



Global Impact on Arizona Soil: Recognition and

International trade with the United States continues to grow at an explosive pace. In May 2006 alone, U.S. exports and imports of goods and services increased \$5.9 billion from the previous month.¹ Arizona's economy echoes this trend and, in recent years, international business in the state has increased dramatically. Worldwide exports from Arizona in 2005 totaled \$14.9 billion, an 11.37 percent increase from 2004.²

As a result of this growth in international business, companies with assets in Arizona are frequently involved in disputes before courts in other countries. Increasingly, such disputes result in efforts to obtain recognition and enforcement of the foreign court's judgment in Arizona. Currently, there is no bilateral treaty or multilateral international convention that addresses the recognition and enforcement of foreign judgments in the United States.³

Instead, courts in the United States look to the laws of the state in which recognition is sought (among others) to determine whether the foreign judgment will be enforced.⁴

In Arizona, courts rely on the common law principles of comity to determine whether to recognize and enforce a foreign judgment.⁵

This article provides an overview of the state's procedures for domesticating foreign judgments. It addresses the distinction between recognition and enforcement of a foreign judgment, the requirements for recognition and enforcement of such a judgment and possible defenses, and the legal effect of having a court grant or deny recognition of a foreign judgment.

Recognition Versus Enforcement

The recognition of a foreign judgment and the enforcement of a foreign judg-

ment are two distinct concepts.

Recognition of a foreign judgment "occurs when a court precludes litigation of a claim or issue because that claim or issue was previously litigated in the court of a foreign nation."⁶ Once a foreign judgment is recognized, it is entitled to the same preclusive effects as a recognized judgment from a sister-state court. Therefore, recognition is key, for it may preclude the re-litigation of certain issues in U.S. courts.

By contrast, enforcement of a foreign judgment in the United States occurs when a court, upon request of a prevailing party, requires the losing party to satisfy the judgment.⁷ A court in the United States cannot enforce a foreign judgment until it has been recognized. However, simply because a court recognizes a foreign judgment does not mean that it will be enforced.

For example, courts generally do not



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enforce judgments that grant injunctions, declare rights or determine status, or judgments arising from attachments of property.⁸ As a practical matter, counsel therefore should consider whether a foreign judgment is enforceable in the United States before seeking its recognition.

Recognition and Enforcement Requirements

Arizona uses the *Restatement (Third) of the Foreign Relations Law of the United States* ("Restatement") as a framework for analyzing whether to recognize a foreign judgment.⁹ The *Restatement* provides a strong presumption in favor of recognition of a foreign judgment.¹⁰ Thus, the court will presume that a foreign judgment is conclusive between the parties and entitled to recognition, unless it is challenged.¹¹ To receive this presumption, the party seeking recognition must: (1) time-

ly file the action to enforce the foreign judgment; (2) establish that the U.S. court has jurisdiction over the action; and (3) demonstrate that the foreign judgment is final.

Statute of Limitations

There are two critical time limits for the domestication of a foreign judgment in Arizona.

First, Arizona law prevents a plaintiff from filing an enforcement action if such an action would be time-barred in the rendering country.¹²

Second, regardless of the rendering country's time bar, Arizona places a four-year statute of limitations on the enforcement of a foreign judgment.¹³ Thus, a party has at most four years to enforce a foreign judgment in Arizona, and even less time if the rendering nation's rules are more restrictive. These time limits bar the enforcement of a foreign judgment even if

the filing of an action to enforce a similar domestic judgment would have been allowed.¹⁴

Regardless of the Arizona law governing domestic judgments, counsel must file the action to enforce a foreign judgment before either of the two periods expires.

Jurisdiction Over Enforcement Actions

The court's jurisdiction over an enforcement action is broader than in ordinary civil actions.¹⁵

For example, the court ordinarily may have jurisdiction to hear a claim if the defendant owns property within the state and that property is related to the underlying claim. However, in an enforcement action, the court may have jurisdiction even if the defendant's property within the state is unrelated to the claim.¹⁶ As long as a defendant owns property in Arizona, the court likely has jurisdiction to adjudicate the enforcement action.¹⁷



The court can deny recognition and enforcement of a foreign judgment based on a lack of the process in the foreign proceedings.

