

COMMENT

The *Mareva* Injunction: A Remedy in the Pursuit of the Errant Defendant

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INTRODUCTION

Errant, Inc., a foreign manufacturer, sells bikes in California. A person riding an Errant bike is injured and sues Errant for negligence, seeking a substantial money judgment. After the plaintiff files suit, but before judgment is rendered, Errant removes all its assets outside of the United States, making itself effectively judgment proof.

A gap exists in American prejudgment attachment laws that defendants like Errant may exploit.¹ Hence, although American law affords some prejudgment protection to plaintiffs, courts often cannot prevent defendants like Errant from removing their assets from the courts' jurisdiction.² This gap not only frustrates plaintiffs' rights,³ but also taints the integrity of the judicial process.⁴

Courts hesitate in granting preliminary relief because doing so requires courts to act before determining whether defendants are wrongdoers.⁵ Due process considerations require that courts grant defendants a degree of immunity before resolving a dispute.⁶ Also, courts fear that erroneously granting preliminary relief may impose an intolerable burden on the defendants.⁷ This hesitancy, however, provides defendants, on notice of imminent proceedings, with the opportunity to remove their assets outside the country.⁸

Plaintiffs who anticipate that defendants will remove their assets can seek prejudgment attachments.⁹ Prejudgment attach-

¹ See Lawrence Collins, *The Territorial Reach of Mareva Injunctions*, 105 L.Q. REV. 262, 262 (1989) (arguing how defendants easily become judgment proof by removing their assets).

² See Rhonda Wasserman, *Equity Renewed: Preliminary Injunctions to Secure Potential Money Judgments*, 67 WASH. L. REV. 257, 262 (1992) (detailing situation similar to bike hypothetical in which court could not hinder defendant from effectively making himself judgment proof).

³ See *id.* at 268 (stating that courts can and should protect plaintiffs' rights by freezing defendants' assets).

⁴ See *id.* at 299 (asserting six ways in which preliminary injunction serves public interest, including protecting integrity of judicial process).

⁵ See Douglas Laycock, *The Death of the Irreparable Injury Rule*, 103 HARV. L. REV. 687, 732 (1990) (discussing dangers of granting preliminary relief before affording defendant full hearing).

⁶ See *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 342 (1969) (Harlan, J., concurring) (noting that prejudgment garnishment procedure violates due process when defendant's deprivation is not de minimis).

⁷ See Laycock, *supra* note 5, at 728 (showing how preliminary order may inflict serious penalty on defendant who has not had ample time to prepare defense).

⁸ See Wasserman, *supra* note 2, at 348 (finding that some defendants hide assets to escape potential judgment); see also Dennis Campbell & Dharmendra Popat, *Enforcing American Money Judgments in the United Kingdom and Germany*, 18 S. ILL. U. L.J. 517, 517 (1994) (proposing that plaintiff plan how to enforce judgment before obtaining judgment).

⁹ See Wasserman, *supra* note 2, at 269 (showing that most common remedy for freezing assets is attachment); see also *id.* at 306 (discussing how courts often do not grant preliminary injunctions in cases where plaintiffs seek money damages).

ments authorize sheriffs to physically seize defendants' tangible property within the courts' jurisdiction.¹⁰ The prejudgment attachment is an effective remedy, but because it is statutorily limited to certain specified claims, it is not automatically available to all plaintiffs.¹¹

If a prejudgment attachment is not available, plaintiffs may instead seek a preliminary injunction.¹² Because a preliminary injunction is only available as an equitable remedy, however, it is also limited to certain claims.¹³ Since both a prejudgment attachment and a preliminary injunction are not available in all circumstances, a number of plaintiffs are left with no redress.¹⁴ While American law recognizes plaintiffs' interests, it does not always prevent defendants from removing their assets in order to become judgment proof.¹⁵

This Comment examines the *Mareva* injunction, an English preliminary remedy that could help fill this void in American law and stop errant defendants by freezing their assets.¹⁶ Part I

¹⁰ See *id.* at 281-82 (stating that sheriff can physically seize, and in some cases sell, defendant's property). Most attachment statutes allow sheriffs to attach property in the hands of third party garnishees. See *id.* at 285. Normally the statutes create procedures allowing garnishees to dispute defendants' claims of ownership or to deny indebtedness to defendants. See *id.* Wasserman concludes that these protective procedures are overbroad and cumbersome. See *id.* The garnishment provisions do not differentiate between innocent third parties and those parties in conspiracy with defendants. See *id.* Furthermore, plaintiffs can bring innocent third parties into lawsuits who will be forced to defend against claims that defendants did not bring against them. See *id.*

¹¹ See Peter F. Schlosser, *Coordinated Transnational Interaction in Civil Litigation and Arbitration*, 12 MICH. J. INT'L L. 150, 155 (1990) (discussing fact that prejudgment attachment was limited to contractual claims in California); Wasserman, *supra* note 2, at 276-78 (illustrating failures of prejudgment attachment and geographic limitation of remedy).

¹² See Schlosser, *supra* note 11, at 157 (showing that when states limit attachment remedies, preliminary injunctions become more available).

¹³ See Wasserman, *supra* note 2, at 306-08 (examining reasons why courts have limited application of preliminary injunction).

¹⁴ See *id.* at 305-06 (stating that court's refusal to grant preliminary injunction may result in harm to plaintiff); see also Schlosser, *supra* note 11, at 157 (discussing limitation of attachments).

¹⁵ See Wasserman, *supra* note 2, at 262-63 (inferring that although plaintiffs would benefit from preliminary remedy, their claims may fall outside scope of existing equitable remedies).

¹⁶ See *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.*, [1980] 1 All E.R. 213, 215 (Eng. C.A. 1975) (developing basis for new worldwide reaching provisional remedy that allows courts to grant interlocutory judgments); see also *infra* notes 148-54 and accompanying text (concluding that American law needs *Mareva*-type injunction).

discusses the development of the *Mareva* injunction. Part II examines the current state of American prejudgment protection, focusing on the prejudgment attachment and its equitable counterpart, the preliminary injunction. Part II also analyzes problems with American prejudgment remedies. Finally, Part III proposes that American courts adopt a *Mareva*-type injunction.

