
Second Circuit Expands Threshold Issues Reviewable Before Determining Complex Issues of Subject-Matter Jurisdiction

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It is hornbook law that federal courts must assure themselves that they have subject-matter jurisdiction before addressing the merits of any case. In *Steel Co. v. Citizens for a Better Environment* and *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, the Supreme Court of the United States highlighted an exception to this general rule, holding that federal courts may sometimes, in their discretion, rule on merits issues before deciding subject-matter jurisdiction — particularly when subject-matter jurisdiction is difficult to resolve and there are “non-merits,” non-jurisdictional grounds for dismissal that are more straightforward. Importantly, courts may exercise this discretion only when (1) the merits question is more readily resolved than the jurisdictional question and (2) the party prevailing on the merits question is the same as the party that would prevail party if jurisdiction were denied. Since then, the lower courts have wrestled with identifying the types of “non-merits,” non-jurisdictional grounds that can be considered before ruling on complex questions of subject-matter jurisdiction, including issues such as *forum non-conveniens* and abstention.

In *Phoenix Light SF Limited v. Bank of New York Mellon*, the Court of Appeals for the Second Circuit recently added to this list of “non-merits,” non-jurisdictional issues in addressing an issue of first impression, and held that the lower court had appropriately dismissed plaintiffs’ claims on the non-merits ground of collateral estoppel before determining whether plaintiffs had standing under Article III of the U.S. Constitution to bring their claims. The decision confirms that there are potentially a wide array of “non-merits,” non-jurisdictional grounds that federal courts can rely on to dismiss a case before addressing subject-matter jurisdiction.

The outcome of *Phoenix Light* signals that federal courts are increasingly willing to expand the list of permissible non-merits grounds for dismissal before considering complex issues of subject-matter jurisdiction. In the future, courts may be willing to further expand this list to include issues such as international comity, exhaustion, and the political-question doctrine.

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