



**ENFORCING
INTERNATIONAL
JUDGMENTS**

By Houston Putnam Lowry

It had the appearances of an ordinary day. An old client you hadn't heard from in a long time called and wanted an appointment to discuss enforcing a judgment. When the client arrived, you learned it was a judgment from another country, not a sister state within the United States.

You begin wondering what your options might be.

How Do You Prove the Judgment?

The first question is how do you prove the judgment? In the United States, you would simply get a certified copy and that's the end of it.

When dealing with a foreign judgment, you need to get a copy of the judgment certified by the local foreign court (usually by the clerk of the court). Next, you must have someone (possibly from the ministry of justice) certify who is the clerk of the court. This might seem easy, but it can be difficult in practice. In my home state, the Connecticut Secretary of the State keeps track of the probate judges but not the clerks of the probate court (meaning the secretary of the state will certify the signature of a probate judge but not the signature of a probate clerk). Then you need someone from the U.S. State Department to certify the certification from the minister of justice. With this stream of certifications, your copy of the judgment is ready to be presented to the receiving court.

By now your head is spinning and you are thinking how long is this going to take and how much will each of these certifications cost. Both of these are proper concerns—for both you and your client. If it takes six months to obtain a certified copy of the foreign judgment, that will certainly slow down enforcement proceedings.

There is a shortcut: the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (www.hcch.net/index_en.php?act=conventions.text&cid=41). The United States has been

a party to this convention since 1981, and 96 other countries have adhered to it. It creates an "Apostille" containing certain specified information; the Apostille is signed by one of the authorities designated for that country when it became a party to the convention. The lines of text in the Apostille are numbered to aid readers in determining which lines gives what information, even if the Apostille is issued in a foreign language. For example, line one gives the name of the originating country. Most people can read an Arabic numeral even if they cannot read a particular language.

The Apostille is roughly nine centimeters square, but many central authorities will put it on a full sheet of paper (whatever that might be for the relevant country).

Needless to say, your local court will probably want a copy of the judgment in English. You will have to find a translator you feel comfortable with. You will discover the cost of translating documents can be quite high, especially for unusual languages.

International Agreements

Next you should research whether there is an international treaty or convention that allows a judgment from another country (any other country!) to be enforced within the United States. Regrettably, the United States is not party to any bilateral or multilateral convention regarding the enforcement of judgment from another country. (In 1976 the United States and the United Kingdom initialed a "Convention on the Reciprocal Recognition and Enforcement of Judgments in Civil Matters," 16 I.L.M. 71 (1977), but negotiations over the final text broke off in 1981.) The topic is not covered in any friendship, commerce, and navigation treaty. The topic is not covered in any bilateral investment treaty.

You mutter to yourself, no wonder the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly called the New York Convention; www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html) is so popular in international transactions! That won't help you here because this is a judgment and not an arbitral award.

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In its ruling, the court will evaluate what comity must be given the foreign judgment.

Federal Law

There is currently no federal law regarding the enforcement of judgments from foreign countries. In 2006 the American Law Institute issued a report entitled Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute (www.ali.org/index.cfm?fuseaction=publicationsfpae&node_id=82&product_code=1REFJOT). The report was transmitted to Congress, but Congress has taken no action. (It should be noted this author strenuously objected to the reciprocity requirement in the report.) In the current political climate, action is viewed as unlikely by this author.

Suit on a Judgment

You can always bring a suit on a judgment, but that is hardly a summary procedure. In effect, your client must start and complete a second lawsuit—which may take a couple of years. By that point, the statute of limitations may have passed on the underlying cause of action, meaning the only way to enforce your client’s rights is by suing on the judgment. If the judgment cannot be enforced, your client has no further options because the original cause of action is time barred.

In determining whether or not the judgment will be enforced, the court will evaluate what “comity,” as defined in *Hilton v. Guyot*, 159 U.S. 113 (1895), must be given the foreign judgment. In that case, the court noted:

No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have been content to call “the comity of nations.” Although the phrase has been often criticized, no satisfactory substitute has been suggested.