I. THE *MAREVA* INJUNCTION

The *Mareva* injunction first appeared in an English breach of contract case involving foreign defendants.¹⁷ The owners of a ship named *Mareva* leased the ship to a foreign charterer corporation who in turn sublet the ship to third parties.¹⁸ The third parties made rent payments directly into the charterer's London bank account.¹⁹ When the charterer failed to pay the rent, the *Mareva*'s owners sued the charterer for breach of contract.²⁰

In order to prevent the charterer from removing its assets outside of England, *Mareva*'s owners applied for a preliminary injunction to freeze the charterer's assets in a London bank account.²¹ The court granted the injunction.²² The court reasoned that the injunction afforded the plaintiffs some degree of protection before becoming actual judgment creditors.²³

¹⁷ See *Mareva*, [1980] 1 All E.R. at 215 (granting injunction to restrain defendants from disposing of assets before judgment entered on merits); *Nippon Yusen Kaisha v. Karageorgis*, [1975] 1 W.L.R. 1093, 1095 (Eng. C.A. 1975) (granting *Mareva*-type injunction); see also Peter S. O'Driscoll, *Performance Bonds, Bankers' Guarantees, and the Mareva Injunction*, 7 NW. J. INT'L L. & BUS., 380, 398-99 (1985) (stating that *Mareva* injunction was first applied in *Nippon Yusen*, which involved charter of three ships). In *Nippon Yusen* the defendant failed to pay the hire, but the plaintiffs discovered that the defendant had funds on deposit in London Banks and sought an injunction to restrain their removal. See *Nippon Yusen*, [1975] 1 W.L.R. at 1094.

¹⁸ See *Mareva*, [1980] 1 All E.R. at 213 (noting that ship was let to charterers with rent to be paid half-monthly in advance).

¹⁹ See *id.*

²⁰ See *id.* at 214 (stating that ship-owners made claim for unpaid hire and damages for repudiation).

²¹ See *id.*

²² See *id.* at 215 (granting injunction in protection of plaintiff's interests).

²³ See *id.* (arguing that because of danger of ship-owners not getting paid, court had jurisdiction to grant order to prevent defendant from disposing of assets). See generally *Polly Peck Int'l plc v. Nadir*, [1992] 4 All E.R. 769, 785 (Eng. C.A. 1992) (noting that courts will not hinder justice by allowing defendant to make judgment less effective).

English courts currently employ the *Mareva* injunction as effective protection for plaintiffs against defendants removing assets from the courts' jurisdiction.²⁴ Plaintiffs must prove several elements before courts will grant the injunction.²⁵ First, plaintiffs must establish a good arguable case.²⁶ Second, plaintiffs must prove that defendants have assets within the jurisdiction.²⁷ Finally, plaintiffs must show that defendants might remove their assets from the jurisdiction.²⁸

Initially, the *Mareva* injunction reached assets only within the courts' jurisdiction and applied only to foreign defendants engaged in transnational business.²⁹ However, the *Mareva* injunction has evolved and now reaches assets located worldwide.³⁰ Courts can reach worldwide assets because courts now base the injunction on in-personam rather than in-rem jurisdiction.³¹

²⁴ See, e.g., *Republic of Haiti v. Duvalier*, [1989] 2 W.L.R. 261, 275 (Eng. C.A. 1988) (affirming lower court granting of *Mareva* injunction); *Derby & Co. v. Weldon*, [1989] 2 W.L.R. 276, 282 (Eng. C.A. 1988) (granting *Mareva* injunction).

²⁵ See *Third Chandris Shipping Corp. v. Unimarine S.A.*, [1979] 1 Q.B. 645, 668-69 (Eng. C.A. 1979) (setting forth guidelines to limit injunctions). Besides the factors enumerated in the text, plaintiffs must provide full disclosure of anything they know that may be material. See *id.* at 668. Plaintiffs should state the basis for their claims, the amount, and also state the defendants' argument. See *id.* Plaintiffs must also post bonds to compensate defendants in the event of unjustified injunctions. See *id.* at 669; see also WILLIAM TETLEY, *MARITIME LIENS AND CLAIMS* 447 (1985) (discussing criteria for granting *Mareva* injunctions).

²⁶ See *Third Chandris*, [1979] 1 Q.B. at 668 (requiring plaintiff to state grounds of claim and points for defendant).

²⁷ See *id.* (explaining that plaintiff does not have precise knowledge of assets, only indication).

²⁸ See *id.* at 669 (stating that foreign status of defendant is not per se sufficient to show asset removal).

²⁹ See *Collins*, *supra* note 1, at 264 (noting that early *Mareva* cases implied that plaintiff can obtain injunction only when defendant was not within court's jurisdiction); see also *Z Ltd. v. A-Z*, [1982] 1 All E.R. 556, 571 (Eng. C.A. 1981) (applying *Mareva* injunction to broader group of defendants). The *Mareva* injunction is available in matrimonial, personal injury, and Fatal Injuries Act cases, as well as in commercial matters like shipping cases. See *id.*

³⁰ See *Scholsser*, *supra* note 11, at 151-52 (describing how *Mareva* injunction evolved to cover assets worldwide).

³¹ See *Collins*, *supra* note 1, at 265 (noting that *Mareva* injunction has been referred to as relief in personam). That is, courts exercise their power over defendants' persons, rather than over defendants' property. See *BLACK'S LAW DICTIONARY* 791 (6th ed. 1990).

Thus, without expanding the courts' jurisdiction per se, the injunction effectively extends the courts' geographic reach.³² In short, court orders apply to defendants wherever they are.³³

Although the *Mareva* injunction operates in personam, it can affect defendants' assets in ways that would ordinarily require courts to have in-rem jurisdiction.³⁴ This may pose a problem because courts can never take in-rem jurisdiction over assets in foreign jurisdictions.³⁵ However, courts usually accompany *Mareva* injunctions with disclosure orders that require defendants to reveal all their assets within and outside of the courts' jurisdiction.³⁶ Based on such disclosure, plaintiffs can attach assets in foreign jurisdictions and seek enforcement of the judgment.³⁷ Naturally, courts are less willing to grant the *Mareva* injunction if the consequences of the orders suggest that in-rem jurisdiction would be required.³⁸

The *Mareva* injunction grants English courts wide latitude, allowing judges to invoke implied or ancillary powers to further the *Mareva* orders.³⁹ One ancillary power permits judges to is-

³² See Manuel Juan Dominguez, *Using Prejudgment Attachments in the European Community and the U.S.*, 5 J. TRANSNAT'L L. & POL'Y 41, 56-58 (1995) (discussing *Mareva* injunction in terms of international litigation).