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“Final” Judgments

The court will only recognize and enforce a foreign judgment if it is final. A judgment is final when it is ready for execution and is no longer subject to additional proceedings.¹⁸ Therefore, both default judgments and judgments on the merits will be recognized and enforced, if they are the final judgments of a foreign court.¹⁹ Moreover, judgments can be considered final even if they are subject to appeal or later modification. However, if an appeal is in progress in the rendering country, the Arizona court likely will stay the proceeding until the appeal is completed.²⁰

To determine whether a foreign judgment is final, the court examines the laws of the rendering country.²¹ For example, in *Alberta Securities Commission v. Ryckman*,²² the plaintiff sought recognition of an order from an Alberta court. In that case, the Arizona court examined the Alberta Securities Act to determine whether the order was a final judgment. Because the Alberta Securities Act considers these orders to be equivalent to a judgment from the Court of the Queen’s Bench, the Arizona court held that the order was final.²³ Thus, counsel should rely on the laws of the rendering country to establish that the foreign judgment is final.

Non-Recognition of a Foreign Judgment

A court can deny recognition or enforcement of a foreign judgment on several grounds. The *Restatement* provides both mandatory and discretionary grounds for non-recognition.²⁴ In addition, some courts have denied recognition on the basis of reciprocity.

Mandatory Grounds For Non-Recognition

There are two mandatory grounds for non-recognition: (1) the foreign tribunal did not possess jurisdiction; or (2) the foreign tribunal lacked adequate procedural due process.²⁵

Jurisdiction. Lack of jurisdiction is the most common reason for denying recognition of a foreign judgment.²⁶ Generally, jurisdiction is determined by examining the laws of the state in which recognition is sought. Thus, an Arizona court will deny recognition of a foreign judgment if the rendering court lacked jurisdiction under Arizona’s long-arm statute.

Arizona’s long-arm statute confers jurisdiction to the fullest extent possible under federal law.²⁷ A defendant is subject to general jurisdiction if his contacts within the forum country are “substantial or continuous and systematic enough that the defendant may be haled into court in the forum, even for claims unrelated to the defendant’s contacts within the forum.”²⁸

Alternatively, a defendant may be subject to specific jurisdiction if: “(1) the defendant purposefully avails himself of the privilege of conducting business in the forum; (2) the claim arises out of conducting business in the forum; and (3) the exercise of jurisdiction is reasonable.”²⁹ Accordingly, if the foreign court would have had jurisdiction under Arizona law, the judgment will withstand a jurisdictional challenge.

Counsel also can overcome a jurisdictional challenge by showing that the party is precluded from raising it before the Arizona court. For example, if a party appears before a foreign tribunal and has an opportunity to but fails to challenge its jurisdiction, it potentially has waived the right to assert this challenge in later proceedings.³⁰ In that case, a strong argument exists that the party cannot re-litigate the foreign court’s jurisdiction in the United States.

However, courts are split regarding whether a foreign court’s determination of jurisdiction will have a *res judicata* effect in the United States.³¹ This situation arises when a party unsuccessfully challenges the foreign court’s jurisdiction in the rendering country and then challenges its jurisdiction

again before a U.S. court. Some states hold that the foreign court’s determination precludes a party from asserting a jurisdictional challenge in the United States, whereas others will re-litigate the issue.³²

Because Arizona has not addressed how it will treat the jurisdictional rulings of foreign courts, counsel should be prepared to defend against a jurisdictional challenge, even if its client prevailed against a similar challenge before a foreign tribunal.

