

# GLOBAL ACTION

A Newsletter of the **International Law Section** of the Cleveland Bar Association

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## EDITOR'S NOTES

### Mark J. Sundahl

This issue of Global Action, the first of 2008, contains information about the current and future activities of the International Law Section and continues to serve as a forum for sharing recent developments in the world of international law. In this issue you can learn about the opening of the Chinese logistics industry to foreign investment and read some uplifting client stories told by one of our members who practices immigration law. The final feature of this issue introduces the international law faculty at Cleveland-Marshall College of Law and Case Western Reserve University School of Law – some of whom may be familiar to you, while others may not.

Please remember that submissions for future issues of Global Action are welcome and can be emailed directly to me for consideration. Submissions should be brief pieces (500-800 words) on a topic of interest to members of our section.

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## A MESSAGE FROM THE CHAIR

### Robert M. Spira

Welcome to our first issue of Global Action for the 2007-2008 year.

The Cleveland Bar Association's International Law Section had a busy 2007 and we are looking forward to 2008.

In April 2007 the International Law Section presented a full-day symposium addressing Northeast Ohio's Global Challenge. Is Northeast Ohio prepared to face the global economy? How are we doing and what can we do to improve? The symposium brought together CEO's and general counsels from major Northeast Ohio companies, as well as logistics and economic development specialists working in Northeast Ohio. To support the symposium, the section sponsored original survey research by Cleveland State University.

We all learned from the experience. A summary of the symposium presentations should be available soon. Some of the symposium participants have suggested that we do an update session in 2008 to measure progress in the areas discussed. While we have no specific plans to do that at this time, stranger things have happened.

The section continues to sponsor its bi-monthly Global Forum. The Forums offer section members and guests the opportunity to engage in lively discussion about a topic of interest in international law. Javier Pacheco has done a great job in organizing and leading the Forum discussions.

The next Forum is scheduled for January 30, 2008 at the Bar Association. The topic will be international arbitration. Mariann Butch from Benesch, Friedlander, Coplan & Aronoff LLP will be our discussion leader. Mariann is a veteran of the international arbitration process. A lively discussion is anticipated. CLE credit has been applied for.

Planning is well under way for our Seminar to be held in May. Seminar chair Tony Konkoly has completed his survey and section members have given us good direction regarding topics to be presented. Save the date (May 22) and watch for more information.

Thanks to Mark Sundahl and his crew at Cleveland State University for taking over our Global Action newsletter. I am sure they will do a great job. Mark's job will be made easier if he receives articles for publication from the membership.

As most of you know, we are one of the newer and smaller sections of the Cleveland Bar. If you are not a member, please join. If you are a member, please participate in section activities. I am told that we have more fun than any other section.

Please call or email if you have questions or comments.

**Robert M. Spira**,  
Benesch, Friedlander, Coplan & Aronoff LLP  
**Contact:** [rspira@bfca.com](mailto:rspira@bfca.com)

## INVESTING IN CHINA'S TRANSPORTATION AND LOGISTICS INDUSTRY

China's accession to the WTO in November 2001 brought significant changes to its transportation and logistics industry. The commitments China made to open the logistics industry to foreign investors have forever changed the face of this traditionally state-controlled segment of the economy.

The concessions made by China upon its entry into the WTO allow for broader participation of foreign investors, but still require that foreign investors enter into joint ventures with Chinese nationals in certain industry sectors. The joint venture requirement is often coupled with a limit on the level of foreign investment. For example, foreign investment may not exceed 49% in joint ventures in the areas of ocean transportation (including international cargo and passenger transportation); ocean transportation agency; water transportation; air transportation (including repair services to aircrafts); or international liner and maritime transportation. No such limits on foreign participation exist in other sectors, although the investment must still be structured as a joint venture – as is the case for container warehousing and accessory services (including shipping brokerage and customs processing services).

The most significant change is that foreign investors are now able to enter the market through wholly owned companies in the following sectors: road freight; rail freight (as of December 11, 2007); international container multi-modal transportation; warehousing; and cargo transportation agency services (excluding cargo inspection).

