

# Cook rules on diversity jurisdiction

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**U**.S. District Court Chief Judge Julian Abele Cook's jurisdictional decision barring one Canadian corporation from suing another in federal court could have great significance in an emerging free trade era, according to attorneys involved in the case.

Cook concluded last month that federal courts' diversity jurisdiction rules did not permit Pancan International Management Consultants Inc. to pursue a federal breach of contract lawsuit against STS MicroScan Inc. The dispute involves Pancan's work as a sales representative relating to a Canadian post office project.

Pancan and MicroScan both are Canadian corporation, although each has some links to Michigan. MicroScan acquired the assets of STS Informational Services Inc., a Michigan corporation, and is closing down a small technical center in this state. Some principals involved in Pancan are Michigan residents.

Federal diversity jurisdiction is available when the parties are citizens of different states. A domestic corporation is viewed as a citizen of the states where it was incorporated and the state where its principal place of businesses is located.

Cook concluded the rules for corporations also apply to companies incorporated outside the United States. One foreign corporation cannot sue another under federal diversity jurisdiction since each is a citizen of a country outside the United States as well as the state where it does business.

"Therefore, this court finds there is no diversity between Pancan and MicroScan because they are aliens by virtue of their incorporation in Canada," Cook ruled.

Larry Saylor of Miller Canfield, who represented MicroScan, said Cook's ruling

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would limit such suits between non-U.S. companies to state courts or foreign courts. The required diversity is destroyed when two parties are citizens of foreign counties, even if they are not from the same country, Saylor said.

Frederick Acomb of Miller Canfield, who also represented MicroScan, said other federal courts have issued conflicting decisions on the issue posed by the Pancan case. He said it has not been decided by either the 6th U.S. Circuit Court of Appeals or the U.S. Supreme Court.

Acomb called Cook's ruling "a very significant decision in light of NAFTA [North American Free Trade Agreement] and the opening up of free trade." The decision "is likely to have increasing significance as more and more alien corporations begin to maintain their principal places of business in Michigan and throughout the United States."

Saylor and Acomb said it would be difficult to analyze who would benefit most if Cook's view of the law prevails.

"Any restriction on jurisdiction is detrimental to the plaintiffs, who would prefer to have a choice of forums," Saylor noted. He said the general rule that state courts are more favorable to plaintiffs does not necessarily apply in business cases.

Acomb said the strategic impact of the decision would have to be assessed on a case-by-case basis.

Pancan has not appealed Cook's decision, opting instead to pursue its case against MicroScan in Oakland County Circuit Court. MicroScan is seeking a declaratory judgment in Canada.

Pancan's attorney could not be reached for comment.