“Comity,” in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, on the other. But it is the recognition that one nation allows within its territory for

the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws.

Justice Story, in his *Commentaries on the Conflict of Laws* (1834), treating the question in what department of the government of any state, in the absence of any clear declaration of the sovereign will, resides the authority to determine how far the laws of a foreign state shall have effect, and observing that this differs in different states, according to the organization of the departments of the government of each, says:

In England and America the courts of justice have hitherto exercised the same authority in the most ample manner, and the legislatures have in no instance (it is believed) in either country interfered to provide any positive regulations. The common law of both countries has been expanded to meet the exigencies of the times as they have arisen, and, so far as the practice, of nations, or the “jus gentium privatum,” has been supposed to furnish any general principle, it has been followed out.

Great black letter law, but not easy to apply to your client’s case . . . or any other set of facts.

Uniform Foreign Money-Judgment Recognition Act

In 1962 the National Conference of Commissioners on Uniform State Laws drafted the Uniform Foreign Money-Judgments Recognition Act to create a summary procedure to enforce such judgments. It was enacted in 32 United States jurisdictions: Alaska, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, U.S. Virgin Islands, Virginia, and Washington. While this covers a lot of states, it doesn’t cover them all.

The act only applies to judgments for

a sum of money. What common law lawyers refer to as “equitable judgments”—such as injunctions—are not covered. The judgment must be final, meaning all appeals must have been exhausted.

A foreign judgment is not considered enforceable if it was ordered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law. In today’s world, the courts of one country are going to be loathe to declare the courts of another country as not “impartial,” but that is always a possibility. This issue can only be presented by expert testimony, and it is difficult to predict in advance how the receiving court will evaluate such testimony. Your court will not likely consider itself bound by the determination of another domestic court on this issue—especially if there has been a passage of time since the issue was considered.

The next question is whether the foreign court had personal jurisdiction over the defendant and the subject matter. Most courts of general jurisdiction are presumed to have subject matter jurisdiction. Questions about personal jurisdiction are within the experience of most general practitioners and beyond the scope of this article. If service was made in accordance with the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, it will likely be considered effective within the United States, so the judgment can be enforced.

Some states have enacted a non-uniform provision that imposes a reciprocity requirement. This requires expert testimony. If the foreign country’s law is silent on the issue (perhaps because a U.S. judgment has never been taken there for enforcement), there will be a battle of the experts. If there is no settled law on this point, the U.S. court will have to decide if it will presume a U.S. judgment will be enforced, or if it will presume a U.S. judgment will not be enforced. Unless your local court has a history under these circumstances, it will be difficult to predict the outcome.

Hague Choice of Courts Convention

Some 35 countries began negotiating in 1993 at the Hague Conference on Private

International Law for a Convention on Jurisdiction and the Recognition of Foreign Judgments. It became clear over time a convention of such scope was not politically possible.

What was possible became the 2005 Hague Convention on Choice of Court Agreements. Although the United States signed the Convention on January 19, 2009, it has not yet ratified it. The Convention makes exclusive choice of forum clauses specifically enforceable. If the clause is silent on the point, it is presumed to be an exclusive choice of forum clause—contrary to the present U.S. domestic rule . . . so watch out! This will be substantially equivalent to the enforcement of arbitration agreements under the New York Convention.

As a general rule, the judgments of the selected forum are enforceable (once again, similar to enforcement of arbitral awards under the New York Convention). If you don’t want to have the judgment of a foreign forum enforced, don’t agree to litigate there.

Although this convention has not yet been ratified and implemented in the United States, it is on the fast track. Be sure to check on it because it might apply when your case appears at your doorstep.

Conclusion

It is certainly an adventure to enforce a judgment from another country. However, it is completely possible for a general practitioner to do so with professionalism and confidence. **GPSOLO**

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