to post security because the antisuit injunction could "only work to avoid damages, not cause them."[141]

The Court finds the reasoning employed by the Fifth Circuit in *Kaepa* to be applicable to the instant case. Furthermore, in the case *sub judice*, the foreign litigation to be enjoined is an action for declaratory and injunctive relief; Eastern Pacific Singapore and EPS India are not seeking damages as a form of relief in the Indian litigation. Pursuant to Rule 65(c), the Court finds no security is required for this antisuit injunction.[142]

Under Federal Rule of Civil Procedure 65(d)(2), Eastern Pacific Singapore is required to give notice of this order to EPS India.

Federal Rule of Civil Procedure 65(d)(2) provides that every order granting an injunction

> binds only the following who receive actual notice of it by personal service or otherwise:
>
> (A) the parties;
>
> (B) the parties' officers, agents, servants, employees, and attorneys; and
>
> (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).[143]

Subpart (C) "contemplates two categories of persons who may be bound by an injunction."[144] First, a

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[141] *Kaepa, Inc. v. Achilles Corp*., 76 F.3d 624, 628 n.20 (5th Cir. 1996).

[142] *See id.* at 628.

[143] Fed. R. Civ. P. 65(d)(2)(A)–(C).

[144] *Texas v. Dep't of Lab*., 929 F.3d 205, 211 (5th Cir. 2019).

nonparty may be held in contempt if he aids or abets an enjoined party in violating an injunction"; second, "an injunction may be enforced against a nonparty in privity with the enjoined party."[145] "Ultimately, a determination that privity exists 'represents a legal conclusion that the relationship between the one who is a party on the record and the non-party is sufficiently close.'"[146]

The antisuit injunction is binding upon Eastern Pacific Singapore under Rule 65(d)(2)(A) because Eastern Pacific Singapore is a party to this action. In addition, this antisuit injunction is binding on EPS India under Rule 65(d)(2)(C) because EPS India is in active concert or participation with Eastern Pacific Singapore, and the relationship between Eastern Pacific Singapore and EPS India is "sufficiently close."[147] EPS India is a subsidiary of Eastern Pacific Singapore; EPS India is 99.99% owned by Eastern Pacific Singapore.[148] Additionally, in the Indian lawsuit, there is a

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[145] *Id.* (quoting *Nat'l Spiritual Assembly of Baha'is of U.S. Under Hereditary Guardianship, Inc. v. Nat'l Spiritual Assembly of Baha'is of U.S., Inc*., 628 F.3d 837, 848–49 (7th Cir. 2010) (internal quotations omitted).

[146] *Id.* (quoting *Sw. Airlines Co. v. Tex. Int'l Airlines, Inc*., 546 F.2d 84, 95 (5th Cir. 1977)).

[147] *See, e.g., Teas v. Twentieth Century-Fox Film Corp.*, 413 F.2d 1263, 1269 (5th Cir. 1969) (noting that "the control relationship between parent and subsidiary might be proved sufficient for a determination of privity or even alter ego.").

[148] R. Doc. 204-2 at ¶ 11, at p. 4. *See, e.g*., *Int'l Equity Invs., Inc. v. Opportunity Equity Partners Ltd*., 441 F. Supp. 2d 552, 562 (S.D.N.Y. 2006) ("Where parties to the two actions are affiliated or substantially similar, such that their interests are represented by one another, courts have found the first requirement [that the parties are the same in both matters] is met."), *aff'd*, 246 F. App'x 73 (2d Cir. 2007).

complete identity of interests and positions between EPS India and Eastern Pacific Singapore, *vis-à-vis* Plaintiff. The United States Supreme Court has explained that Rule 65(d)(2) is "derived from the common law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control."[149] Both EPS India and Eastern Pacific Singapore are parties-plaintiff in the Indian lawsuit, and both EPS India and Eastern Pacific Singapore seek to restrain Plaintiff from prosecuting his claims in this Court, and to require Plaintiff to litigate his claims in the Indian court. Unless EPS India is also subject to this Court's antisuit injunction order, the order will be of no practical utility, as EPS India may be able to continue the Indian lawsuit with no participation by Eastern Pacific Singapore. It follows that, if Plaintiff believes EPS India "as an entity acting in concert with Defendant [Eastern Pacific Singapore] is violating this Order, Plaintiff may file a motion for contempt."[150]