³³ See Schlosser, *supra* note 11, at 158 (arguing that international law permits court with in-personam jurisdiction to order person to either maintain or refrain from activities abroad).

³⁴ See Collins, *supra* note 1, at 265 (arguing that although *Mareva* injunction operates in personam, it sometimes affects defendant's assets in ways that ordinarily would require in-rem jurisdiction); see also *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1361 (9th Cir. 1988) (noting that freezing assets has similar effect as attachment); Schlosser, *supra* note 11, at 156.

³⁵ See Schlosser, *supra* note 11, at 158 (noting that domestic courts cannot attach foreign assets).

³⁶ See *id.* at 168-69 (showing how *Mareva* injunction may be accompanied by disclosure order).

³⁷ See Collins, *supra* note 1, at 286 (illustrating how disclosure of foreign assets might lead to plaintiff obtaining security in some foreign jurisdiction). Professor Collins also notes that obtaining the foreign forum security interest should not present difficulties since the applicant should be entitled to the legal remedies of the *lex situs*. See *id.* at 269.

³⁸ See *id.* at 271-74 (surveying cases involving *Mareva* jurisdiction and foreign assets); see also *Polly Peck Int'l plc v. Nadir*, [1992] 4 All E.R. 769, 783-86 (Eng. C.A. 1992) (holding that where there is in-rem claim against bank's funds *Mareva* injunction is inappropriate).

³⁹ See *A.J. Bekhor & Co. v. Bilton*, [1981] 1 Q.B. 923, 940 (Eng. C.A. 1981) (stating that court may grant ancillary orders supporting *Mareva* injunction); see also *Z Ltd. v. A-Z*, [1982] 1 Q.B. 558, 574-78 (Eng. C.A. 1981) (describing principles to address scope of injunction).

sue disclosure orders.⁴⁰ Another ancillary power allows judges to bring third parties within the scope of the injunction.⁴¹ Since *Mareva* orders do not necessarily put third parties on notice of the pending litigation, third parties may in good faith purchase defendants' property or help transfer funds out of forum banks, possibly frustrating future judgments.⁴² Therefore, courts might have a compelling interest to order third parties to refrain from dealing with defendants' assets.⁴³

Initially, the *Mareva* injunction was available only to English litigants in disputes with foreign defendants.⁴⁴ After England joined the Brussels convention,⁴⁵ however, courts were able to extend the *Mareva* injunction to litigants from European Union member states.⁴⁶ Although available to plaintiffs located outside

⁴⁰ See Schlosser, *supra* note 11, at 165-71 (examining ancillary disclosure order).

⁴¹ See *Babanaft Int'l Co. S.A. v. Bassatne*, [1989] 2 W.L.R. 232, 240 (Eng. C.A. 1988) (noting that *Mareva* injunctions directly affect third parties); *Bankers Trust Co. v. Shapira*, [1980] 1 W.L.R. 1274, 1282 (Eng. C.A. 1980) (noting that bank became entangled in another's wrongful action and, therefore, had duty of disclosure).

⁴² See *Z Ltd.*, [1982] 1 Q.B. at 574 (noting that when assets in third party's possession are subject to *Mareva* injunction, third party must hold them pending further order).

⁴³ See DOUGLAS LAYCOCK, *MODERN AMERICAN REMEDIES*, 770-75 (2d ed. 1994) (discussing various theories for bringing third parties within scope of injunction).

⁴⁴ See Collins, *supra* note 1, at 264 (noting that early cases held *Mareva* injunction only applied to foreign defendants); see also Wasserman, *supra* note 2, at 339-40 (illustrating reason for application to foreign defendants). Section 37(3) of the 1981 Supreme Court Act expanded upon these early cases and established that the *Mareva* injunction also applied to defendants within the court's jurisdiction. See *id.* at 340; see also *Derby & Co. Ltd. v. Weldon*, [1989] 2 W.L.R. 412, 421-23 (Eng. C.A. 1988) (expanding geographic reach of *Mareva* injunction); *Republic of Haiti v. Duvalier*, [1989] 2 W.L.R. 261, 263 (Eng. C.A. 1988) (involving litigants and pending proceedings in France); *Rasu Maritima S.A. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, [1978] 1 Q.B. 644, 659 (Eng. C.A. 1978) (suggesting that injunction only applied to cases where defendant was located outside jurisdiction). *But see* Schlosser, *supra* note 11, at 152 (noting that English statute referred to assets within jurisdiction).

⁴⁵ See Convention on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters, 33 Official J.E.L. No 189, July 28, 1990, 29 I.L.M. 1413 (establishing acceptable bases of jurisdiction among European Union member states).

⁴⁶ See Schlosser, *supra* note 11, at 153. Accordingly, a litigant from France may apply for provisional remedies in another member state, even though the main proceedings are not pending in that state. See *id.*; see also *Duvalier*, [1989] 2 W.L.R. at 262-64 (noting that main proceedings were in France and that link to England was defendants' English solicitor); *Babanaft Int'l Co. S.A.*, [1989] 2 W.L.R. at 237 (noting that judgment debtors were two Lebanese nationals living outside of England but owning assets in England); Collins, *supra* note 1, at 289 (describing article 24 of 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which allows courts of contracting states to grant provisional remedies even when other contracting states maintain

of England, the *Mareva* injunction is not available to American plaintiffs.⁴⁷

II. STATE OF THE LAW

American courts have always been reluctant to provide pre-judgment relief.⁴⁸ Nevertheless, two general preliminary remedies are available to plaintiffs who want to freeze defendants' assets pending trial.⁴⁹ Plaintiffs seeking money judgments may apply for prejudgment attachments, often described as remedies at law.⁵⁰ If plaintiffs instead seek equitable remedies, they may apply for preliminary injunctions.⁵¹

A. *The Prejudgment Attachment*

The prejudgment attachment historically served to coerce defendants' appearances in court.⁵² Currently, however, courts issue prejudgment attachments to provide security for plaintiffs' claims.⁵³ Upon plaintiffs showing the validity of their claims and the likelihood that defendants will dissipate their own property, judges may issue attachment orders.⁵⁴

Attachment orders ordinarily create security liens in defendants' targeted assets.⁵⁵ These orders authorize sheriffs to

pending substantive action).

⁴⁷ See Wasserman, *supra* note 2, at 336 n.337 (noting that many common-law jurisdictions have adopted *Mareva* injunctions). The United States is noticeably missing from the list. See *id.*

⁴⁸ See Laycock, *supra* note 5, at 729 (explaining that courts particularly fear preliminary remedies).

