

## TEXAS LAWYER

# Texas Appeals Court Tosses \$500 Million Ore Theft Suit Against Vale

By Laura Lorek

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**A** Texas appellate court tossed a \$500 million conversion claim against Brazilian mining giant Vale S.A. last month, ruling that shipping ore to a Corpus Christi steel plant created no substantial connection to the alleged wrongdoing, and establishing a precedent that could shield foreign companies from jurisdiction in Texas based solely on downstream U.S. contacts.

The Texas Court of Appeals reversed a Nueces County trial court's denial of Vale's special appearance after two years of jurisdictional discovery. The court found that Vale's contacts with Texas, including technical assistance visits to a Corpus Christi steel plant operated by European manufacturers, had no substantial connection to the central dispute over mineral rights to an iron ore deposit in Brazil.

"While we, of course, have a great deal of respect for the intermediate court of appeals, we strongly believe that the Texas Supreme Court will follow the trial court's denial of the special appearance and follow well-established Texas authority supporting Judge Gonzales' decision and her undeniable findings supporting that the theft of the plaintiff's minerals took place in Texas based upon deliberate contracts with and delivery of the stolen product to the State of Texas," Michael K Hurst, partner with the Dallas-based Lynn Pinker Hurst & Schwegmann, attorney for Itabirçu, said in a written statement.

"Furthermore, the litigation against the Texas Defendant that knew about and benefited from the theft continues," Hurst said. "We look forward to a trial on the merits that will no doubt resoundingly show that Texas and the US are serious about not tolerating massive tortious activities like this to transpire within their borders."



Credit: Salienko Evgenii/Shutterstock

**Loading of stone ore in a shale quarry, panorama.**

The June 11 ruling provides out-of-state and foreign defendants with a strong defense against lawsuits in Texas based solely on where a product is delivered, rather than where the alleged wrongdoing occurred. The court noted that allowing jurisdiction under these circumstances would permit any country receiving Vale's shipments to assert jurisdiction, undermining established constitutional limits on personal jurisdiction.

In a memorandum opinion, the court held that "there is no 'substantial connection' between Vale's contacts with Texas and the operative facts of Itabirçu's claims." The court held that none of the acts Itabirçu alleged Vale performed in Texas "are related in any substantial way to the actual conduct which Itabirçu complains about in its suit" and concluded that "a trial on Itabirçu's conversion claim would focus predominantly—if not exclusively—on Vale's activities in Brazil." The court further found that even if a substantial connection existed

between Vale's alleged Texas contacts and Itabirçu's claims, exercising jurisdiction over Vale would not comport with traditional notions of fair play and substantial justice under the U.S. Constitution. The court ordered the dismissal of all claims against Vale.

In October 2023, Itabirçu Nacional de Pesquisa Mineral Ltda., a Brazilian mineral rights company, sued Vale, alleging that Vale extracted iron ore from a disputed area in its Itabira Mining Complex, processed it, and shipped it to Corpus Christi, where Itabirçu claimed the conversion continued. Itabirçu sought over \$500 million, representing Vale's alleged profits from the disputed ore.

Gibson Dunn partners Christopher Joralemon and David Kusnetz, who led Vale's defense, stated that they intentionally focused their appeal on the substantial connection aspect of the specific jurisdiction analysis.

"It was crystal clear that under governing Texas law and U.S. constitutional law and the well-developed evidentiary record, there was no scenario in which a court could find a substantial connection between the challenged conduct, the conversion of ore in Brazil, and Vale's conduct in Texas," Joralemon said.

The team also adopted an unusual approach to jurisdictional discovery by welcoming an expansive record instead of seeking to limit it. Kusnetz explained that they were confident additional evidence would further demonstrate the lack of jurisdiction, and Vale brought in executives from around the world to testify. This comprehensive record became the factual basis for the appellate court's decision.

Before the merits appeal was decided, Gibson Dunn requested an emergency stay of trial court proceedings, a motion that is rarely granted. The team argued that allowing discovery would create an unfair advantage, as Brazilian law does not permit American-style depositions. Any discovery ordered by the Texas court would give Itabirçu access to evidence unavailable in Brazil. The appellate court granted the stay one day after Itabirçu filed its opposition, before Vale submitted its reply.

"They didn't have an answer to our irreparable harm arguments," Kusnetz said. "If they obtain broad document discovery that's not available to them in Brazil, you can't unring that bell."

A key argument in Gibson Dunn's briefing addressed the practical implications of Itabirçu's theory. Joralemon argued that if conversion is not complete until the ore reaches its final destination, Vale could face conversion

claims in every country where it ships ore, including Argentina and China.

"There's no stopping that type of legal theory, no limiting principle," he said. The appellate court agreed, stating that under Itabirçu's theory, any court in any country receiving Vale's shipments could assert jurisdiction.

The court went beyond the substantial connection analysis, also finding that exercising jurisdiction over Vale would violate accepted standards of fair play and substantial justice under the U.S. Constitution. Joralemon emphasized the significance of this point, stating, "That is literally the last line of defense, the bare minimum required by the U.S. and Texas constitutions to protect a defendant from being haled into a foreign jurisdiction." He added, "The fact that the appellate court found it necessary to cite that as an additional reason just really highlights how extraordinary this theory was."

Both lawyers noted that the case involved broader issues beyond technical jurisdiction. "At bottom, this is a mineral rights dispute in Brazil between two Brazilian entities, governed by complex Brazilian mining regulations," Joralemon said. "The notion that a Texas state court should or could wade in and apply Texas common law to sort out mineral rights disputes in Brazil was extraordinary."

Both lawyers credited Vale's determination to contest an adverse trial court ruling, endure two years of jurisdictional discovery, and pursue an interlocutory appeal as essential to the outcome.

"It takes guts," Kusnetz said. "Without the testimony of any of those Vale executives, I'm not sure we win."

Joralemon summarized the ruling for litigators defending foreign companies in Texas: a company's activities in a forum must be substantially connected to the subject of the claim, not merely related to the same transaction or supply chain.

"Trust in what the business arrangement originally was," Kusnetz added. "Because that is the hallmark of international jurisprudence: respecting the contracted rights between sophisticated parties."

The cross-office Gibson Dunn team representing Vale S.A. included Joralemon, Kusnetz, Sydney Scott, and Brad Hubbard, of counsel Benjamin D. Wilson, and associates Michael Klurfeld, Jack DiSorbo, Arjun Ogale, Hayato Watanabe, John Ito, Warren Bloom, Jon Greenberg, and Michelle Gery.