Because Rule 65(d)(2) requires that persons to be bound by an injunction order must receive actual notice, Eastern Pacific Singapore is required—immediately upon receipt of this Order—to provide actual notice of this order to EPS India. To ensure that such notice is provided, Eastern Pacific Singapore must file

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[149] *Nat'l Spiritual Assembly of Baha'is of U.S. Under Hereditary Guardianship, Inc. v. Nat'l Spiritual Assembly of Baha'is of U.S., Inc.*, 628 F.3d 837, 848 (7th Cir. 2010) (citing *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945)).

[150] *M-I LLC v. FPUSA, LLC*, No. SA:15-CV-406-DAE, 2015 WL 6738823, at *17 n.7 (W.D. Tex. Nov. 4, 2015), *adhered to*, No. SA:15-CV-406-DAE, 2016 WL 6088344 (W.D. Tex. Oct. 17, 2016).

into the record of the Indian lawsuit, a notice of this order, attaching a copy of this order to said notice.

CONCLUSION

IT IS ORDERED that Plaintiff's Motion for Preliminary and Permanent Injunction[151] is **GRANTED.** Eastern Pacific Shipping, PTE. LTD, and its affiliates, subsidiaries, and all persons in privity or active concert or participation with Eastern Pacific Shipping, PTE. LTD, who have actual notice of this injunction, specifically Eastern Pacific Shipping (India) Private Limited, shall dismiss their claims in the litigation now pending in the District Court of South Goa, Margao, Republic of India, styled and numbered as *Eastern PacificShipping (India) Pte. Ltd. and Eastern Pacific Shipping Pte. Ltd. versus Vishveshwar Ganpat Kholkar*, Special Civil Suit No. 64/2020/III, CNR No. GASG02-003269-2020.

IT IS FURTHER ORDERED that Eastern Pacific Shipping, PTE. LTD, and Eastern Pacific Shipping (India) Private Limited are **HEREBY ENJOINED** from further prosecuting the litigation now pending in the District Court of South Goa, Margao, Republic of India, styled and numbered as *Eastern PacificShipping (India) Pte. Ltd. and Eastern Pacific Shipping Pte. Ltd. versus Vishveshwar Ganpat Kholkar*, Special Civil Suit No. 64/2020/III, CNR No. GASG02-003269-2020.

IT IS FURTHER ORDERED that Eastern Pacific Shipping, PTE. LTD, shall, immediately upon receipt of this Order, provide a copy of this Order to Eastern Pacific Shipping (India) Private Limited.

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[151] R. Doc. 199.

IT IS FURTHER ORDERED that Eastern Pacific Shipping, PTE. LTD, shall, on or before April 6, 2022, file a Notice of this Order, attaching a copy of this Order, into the record of *Eastern PacificShipping (India) Pte. Ltd. and Eastern Pacific Shipping Pte. Ltd. versus Vishveshwar Ganpat Kholkar*, Special Civil Suit No. 64/2020/III, CNR No. GASG02-003269-2020.

New Orleans, Louisiana, this 5th day of April, 2022.

/s/ Susie Morgan

SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

APPENDIX C

United States Court of Appeals for the Fifth Circuit

No. 22-30168

KHOLKAR VISHVESHWAR GANPAT,

Plaintiff—Appellee,

versus

EASTERN PACIFIC SHIPPING PTE, LIMITED, *doing business as* EPS,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:18-CV-13556

May 26, 2023

ON PETITION FOR REHEARING
AND REHEARING EN BANC

Before JONES, HO, and WILSON, *Circuit Judges*.

PER CURIAM:

The petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.