Due Process. The court also can deny recognition and enforcement of a foreign judgment based on a lack of due process in the foreign proceedings. The court will examine whether the foreign country provided the defendant with “an opportunity for a hearing that comports with basic due process principles before a court of competent jurisdiction.”³³ Thus, if the foreign court did not possess adequate procedures to ensure a fundamentally fair and impartial proceeding, the court will deny recognition of its judgment.

The due process standard does not require a foreign tribunal to adopt the same procedures as those used in the courts of Arizona or the United States.³⁴ For example, in *Hilton v. Guyot*,³⁵ the party contested the enforcement of a French court’s judgment. There, the French court introduced evidence generally not admitted in U.S. courts, allowed the parties to testify not under oath, and provided no cross-examination.³⁶ Despite these differences, the United States Supreme Court rejected the party’s assertions that the French court lacked adequate due process standards. Therefore, unless a foreign court’s procedures are fundamentally unfair, a U.S. court will not deny recognition of its judgment merely because it uses different procedures.

However, if the defendant did not receive notice of the proceedings, a court will deny recognition of the foreign judgment based on a lack of due process. For



A court may conclude that a foreign judgment is repugnant to Arizona's public policy.

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example, in *Rotary Club of Tucson v. Ramos de Pena*,³⁷ the defendant did not receive notice of the Mexican proceeding. Because the defendant did not have an opportunity to participate in the hearing, the court held that he was denied due process of law.³⁸ Therefore, the court denied recognition of the Mexican judgment in Arizona courts. Accordingly, in order to protect the validity of a foreign judgment, counsel should ensure that the defendant receives notice of the foreign proceedings.

Discretionary Grounds for Non-Recognition

Courts also possess several discretionary grounds for denying recognition and enforcement of a foreign judgment.³⁹ As with the mandatory grounds, the party seeking non-recognition based on discretionary grounds typically carries the burden of proof.⁴⁰

Lack of Subject Matter Jurisdiction. A court may deny recognition and enforcement of a judgment if the foreign court lacked subject matter jurisdiction over the action. U.S. courts generally presume that the foreign court possessed subject matter jurisdiction, unless the foreign judgment affects a party's right to land in the United States or rights to a U.S. patent, trademark or copyright.⁴¹ Moreover, a party that fails to raise a challenge to subject matter jurisdiction before a foreign tribunal is likely precluded from challenging it in U.S. courts. Accordingly, parties rarely raise challenges based on a lack of subject matter jurisdiction in opposing recognition of foreign judgments.

Failure To Provide Adequate Notice. In its discretion, a court also may deny recognition if the defendant did not receive adequate notice. If the rendering country is a signatory to the Hague Service Convention ("Convention"),⁴² the notice should comply with the methods proscribed within the Convention.⁴³ If the country is not a party

to the Convention, then the court will examine whether the notice was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."⁴⁴

Generally, courts consider both service of process by registered mail⁴⁵ and personal service⁴⁶ as adequate methods of serving notice. However, because adequate notice depends upon the surrounding circumstances, the court's holding will vary on a case-by-case basis.

Judgments Obtained by Fraud. A court also may deny recognition of a judgment that was obtained by fraud, but only extrinsic fraud.⁴⁷ Extrinsic fraud occurs when the opposing side or a third party deprives the losing party of an adequate opportunity to present its case.⁴⁸

In contrast, intrinsic fraud occurs when a party falsifies documents or a witness commits perjury.⁴⁹ Because a party can assert challenges based on intrinsic fraud in the rendering country, U.S. courts do not recognize this as grounds for denying recognition. Accordingly, unless the party opposing recognition presents proof of extrinsic fraud, the court will not deny recognition of a foreign judgment based on fraud.⁵⁰

Judgment Is Repugnant to Public Policy. A court also may conclude that a foreign judgment is repugnant to Arizona's public policy.⁵¹ Historically, Arizona has narrowly interpreted this exception.