After these changes were enacted, China approved 919 foreign-funded transportation enterprises, reflecting an investment of \$5 billion, by the end of 2004. As a result of incentives and supporting measures being offered to foreign investors, the pace of U.S. investment in China's transportation and logistics industries is expected to accelerate. More than 80% of the Chinese population are farmers, living in the countryside where both cargo and passenger transportation services are extremely scarce and in high demand. To serve this rural population, the Chinese government provides special incentives for foreign investments in cargo trucking and road transportation businesses in China's western and northeastern regions, passenger transportation services in all countryside and remote areas, and cargo transportation services between cities and villages nationwide.

The international trucking transportation business is also booming between China and its neighboring countries. China has signed bilateral trucking transportation agreements with more than ten countries and set up more than sixty international road transportation lines and stations. By 2005, the in-bound and out-bound trucking transportation volume reached 1.4 million vehicles and over 10 million tons of cargo.

On March 23, 2006, the State Counsel of the Chinese central government published its long term economic development plan, and selected eleven priority industrial areas that the State would be focusing on and encouraging investors to invest. In the plan, transportation was declared by the Chinese government as the "life line" of the country's economy. In short, China's \$2.6 trillion economy has been growing at a torrid pace of 11% per year for the last 20 years – and China's ability to maintain this growth demands that its logistics industry evolve to meet the needs of the Chinese economy.

In spite of the high demand and huge market for transportation business in China, the profitability of such an investment has room for improvement. Historically, China's transportation business has not been a lucrative investment due to the following reasons: (1) lack of sophisticated transportation systems and chain of operations; (2) lack of advanced management systems and an organized market; (3) lack of high quality transportation equipment and tools; (4) lack of adequate financing support; and (5) lack of protection from unfair competition. The Chinese government recognizes these problems and has been trying to improve the economics of the industry by providing strong financial aid and incentives, introducing advanced management systems by opening investment areas, acquiring highly efficient transportation vehicles and equipment, and enforcing competition laws.

Beijing, Tian Jing, Shanghai, Chongdong, Jiangsu, and Gungdong have led the way in encouraging and facilitating foreign investment in China's transportation and logistics industries. In addition to the favorable developments in the provinces, the central government is also becoming involved in encouraging foreign investment in transportation and logistics. On March 31, 2006, the PRC Ministry of Commerce (MOFCOM) issued a Public Notice authorizing foreign investment in transportation and logistics nationwide in China. Foreign investors can submit their applications, together with required documents, to the local MOFCOM. The local MOFCOM may approve the application or, depending on the size of the proposed investment, send it to the central MOFCOM.

With the support of the Chinese government, China's transportation and logistics industry is undergoing significant changes in an effort to modernize. These changes present both great opportunities and serious challenges to foreign investors. The road from investing to harvesting profits may be bumpy, but the future is promising.

**Robert M. Spira**, *Benesch, Friedlander, Coplan & Aronoff LLP*

**Charlene Lee (Xiao Lin Li)**, *Attorney at Law, Admitted to Ohio, Wisconsin and the PRC Bar.*

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## IMMIGRATION LAW: Difficult Challenges and Stories of Success

Immigration law is a challenging, emotional, and complicated area of the law. The application of the law often leads to unjust results, including the separation of families. But passionate representation of clients and zealous research leading to creative arguments can bring successes that make a lasting difference in people's lives. The following two stories illustrate the lengths that deserving people must go in order to legalize their status and stay in this country. The first story concerns an individual who had to go through proceedings when he merely followed the instructions given to him by the U.S. Embassy years earlier. The second story is about a young girl to whom fraud was imputed when her parents entered the United States, despite her being a three-year old.

The first story began when our client, referred to here as "Manny," came to the United States on a J-1 visa, which allows the holder to work or study in the United States as part of an exchange program usually sponsored by a government entity (or to meet the need for a prescribed skill set in the United States). In many instances, a J-1 visa holder must leave the United States after his or her program is over, and must stay in his home country for two years before returning to the United States. After Manny finished his program, he went back to his home country, where he married a United States citizen. Seeking to return to the United States with his wife, he applied to the United States consulate in his home country, appeared at the interviews, and was told that everything he needed to return was in a sealed envelope that

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## SPECIAL THANKS TO:

Scott Zimmer of ZIMMERdesign for the design and production of this newsletter.