⁴⁹ See Wasserman, *supra* note 2, at 259-63 (illustrating two types of preliminary remedies).

⁵⁰ See *id.* at 270 (describing attachments as remedy at law).

⁵¹ See *id.* at 306-07 (describing preliminary injunction as falling within equitable remedies).

⁵² See *id.* at 274 (noting use of prejudgment attachment to coerce defendant's court appearance).

⁵³ See FED. R. CIV. P. 64 (authorizing property seizure to secure future judgment); Schlosser, *supra* note 11, at 155; see also ROBERT WYNESS MILLAR, CIVIL PROCEDURE OF THE TRIAL COURT IN HISTORICAL PERSPECTIVE 481 (1952) (explaining that English courts' attachments allowed pretrial attachment to provide security for plaintiff's claim).

⁵⁴ See Wasserman, *supra* note 2, at 270-71 (discussing process plaintiff must complete in order to obtain order).

⁵⁵ See *id.* at 281-82 (discussing attachment as constructive lien on defendant's property). Since the judicial attachment gives plaintiff secured creditor status, it can effect

physically seize defendants' tangible property.⁵⁶ If the property is depreciating, or otherwise expensive to keep, sheriffs can sell defendants' property.⁵⁷

Statutes usually define the scope of the prejudgment attachment and provide courts with corollary attachment jurisdiction.⁵⁸ Except for Pennsylvania, all states have enacted attachment statutes.⁵⁹ Many state attachment statutes, however, limit prejudgment attachments to certain legal claims, such as contractual claims.⁶⁰ Thus, courts must have both subject-matter jurisdiction over specific claims and in-rem jurisdiction over defendants' property to issue prejudgment attachment orders.⁶¹ Furthermore, attachment orders are only available to plaintiffs who seek final remedies in law.⁶²

B. The Preliminary Injunction

If plaintiffs ultimately seek equitable remedies, they may instead apply for preliminary injunctions.⁶³ The purpose of the

the hierarchy of claims in a bankruptcy proceeding. *See id.* at 283-84.

⁵⁶ *See id.* at 281. Professor Wasserman describes how attachment statutes allow the sheriff to attach defendant's property in the hands of third-party garnishees. *See id.* Professor Wasserman concludes that the garnishment provisions are overbroad and cumbersome because they do not distinguish between third parties who collaborate with the defendant and totally innocent third parties. *See id.* at 285.

⁵⁷ *See id.* at 281 (stating that in most states, sheriff has authority to sell defendant's property); *see also* CAL. CIV. PROC. CODE §§ 482.080, 488.050, 488.090, 488.335 (West Supp. 1998) (providing for California attachment procedure).

⁵⁸ *See* Wasserman, *supra* note 2, at 276-80.

⁵⁹ *See id.* at 270.

⁶⁰ *See, e.g.,* CAL. CIV. PROC. CODE § 483.010 (West Supp. 1998) (limiting prejudgment attachment to contractual claims).

⁶¹ *See* Schlosser, *supra* note 11, at 158 (noting that attachments require in-rem jurisdiction).

⁶² *See* Wasserman, *supra* note 2, at 262 (noting that attachment order is available to plaintiff who seeks final remedy at law).

⁶³ *See id.* at 263 (describing principle that preliminary injunction is available to secure equitable remedy); *see also* Laycock, *supra* note 5, at 699-700 (outlining history behind equitable remedies and showing origin of irreparable injury rule). The preliminary injunction is the product of the historical conflict between law and equity. *See id.* The dichotomy between law and equity originated in fourteenth century England when courts of equity developed in competition with common-law courts. *See id.* To keep the courts separate, courts of equity took jurisdiction only when there was no adequate remedy at law. *See id.* The courts summarized the practice in a rule that equitable remedies would be available only where plaintiffs would suffer irreparable injury. *See id.* Hence, to obtain injunctive relief plaintiffs must establish that they will suffer irreparable injury. *See id.* (describing

preliminary injunction is to preserve the status quo between litigants pending trial.⁶⁴ The preliminary injunction may direct defendants to act or refrain from acting.⁶⁵

To obtain a preliminary injunction, plaintiffs must first show a strong likelihood of success on the merits.⁶⁶ Second, plaintiffs must show that, unless the court grants the preliminary injunction, they will suffer irreparable injury.⁶⁷ Third, plaintiffs must prove that their potential harm outweighs the harm that an injunction would inflict upon defendants.⁶⁸ Fourth, the injunction must further the public interest.⁶⁹

Courts usually deny preliminary injunction applications because plaintiffs fail to satisfy the irreparable injury rule.⁷⁰ The irreparable injury rule is firmly rooted in the development of courts of equity, but is amorphous.⁷¹ The courts define what constitutes irreparable injury; thus, the irreparable injury does not fix an absolute threshold.⁷²

C. *The Gap in American Prejudgment Attachment Laws*

Although the preliminary injunction and prejudgment attachment provide some protection to plaintiffs' interests, American provisional remedies are insufficient.⁷³ Defendants can still re-

historical reasons for creation of equitable actions); see also F.W. MAITLAND, *EQUITY: A COURSE OF LECTURES* 4-5 (John Brunyate ed., 2d ed. 1936); JOSEPH STORY, *COMMENTARIES ON EQUITY JURISPRUDENCE AS ADMINISTERED IN ENGLAND AND AMERICA* §§ 41-49, at 41-53 (Arno Press 1972) (1835) (explaining how courts of equity developed parallel to common-law courts).

⁶⁴ See Wasserman, *supra* note 2, at 282 (establishing that goal of preliminary remedies is to preserve status quo between litigants pending trial).

⁶⁵ See *id.* at 286. A defendant who violates a preliminary injunction may be found in contempt of court. See LAYCOCK, *supra* note 43, at 232-34.

⁶⁶ See *Los Angeles Mem'l Coliseum Comm'n v. National Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980) (listing equitable criteria for obtaining preliminary injunctions, which includes strong likelihood of success on merits).

⁶⁷ See *id.*

⁶⁸ See *id.*

⁶⁹ See *id.*

⁷⁰ See Laycock, *supra* note 5, at 689 (explaining implication that equity will not act if adequate legal remedies exist and noting that courts usually find legal remedies inadequate). Professor Laycock surveyed more than 1400 cases in examining the irreparable rule and concluded that the rule is "dead." See *id.* at 688.

