The Harvard Law School Forum on Corporate Governance and Financial Regulation
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Limits on Extraterritorial Reach of State Law

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Editor's Note: George Conway is partner in the Litigation Department at Wachtell, Lipton, Rosen & Katz. This post is based on a Wachtell Lipton firm memorandum from Mr. Conway, Herbert M. Wachtell, Ben M. Germana, and Graham W. Meli.

Recently, in *Global Reinsurance Corp.–U.S. Branch v. Equitas Ltd.*, the New York Court of Appeals, New York's highest court, refused to apply the state's antitrust statute, the Donnelly Act, to allegedly anticompetitive conduct in Great Britain that had only incidental effects in New York. Reversing a divided decision of the intermediate appellate court, the Court of Appeals reasoned that state antitrust law could not have a broader extraterritorial reach than federal antitrust law; otherwise, statutory and judicial limitations on the federal Sherman Act "would be undone if states remained free to authorize 'little Sherman Act' claims that went beyond it."

This rationale may have significant implications beyond the antitrust arena, as the Court of Appeals more broadly reaffirmed that "[t]he established presumption is, of course, against the extra-territorial operation of New York law." For example, the potential impact on securities claims under state common law is particularly notable. In the wake of the United States Supreme Court's decision in *Morrison v. National Australia Bank*, which held that Section 10(b) of the Securities Exchange Act applies only to domestic securities transactions (see our memo here), a number of plaintiffs have attempted to invoke state common law to recover losses on extraterritorial transactions. One potential obstacle to such state-law suits appeared to have been removed late last year, when the Court of Appeals, in *Assured Guaranty (UK) Ltd. v. J.P. Morgan Investment Management*, rejected a line of lower-court and federal precedents that had held common-law securities actions preempted by New York's securities statute, the Martin Act (see our memo here).

But it would appear that *Global Reinsurance* puts a new roadblock in the path of plaintiffs wishing to use New York common law to circumvent *Morrison.* The Court of Appeals' concern that limitations on the reach of federal antitrust law "would be undone" by extraterritorial application of state antitrust law should apply equally to an attempt to circumvent *Morrison*'s limitation on the federal securities laws. Accordingly, it would appear that the Court is poised to give close scrutiny to attempts to expand the reach of state law to foreign transactions having only limited contact with the State.