

Del Fierro v. PepsiCo International, 897 F. Supp. 59 (E.D.N.Y.1995)

Pepsi Cola ran a promotion in the Philippines called the "Number Fever Game." Each day the number found on the inside of a Pepsi bottle cap would be announced, and winners would receive from 1,000 to 1,000,000 pesos (30 peso to a dollar). On May 22, 1992, the number 349 was picked, but "far more consumers than intended or anticipated" had this number, and Pepsi refused to pay the winners. Plaintiffs sued for breach of contract, seeking \$400,000,000 in actual damages.

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Forum non conveniens--the balance of private and public interest factors

Court concludes that "practically all" of the factors "militate against allowing plaintiffs to litigate in this forum."

PepsiCo's subsidiaries are based in the Philippines, evidence is in the Philippines, Philippine law applies, and Philippine court may not enforce U.S. judgment--

Philippine Rules of Court, Section 50, Rule 39:

"In case of a judgment [by a tribunal of a foreign country] against a person, the judgment is presumptive evidence...but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake or law or fact."

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Why Is the United States a Magnet Forum?

- 1. More pretrial discovery is available; costs of litigation are frequently lower**
- 2. Liability law is more likely to favor recovery**
- 3. Choice-of-law rules may favor U.S. law which may favor plaintiff**
- 4. Trial by jury may lead to higher damage award**