⁷¹ See *id.* at 699-700 (tracing history of equity and irreparable injury rule).

⁷² See *id.* at 694-95 (referring to adequacy threshold).

⁷³ See Wasserman, *supra* note 2, at 276 (stating that prejudgment attachment does not

move their assets beyond a court's jurisdiction.⁷⁴ For example, if a plaintiff seeks a legal remedy, a court will ordinarily deny a preliminary injunction.⁷⁵ However, the court may also deny a prejudgment attachment because the plaintiff's claims fall outside the statute's scope.⁷⁶

First, the prejudgment attachment suffers from its jurisdictional restraints.⁷⁷ The prejudgment attachment requires in-rem jurisdiction.⁷⁸ Consequently, courts may never attach foreign assets.⁷⁹ This jurisdictional restraint is increasingly significant in a world where financial mobility makes territoriality even less important.⁸⁰

Second, the prejudgment attachment is ordinarily limited by statute to specific enumerated claims.⁸¹ For example, statutes often provide that courts may only grant prejudgment attachments on contractual claims.⁸² Hence, even if plaintiffs seek

prevent harm); *see also* Schlosser, *supra* note 11, at 158-61 (illustrating preliminary remedy problems in other civil-law states).

⁷⁴ *See, e.g.*, Wasserman, *supra* note 2, at 262-63 (discussing case of widower who would likely not prevail on motion for preliminary injunction).

⁷⁵ *See id.* at 262.

⁷⁶ *See* CAL. CIV. PROC. CODE § 483.010 (West Supp. 1998) (providing attachment procedure for contractual claims); *see also* Schlosser, *supra* note 11, at 155 (referring to California statute where prejudgment attachments are limited to contractual claims).

⁷⁷ *See* Wasserman, *supra* note 2, at 278 (discussing impact attachment's limited territorial reach has on court's ability to preserve defendant's assets for satisfaction of future judgment); *see also* Schlosser, *supra* note 11, at 157-58 (discussing case where plaintiff must look to foreign courts for assistance). Plaintiffs might not be able to identify relevant courts without first obtaining information about defendants' assets. *See id.* at 158. Additionally, foreign courts, where assets are located, may not have the power to issue attachment orders. *See id.* Moreover, even if plaintiffs obtain relevant information, it may be too late to commence attachment proceedings in order to secure future judgments. *See id.* Usually the context suggests urgency and applications for *Mareva* injunctions are made *ex parte* without notice to opponents. *See id.*

⁷⁸ *See* Schlosser, *supra* note 11, at 158.

⁷⁹ *See id.*

⁸⁰ *See* Dominguez, *supra* note 32, at 41 (stating that crucial aspect of facilitating global market activity is enforceability of private agreements).

⁸¹ *See* Wasserman, *supra* note 2, at 276 (stating that numerous states specify types of costs in which attachment is authorized).

⁸² *See id.* Some states, like California, have limited the remedy to contractual claims. *See* Schlosser, *supra* note 11, at 155. Other states make it a function of the residency of the defendant or limit the attachment to specific kinds of property. *See* Wasserman, *supra* note 2, at 276-77. For example, in Pennsylvania, prejudgment attachment is not available in any action brought in federal or state court. *See id.* at 276. However, some have also suggested that Federal Rule of Civil Procedure 65(b) provides jurisdiction for temporary restraining

remedies at law, courts may still not have subject-matter jurisdiction over the specific claims.⁸³

Besides limited application, the prejudgment attachment is also intrusive.⁸⁴ The prejudgment attachment creates a security lien in defendants' assets, thus encumbering titles and increasing defendants' liabilities.⁸⁵ Eventually, these liabilities may force defendants into bankruptcy.⁸⁶ Even if the attachment does not result in defendants' bankruptcy, it may nonetheless drastically alter the bargaining power between plaintiffs and defendants.⁸⁷

Like the prejudgment attachment, the preliminary injunction's scope is narrow.⁸⁸ While the preliminary injunction is not statutorily limited to specific claims,⁸⁹ it is available only if plaintiffs seek final remedies in equity.⁹⁰ Cognizant of this practice, plaintiffs might be inclined to artfully characterize contract claims as equitable so that they can apply for preliminary injunctions.⁹¹ Courts, however, deny injunctive relief when they construe plaintiffs' injunction applications as attempts to circumscribe the statutory limitations of the prejudgment attachment.⁹²

The most common reason that courts give for denying plaintiffs' motions for preliminary injunction is the irreparable injury rule.⁹³ Plaintiffs must show that a damage award would

orders and possibly for *Mareva* injunctions as well. See Edward V. Cattell, Jr., *What Do You Do When the Marshal Is Busy? A New Use for the Mareva Injunction*, 18 J. MAR. L. & COM. 263, 269-74 (1987).

⁸³ See Wasserman, *supra* note 2, at 276-77 (detailing subject matter jurisdiction restrictions on prejudgment attachment under particular statutes).

⁸⁴ See *id.* at 283 (noting that plaintiff acquires judicial lien in defendant's assets).

⁸⁵ See *id.* at 281-82 (showing how attachment lien encumbers property and affects credit ratings).

⁸⁶ See *id.* at 284 (concluding that creditors with inferior liens might feel compelled to force defendant into involuntary bankruptcy in effort to avoid attachment lien).

⁸⁷ See *Connecticut v. Doehr*, 501 U.S. 1, 21 (1991) (plurality opinion) (noting that attachment has potential as tactical device to pressure opponent); see also Wasserman, *supra* note 2, at 282 (arguing that attachment remedy increases plaintiff's leverage).

⁸⁸ See Wasserman, *supra* note 2, at 262 (observing that plaintiff cannot count on injunctive relief though defendant is likely to remove assets).

⁸⁹ See *id.* at 261 (assuming courts' inherent equitable powers as basis for granting preliminary injunction).

⁹⁰ See *id.* at 262-63 (noting that ordinarily preliminary injunction is not available to plaintiffs in legal disputes).

⁹¹ See *id.* at 330-31 (illustrating how plaintiff might be inclined to characterize claim so that she can apply for preliminary injunction).

⁹² See *id.* at 330.