For example, in *Hashim v. Hashim*,⁵² the court reviewed a bankruptcy court's decision to deny recognition of a foreign judgment. The bankruptcy court concluded that the enforcement of potentially oppressive attorneys' fees would be repugnant to Arizona's public policy.⁵³ On appeal, the court overturned the bankruptcy court's decision, holding that "Arizona law would not support the bankruptcy court's order

denying comity to the English court's award even if the award were to amount to \$10 million."⁵⁴ Thus, except in extreme cases, Arizona courts will reject challenges to judgment based on these grounds.

Judgment Conflicts With the Judgments of Other Courts. Arizona courts also may deny recognition of a foreign judgment if it conflicts with a judgment of another court.⁵⁵ Conflicts can exist between the judgments of two foreign courts or between the judgments of a foreign court and a U.S. court.

Under the *Restatement's* last-in-time rule, the U.S. court generally adopts the latter of the two conflicting judgments.⁵⁶ Arizona, however, has not held if it will adopt the last-in-time rule.⁵⁷

Proceeding Is Contrary to an Agreement Between the Parties. A court can deny recognition if the foreign proceeding was contrary to an agreement between the parties.⁵⁸ This ordinarily occurs in contract disputes where the parties have agreed to settle disputes in a specific forum. Courts generally respect a party's rights under an arbitration clause or forum selection clause. Therefore, if a party uses a court that differs from the forum expressed in the contract or contrary to an enforceable arbitration provision, the court will probably deny recognition of that court's judgment.

However, the court may conclude that the parties are precluded from asserting their rights under a contract. For example, courts consider a party that participates in an action to have waived its right to contest a forum, unless participation is to protect property under attachment or arrest.⁵⁹ Moreover, if the foreign court determines that a party has waived its rights to the forum expressed in the agreement, this decision will likely have a binding effect in U.S. courts. Thus, under these circumstances, the court will likely reject challenges to a specific forum.

Reciprocity

Historically, some states also have a reciprocity requirement. There, a party seeking recognition must demonstrate that the rendering country would recognize the judgment of a U.S. court if the circumstances were reversed.

The seminal case addressing this issue is *Hilton v. Guyot*.⁶⁰ There, the Supreme Court concluded that France would not recognize a similar U.S. judgment in its courts.⁶¹ Therefore, the Court denied recognition of the French judgment. Thus, if a state has a reciprocity requirement, the party seeking recognition must prove reciprocity, even if the judgment is otherwise recognizable.

Though Arizona courts have not addressed this issue, it is unlikely that they will adopt a reciprocity requirement, for a few reasons.

First, the *Restatement* advocates doing away with the reciprocity requirement, stating that an otherwise recognizable judgment should not be denied because the “courts in the rendering state might not

enforce a judgment of a court in the United States if the circumstances were reversed.”⁶² Moreover, commentators have heavily criticized the requirement because: (1) it fails to achieve its goal of protecting Americans; (2) the parties in the litigation have no control over the acts of the foreign country; and (3) it ignores the policy underlying the recognition and enforcement of foreign judgments, which is to put an end to litigation.⁶³

For these reasons, the current trend among the states is to reject the reciprocity requirement.⁶⁴ Accordingly, Arizona will probably not require a showing of reciprocity before it will recognize a foreign judgment.

Conclusion

Recognition

After a foreign judgment is recognized, courts will give it the same preclusive effect as a recognized judgment of a sister-state court. Under Arizona law, a foreign court’s judgment has no greater effect in Arizona than it does in the rendering country.⁶⁵ Therefore, if the judgment is subject to col-

lateral attacks in the rendering country, then it is subject to the same attacks in Arizona.⁶⁶ Accordingly, counsel should be aware of how the foreign judgment is treated in the rendering country to determine whether it will be subject to an attack after it is recognized.

