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US Litigation Today: Still a Threat For European Businesses or Just a Paper Tiger?
Conference proceedings from the 29th Journée de droit international privé of 23 June 2017
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Preface

At the time of writing, the implications of "America First" policymaking are making life difficult for many around the world—and not the least for a number of European leaders. The Trump Administration's proclaimed desire for turning its attention inward has left many people around the world concerned about what they see as an abdication of responsibility that is seen as the necessary accomplishment to the United States' status as the world's premier economic, military, and political power.

Yet not so long ago, a more expansionist United States foreign policy was being criticized for unabashedly attempting to wield its power over those outside its borders. These critics of US extraterritoriality were not restricted to those concerned with US military actions or economic coercion. In fact, much of what can be considered “extraterritorial” was taking place within its borders—through legal mechanisms that made rules set out in US legislation applicable to foreigners. Foreign corporations, in particular, often felt themselves unfairly exposed to legal action in the United States.

While US courts may never have aggressively pursued foreign companies for violations of US law, the late 20th century did witness a certain expansion of the jurisdictional reach of US legislation. Through statutes such as the Alien Tort Claims Act, rediscovered after years of non-use, through court-driven extensions of the standing doctrines that granted them jurisdiction over companies with minimal contacts to the forum State, and by means of procedures such as mass claims actions that subjected foreign defendants to unfamiliar procedural forms, litigation in the United States evolved into something that businesses around the world feared.

However, by the early years of the new millennium, the US civil justice system was changing. The increasingly conservative judges on the Supreme Court became a particularly significant force in the move to retreat from some of the interpretations of law that were of concern to foreign companies. The evolving legal landscape lay the basis for Stephen Burbank's paper titled "International Civil Litigation in the US: Becoming a Paper Tiger".1 Burbank suggests that US courts are no longer the threat they once were to foreign corporations.

Using Burbank's title as inspiration, the Swiss Institute of Comparative Law and the Center of Comparative, European and International Law of the Lausanne School of Law organized a conference in June 2017 to probe the current realities of US litigation for foreign companies. The contributions in this volume were authored by