⁹³ See *supra* note 63 and accompanying text (explaining irreparable injury rule and

be insufficient to compensate them for harm suffered.⁹⁴ There is case law that suggests that the irreparable injury rule poses a fatal threat to every preliminary injunction application.⁹⁵ Yet, arguably every harm except for strict monetary loss is irreparable.⁹⁶ Therefore, the irreparable injury rule should not pose an insurmountable obstacle to courts adopting a *Mareva*-type injunction.⁹⁷

American courts address some valid concerns when they decline to grant preliminary relief.⁹⁸ However, courts have failed to account for new realities of the modern world.⁹⁹ American courts should adopt the *Mareva* injunction to protect plaintiffs from increasingly mobile defendants.¹⁰⁰

III. PROPOSAL

Current American preliminary remedies do not adequately deal with errant defendants who can instantly move their assets beyond the courts' reach.¹⁰¹ Certain claims fall outside the scope of both the American preliminary injunction and the prejudgment attachment.¹⁰² Increased capital mobility invites many defendants to exploit this gap.¹⁰³ The *Mareva* injunction

tracing history of equity and irreparable injury rule); *see also* ITT Community Dev. Corp. v. Barton, 569 F.2d 1351, 1359 (5th Cir. 1978) (noting that law and equity merged).

⁹⁴ *See* Laycock, *supra* note 5, at 689 (summarizing irreparable injury rule); Wasserman, *supra* note 2, at 289 (stating that court must inquire into possible irreparable injury); *see also* Loretangeli v. Critelli, 853 F.2d 186, 196 (3d Cir. 1988) (indicating that plaintiff's allegations of defendant's insolvency failed to meet burden of showing irreparable injury).

⁹⁵ *See* Laycock, *supra* note 5, at 722 (stating that courts have used irreparable injury rule to deny specific relief).

⁹⁶ *See id.* at 703 (arguing that money is never adequate remedy in itself). Professor Laycock concludes that the irreparable injury rule vests some discretion in courts to define what amounts to irreparable injury. *See id.* at 691.

⁹⁷ *See id.* at 696 (describing irreparable injury rule as historical rather than functional); *see also* Wasserman, *supra* note 2, at 286-87 (exploring ways for plaintiff to satisfy court's criteria and prevail on request for injunctive relief).

⁹⁸ *See supra* notes 52-72 and accompanying text (analyzing underlying rationales of American provisional remedies).

⁹⁹ *See* Wasserman, *supra* note 2, at 262-63 (discussing example of plaintiff without redress).

¹⁰⁰ *See supra* notes 17-47 and accompanying text (analyzing benefits inherent in *Mareva* injunction).

¹⁰¹ *See* Wasserman, *supra* note 2, at 268-69 (describing resulting harm as tertiary harm).

¹⁰² *See supra* notes 73-100 and accompanying text (describing gap in American preliminary remedies).

¹⁰³ *See* Collins, *supra* note 1, at 262 (noting that increased financial mobility drives devel-

successfully deals with defendants who are likely to dissipate their assets and, hence, addresses claims that the prejudgment attachment and preliminary injunction cannot.¹⁰⁴

A. *Application of the Mareva Injunction*

When granting *Mareva* injunctions, courts must balance the need to protect plaintiffs' interests in future judgments against the risk of inflicting legally unjustified harm on defendants.¹⁰⁵ Because of these countervailing concerns, courts should grant *Mareva* injunctions sparingly and only where plaintiffs can show a likelihood of success on the merits.¹⁰⁶ Moreover, courts should closely tailor the scope of the injunctions to their purpose.¹⁰⁷

Before granting the injunctions, courts should determine whether they have in-personam jurisdiction over defendants.¹⁰⁸ Requiring in-personam jurisdiction limits courts' jurisdiction¹⁰⁹ and compels courts to consider due process.¹¹⁰ For example, due process protects defendants by preventing courts from subjecting them to exorbitant jurisdiction.¹¹¹

opment of *Mareva* injunction).

¹⁰⁴ See *id.* at 263-64 (describing effectiveness and statutory recognition of *Mareva* injunction); see also *Deutsche Schauchtbau-und Tiefbohrsgesellschaft v. R'as al Khaimah Nat'l Oil Co.*, [1987] 3 W.L.R. 1023, 1036 (Eng. C.A. 1987) (describing *Mareva* injunction as most imaginative, important, and beneficent invention of modern times).

¹⁰⁵ See Wasserman, *supra* note 2, at 286 (discussing four criteria used to determine if preliminary injunction is appropriate).

¹⁰⁶ See *Rasu Maritima S.A. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, [1978] 1 Q.B. 644, 661 (Eng. C.A. 1977) (setting forth threshold requirement that plaintiff must show good arguable cause); see also *Z Ltd. v. A-Z*, [1982] 1 Q.B., 558, 585 (Eng. C.A. 1981) (noting impropriety of granting *Mareva* relief simply to provide security for plaintiff's claim when no real risk of evasive dissipation exists).

¹⁰⁷ See Wasserman, *supra* note 2, at 347-48 (suggesting methods to reduce risk to defendants and third parties). Professor Wasserman adds that courts must fulfill dual purposes in protecting both plaintiffs' and defendants' interests in deciding on injunctions. See *id.*

¹⁰⁸ See Collins, *supra* note 1, at 264-65 (describing statute that requires personal jurisdiction over targeted defendant).

¹⁰⁹ See *id.* (describing how British Parliament limited courts' broad statutory powers by requiring that courts have at least personal jurisdiction over targeted defendant).

¹¹⁰ Compare *Pennoyer v. Neff*, 95 U.S. 714, 733-34 (1877) (establishing that due process considerations mandate personal service before state can exercise jurisdiction), with *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) (holding that due process requires minimum contacts in order to find jurisdiction).

¹¹¹ See *International Shoe*, 326 U.S. at 319 (illustrating that court does not have

American jurisdictional doctrines are somewhat inconsistent with a worldwide injunction because courts only exercise jurisdiction within state bounds.¹¹² For purposes of the injunction's effectiveness, courts should have jurisdiction based on the aggregate of national contacts.¹¹³ Jurisdiction should exist when defendants have substantial business contacts with the United States as a whole, even though they have few contacts with a particular forum state.¹¹⁴

Courts should grant *Mareva* injunctions only when there is real risk that defendants might remove their assets.¹¹⁵ English courts have considered several factors to determine if real risk exists.¹¹⁶ Real risk is present and immediate when defendants have already removed assets outside the jurisdiction.¹¹⁷ It also exists when defendant businesses are of foreign origin and can easily render themselves judgment proof.¹¹⁸ Real risk is evident when defendants' past business dealings evidence a dishonest penchant.¹¹⁹ Finally, courts may balance several factors that they develop with time to determine if there is real risk of defendants removing their assets.¹²⁰

jurisdiction if defendant's in-state contact is so causal or isolated that burden of defense would be unreasonable).