[www.zimmerdesign.net](http://www.zimmerdesign.net)

## LINKS

### Become a section member:

[www.clevelandbar.org/professionals\\_sections.asp?id=28&did=28](http://www.clevelandbar.org/professionals_sections.asp?id=28&did=28)

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[www.wtccleveland.org](http://www.wtccleveland.org)

### American Society of International Lawyers:

[www.asil.org](http://www.asil.org)

### Cleveland-Marshall College of Law

[www.law.csuohio.edu](http://www.law.csuohio.edu)

### Case Western Reserve University School of Law

[www.law.case.edu](http://www.law.case.edu)

### Greater Cleveland International Lawyers Group:

[GCIL@parker.com](mailto:GCIL@parker.com)

### Continued from page two.

he should present when he enters the United States. He followed the instructions given to him by the consul and was admitted to the United States as a lawful permanent resident. After three years as a permanent resident, which is the requirement for permanent residents who obtained their status through marriage to a U.S. citizen, Manny applied for naturalization. His application was denied because the Immigration Service stated that he lied in order to obtain admission to the United States by failing to disclose that he previously had a J-1 visa and was subject to the two-year home residency requirement. He maintained that he did not knowingly fail to disclose information to an immigration official and that he was told that everything he needed to comply with the J-1 requirement had been properly completed. He had to be placed in removal proceedings where we proved at a hearing before the immigration judge that Manny did not knowingly fail to disclose or materially misrepresent facts in order to procure his entry to the United States.

The second story began many years ago, when a three-year old girl (we'll call her "Neepa") came to the United States with her parents from India. Her parents

entered the United States with a green card obtained through the immigrant visa granted to the father's brother, who had passed away. When Neepa was in high school, she and her parents were placed in removal proceedings. The entire family was charged with being subject to removal for entering the United States through fraud. If the young girl was found to have committed fraud, she would have been forced to depart the United States and would have been barred from returning. The Immigration Judge and Board of Immigration Appeals (BIA) concluded that the fraud committed by the parents could be imputed to their child. We succeeded in separating Neepa's case from the parents' case and appealed to the Sixth Circuit. In the end, the Sixth Circuit reversed the BIA by holding that the fraud perpetrated by a child's parents could not be imputed to the minor child. This decision has allowed Neepa to continue living in the United States and has proven to be a useful precedent for other children faced with the imputation of fraud.

### Margaret W. Wong,

*Margaret W. Wong & Associates Co., LPA*

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## CLEVELAND'S INTERNATIONAL LAW PROFESSORS

Both Case Western Reserve University School of Law and Cleveland State University's Cleveland-Marshall School of Law have a substantial international law curriculum. In case you have not yet had the chance to meet our local professors of international law, Global Action would like to introduce them to you.



**Peter M. Gerhart**  
CWRU  
International Trade



**Richard Gordon**  
CWRU  
International Tax & Finance



**Jon Groetzing, Jr.**  
CWRU  
International Business



**Henry T. King, Jr.**  
CWRU  
International Law



**Jacqueline D. Lipton**  
CWRU  
International Commercial Law



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CSU  
Comparative Constitutional Law



**Michael P. Scharf**  
CWRU  
International Criminal Law



**Milena Sterio**  
CSU  
International Criminal Law



**Mark J. Sundahl**  
CSU  
International Business

## UPCOMING EVENTS

### The International Law Section holds meetings on the second Monday of every month.

Please contact Donnie Long at [dlong@clevelandbar.org](mailto:dlong@clevelandbar.org) to receive updates.

### The first Global Forum will be held on Wednesday, January 30, 2008 at noon at the CBA.

The topic of the discussion will be international arbitration. CLE credit has been applied for. For further information (and to suggest topics for future Forums), please contact Javier A. Pacheco at [JPacheco@porterwright.com](mailto:JPacheco@porterwright.com).

### The International Law Section Seminar will take place on May 22, 2008.

Please save the date and watch for further details.

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