¹¹² See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-99 (1980) (discussing jurisdiction as affected by state borders, noting that court may not assert jurisdiction unless defendant purposefully avails herself in forum state); Schlosser, *supra* note 11, at 151 (discussing English "world-wide" injunction).

¹¹³ See *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 113 n.* (1987) (noting national contacts as possible basis for jurisdiction, though court leaves unresolved whether aggregate of national contacts may provide jurisdiction).

¹¹⁴ See Schlosser, *supra* note 11, at 162-63 (arguing that doctrine of international comity should allow broadening of state's jurisdiction).

¹¹⁵ See *Third Chandris Shipping Co. v. Unimarine S.A.*, [1979] 1 Q.B. 645, 661 (Eng. C.A. 1979) (arguing that court should only grant *Mareva* injunction when real danger of default exists); see also *Z Ltd v. A-Z*, [1982] 1 Q.B. 558, 585 (Eng. C.A. 1981) (labeling *Mareva* injunctions granted when no danger of defendant removing assets as "abuse" of jurisdiction).

¹¹⁶ See *Third Chandris Shipping Co.*, [1979] 1 Q.B. at 668-69 (discussing several factors in assessing whether defendant poses risk of removing his assets).

¹¹⁷ See *id.* at 671 (stating that court can infer danger of default when defendant has already removed assets).

¹¹⁸ See *Nippon Yusen Kaisha v. Karageorgis*, [1975] 1 W.L.R. 1093, 1094 (Eng. C.A. 1975) (granting injunction to Japanese shipowners against two Greek shippers who could not be located and who plaintiffs believed held assets in London banks).

¹¹⁹ See *Republic of Haiti v. Duvalier*, [1989] 2 W.L.R. 261, 273 (Eng. C.A. 1988) (upholding order allowing plaintiff access to funds based on prior dishonest behavior).

¹²⁰ See *Third Chandris Shipping Co.*, [1979] 1 Q.B. at 668-69 (discussing ways to show risk

This multifactor balancing test should be inclusive.¹²¹ For example, courts may consider whether the assets within the jurisdiction are sufficient to satisfy future judgments and they may examine defendants' abilities to render assets untraceable.¹²² Furthermore, courts could determine whether defendants' assets are liquid or easily convertible.¹²³

B. Addressing the Void

To address the void of existing American preliminary remedies, courts should make the injunction available to plaintiffs whether they seek legal or equitable remedies.¹²⁴ Courts may grant *Mareva* injunctions by drawing on their general injunctive powers.¹²⁵ Courts can overcome the historical distinction between law and equity in two ways. First, courts may characterize defendants that dissipate their assets as causing plaintiffs irreparable injury.¹²⁶ By characterizing plaintiffs' injuries as irreparable, courts will enable plaintiffs to meet the amorphous irreparable injury threshold required for issuance of preliminary injunctions. Thus, regardless whether the claims are for legal or equitable remedies, plaintiffs will be entitled to injunctions.

of asset dissipation); *see also Z Ltd.*, [1982] 1 Q.B. at 584 (discussing risk of asset reduction).

¹²¹ *See Third Chandris Shipping Co.*, [1979] 1 Q.B. at 668-69 (discussing guidelines that judges should "bear in mind").

¹²² *See id.* at 656 (delineating questions courts might ask).

¹²³ *See id.* at 668-69 (noting that plaintiff must show real risk that defendant is about to dissipate assets). The English courts have not formulated an exclusive list of what constitutes real risk and seems to rely on a rather impressionistic approach. *See id.* (providing guidelines, but requiring only that judges use "wise discretion"); *see also Rasu Maritima S.A. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, [1978] 1 Q.B. 644, 661 (Eng. C.A. 1977) (requiring only that plaintiff show good arguable case to obtain jurisdiction); *Z Ltd.*, [1982] 1 Q.B. at 577 (noting that court should provide defendant earliest opportunity possible to rebut evidence proffered by plaintiff).

¹²⁴ *See Toledo, Ann Arbor & N. Mich. Ry. Co. v. Pennsylvania Co.*, 54 F. 746, 751 (C.C.N.D. Ohio 1893) (quoting circuit court justice's statement that American courts' equitable powers are vast and elastic enough to protect rights and meet changing emergencies of complex business relations).

¹²⁵ *See Schlosser*, *supra* note 11, at 162-63 (arguing that typical *Mareva* plaintiff would satisfy criteria for preliminary injunction).

¹²⁶ *See Wasserman*, *supra* note 2, at 290-93 (showing that court could characterize defendant's dissipation of assets as causing plaintiff irreparable injury). Professor Wasserman concludes that irreparable harm occurs in a suit for money damages when the plaintiff can demonstrate that the defendant plans to dissipate assets in an effort to frustrate the potential judgment. *See id.*

Second, courts could treat plaintiffs' final claims and claims for preliminary relief as separate causes of action.¹²⁷ Accordingly, courts could grant preliminary injunctions based on a theory of equitable remedy.¹²⁸ That is, although plaintiffs' ultimate remedies are at law, plaintiffs would be able to apply for preliminary injunctions not premised on the ultimate remedy. Instead, plaintiffs would file for injunctive relief based on the notion of preserving status quo pending trial.

C. Addressing Commentators' Concerns

Some commentators may argue that the *Mareva* injunction is wrought with too many problems for the American legal system to adopt.¹²⁹ For example, while the *Mareva* injunction's disclosure order adds to the injunction's effectiveness, it might subject defendants to oppressive multiple lawsuits worldwide.¹³⁰ Additionally, plaintiffs may force defendants to litigate in foreign forums, which may be costly and may harm defendants' business reputations.¹³¹ Because granting disclosure orders is discretionary, courts may weigh plaintiffs' and defendants' interests before forcing defendants to disclose their assets.¹³²

¹²⁷ See *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 391 (7th Cir. 1984) (determining that preliminary injunction standard requires irreparable injury before trial of final claim); *Collins*, *supra* note 1, at 262 (showing that under *Mareva*, courts may dissociate between main proceedings and application for provisional relief); see also *USACO Coal Co. v. Carbomin Energy, Inc.*, 689 F.2d 94, 98-100 (6th Cir. 1982) (affirming district court's decision to issue preliminary injunction to preserve defendant's assets pending final adjudication).

¹²⁸ See *Schlosser*, *supra* note 11, at 162 (stating that jurisdiction to grant preliminary injunctions exists separate from jurisdiction over case itself); see also *Shaffer v. Heitner*, 433 U.S. 186, 210 (1977) (noting that state where property is located should have jurisdiction to attach property as security for proceedings pending in foreign forum).

¹²⁹ See *Schlosser*, *supra* note 11, at 153 (stating that *Mareva* injunction encourages piecemeal international litigation).

¹³⁰ See *Ashtiani v. Kashi*, [1987] 1 Q.B. 888, 897-903 (Eng. C.A. 1986) (setting forth limitations of disclosure of foreign assets in order to prevent abuse). The court limited the disclosure order to the tracing of assets in proprietary claims. See *id.* at 901-03; see also *Collins*, *supra* note 1, at 286 (explaining *Ashtiani* decision regarding disclosure order).

¹³¹ See *Collins*, *supra* note 1, at 287-88 (indicating that foreign litigation might be oppressive to defendants).

¹³² See *id.* at 286-87 (examining effects of disclosure order, noting that court may require plaintiff to notify defendant before acting on disclosed information).

Other commentators may argue that courts should not be permitted to bring third parties within the scope of the injunction.¹³³ It may raise jurisdictional issues.¹³⁴ For example, a forum bank, restrained by a third-party order, might have a foreign branch that acts wholly abroad without any directives from the forum bank.¹³⁵ Subjecting this foreign branch to a *Mareva* injunction raises two problems.¹³⁶ First, the third-party order would punish acts of contempt done abroad by a foreigner who was not subject to the court's in-personam jurisdiction.¹³⁷ Second, if the court regards the foreign branch as a wholly-owned subsidiary, it might have in-personam jurisdiction over the foreign branch.¹³⁸ However, it may lack subject-matter jurisdiction over the transaction at issue.¹³⁹ English courts have resolved this problem by excluding third parties from orders affecting foreign assets.¹⁴⁰

Although arguably the *Mareva* injunction is an imperfect remedy, courts may easily take mitigating steps to correct its problems.¹⁴¹ Also, whatever problems the *Mareva* injunction may

¹³³ See *id.* at 284-86. But see *A. v. C.*, [1980] 2 All E.R. 347, 351 (Eng. C.A. 1980) (confirming that court may order third party to disclose information about defendant's assets).

¹³⁴ See Collins, *supra* note 1, at 281-82 (describing situation where jurisdiction problem arises because third party resides outside of jurisdiction). English courts have struggled to resolve the balance between bringing third parties within the scope of the *Mareva* order and avoiding exorbitant jurisdiction over third parties. See *id.* at 282-86.

¹³⁵ See *id.* at 281-82 (describing *Babanaft* facts). Solicitors for the judgment creditors implied that English orders bound foreign banks and that London branch officers could possibly face contempt proceedings. See *id.* at 282.

¹³⁶ See *id.* at 285 (describing "severe" problems that might arise if courts are able to reach home branch of bank for actions of foreign branches).

¹³⁷ See *id.* at 282 (stating that jurisdiction based on acts of contempt done abroad is extreme).

¹³⁸ See *id.* at 285-86 (discussing in-personam jurisdiction over head-offices of banks leading to jurisdiction over foreign branches).

¹³⁹ See *id.* at 284-86 (stating that most troubling issue of jurisdiction involves third party who is subject to personal jurisdiction but who acts abroad).

¹⁴⁰ See *id.* at 282 (describing third party orders and how they affect foreign assets); see also *Babanaft Int'l Co. S.A. v. Bassatne*, [1989] 2 W.L.R. 232, 257 (Eng. C.A. 1988) (explaining attempt by English courts to impose obligations on third parties as "exorbitant, extra-territorial jurisdiction").

¹⁴¹ See *Derby & Co. Ltd. v. Weldon*, [1989] 2 W.L.R. 412, 420 (Eng. C.A. 1989) (stating that judges possess discretion in granting *Mareva* injunctions and that those decisions will not act as binding precedent). The opinion cites subsections 37(1) to (3) of the Supreme Court Act of 1981 as support for the assertion that judges can tailor *Mareva* injunctions to

have are outweighed by its benefits to plaintiffs.¹⁴² Thus, American courts should adopt the *Mareva* injunction to fill the gap left by the prejudgment attachment and the preliminary injunction.¹⁴³

CONCLUSION

American provisional remedies leave a void that threatens plaintiffs' abilities to have their judgments enforced. The existing prejudgment attachment and the preliminary injunction developed when capital was difficult to move abroad.¹⁴⁴ Today, anyone can remove their assets instantaneously.¹⁴⁵ This new financial mobility invites opportunistic defendants to remove their assets in order to become judgment proof.¹⁴⁶

The English judiciary addressed this mobility and produced a significant innovation when they developed the *Mareva* injunction. The *Mareva* injunction effectively freezes evasive defendants' assets. It is well fit for modern times because it reaches worldwide and can be adjusted so as not to be too intrusive on defendants. In the pursuit of globetrotting defendants, courts need the power to freeze defendants' assets before trial. Litigants in the United States would clearly benefit from the adoption of a *Mareva*-type injunction.

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specific cases. *See id.* at 419. Subsection 37(2) allows courts to grant injunctions on "such terms and conditions as the court thinks just." *See id.*; *see also* *Ohio Oil Co. v. Conway*, 279 U.S. 813, 815 (1928) (stating that state's interest in collecting tax could be protected by requiring plaintiff to post bond); *Z Ltd. v. A-Z*, [1981] 1 Q.B. 558, 576 (Eng. C.A. 1982) (suggesting that for purposes of *Mareva*, amount seized should not exceed amount claimed by plaintiff from defendant).

¹⁴² Compare *supra* notes 17-47 and accompanying text (discussing anatomy of *Mareva* injunction), with *supra* notes 52-72 and accompanying text (analyzing American provisional remedies).

¹⁴³ *See Derby*, [1989] 2 W.L.R. at 421 (noting that *Mareva* injunction effectively freezes evasive defendant's assets).

¹⁴⁴ *See supra* notes 52-62 and accompanying text (discussing development of prejudgment attachment).

¹⁴⁵ *See Collins*, *supra* note 1, at 262 (noting that financial mobility is driving factor behind *Mareva* injunction).

¹⁴⁶ *See Wasserman*, *supra* note 2, at 266 (examining harm resulting from unsatisfied judgments).