Non-Recognition

The effects of non-recognition vary depending on the court’s rationale for not recognizing the foreign judgment. For example, if a court denies recognition based on unfairness of the foreign judicial system, unfair procedures, fraud or lack of jurisdiction, then a party cannot use the foreign judgment for any purpose in the United States.⁶⁷ In contrast, if the court refuses to recognize the foreign judgment for any other reason, the foreign judgment may be admitted as evidence.⁶⁸ However, this evidence is nonbinding, and an opposing party may introduce evidence to the contrary. Accordingly, the court’s reasons for denying recognition may affect the parties in later proceedings. **AA**

endnotes

1. Press Release, U.S. Bureau of Economic Analysis and U.S. Census Bureau, Trade Gap Widens in May 2006: U.S. International Trade in Goods and Services (July 12, 2006), www.bea.gov/bea/glance.htm.
2. Arizona Department of Commerce, Arizona Export Statistics, www.azcommerce.com/itrade (click “Arizona Export Statistics”) (last visited Sept. 5, 2006).
3. RESTATEMENT (THIRD) OF FOREIGN RELATIONS OF THE UNITED STATES § 481 cmt. a (1987) (“[I]n the absence of a federal statute or treaty or some other basis for federal jurisdiction ... recognition and enforcement of foreign country judgments is a matter of State law.”).
4. *Id.*
5. See *Alta. Sec. Comm’n v. Ryckman*, 30 P.3d 121, 126 (Ariz. Ct. App. 2001); *Hashim v. Hashim*, 213 F.3d 1169, 1172 (9th Cir. 2000) (interpreting Arizona law).
6. Symposium, *Enforcement and Recognition of Foreign Judgments in United States Courts*, 29 PEPP L. REV. 147, 147-48 (2001) [hereinafter *Enforcement and Recognition Symposium*].
7. *Id.*
8. RESTATEMENT (THIRD) OF FOREIGN RELATIONS OF THE UNITED STATES § 481 cmt. b.
9. *Ryckman*, 30 P.3d at 126 (approving §§ 481 and 482).
10. RESTATEMENT (THIRD) OF FOREIGN RELATIONS OF THE UNITED STATES § 481 cmt. b.
11. *Id.* § 481(1).
12. ARIZ. REV. STAT. § 12-549 (2004).
13. *Id.* § 12-544(3).
14. See *Citibank (S.D.) v. Phifer*, 887 P.2d 5, 6 (Ariz. Ct. App. 1994) (“Filing a judgment after expiration of the statute of limitations period for the enforcement of [California] judgments does not entitle the holder to the extended time limits enjoyed for the enforcement of domestic judgments.”).
15. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 481 cmt. h.
16. *Id.* (“[A]n action to enforce a judgment may usually be brought wherever property of the Defendant is found, without any necessary connection between the underlying action and the property or between the Defendant and the forum.”).
17. See *Huggins v. Deinhard*, 654 P.2d 32, 37 (Ariz. Ct. App. 1982) (finding *quasi in rem* jurisdiction based on defendant’s bank account in Arizona).
18. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 481 cmt. e.
19. *E.g., Tahan v. Hodgson*, 662 F.2d 862 (D.C. Cir. 1981) (enforcing the default judgment of an Israeli court); *John Sanderson & Co. v. Ludlow Jute Co.*, 569 F.2d 696 (1st Cir. 1978) (enforcing the default judgment of an Australian court); see also *Enforcement and Recognition Symposium*, *supra* note 6, at 152-54.
20. See *Enforcement and Recognition Symposium*, *supra* note 6, at 152-54.
21. *Id.*; see also *Samyang Food Co., Ltd. v. Pneumatic Scale Corp.*, No. 5:05-CV-636, 2005 U.S. Dist. LEXIS 25374, *1, at *26-27 (N.D. Ohio Oct. 21, 2005) (interpreting Korean statutes, decision of the Korean Supreme Court, and intermediary courts to determine whether the decision is final).
22. 30 P.3d 121, 124-25 (Ariz. Ct. App. 2001).
23. *Id.*
24. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 482 (1987).
25. *Id.* § 482(1).
26. *Id.* § 482 cmt. c.
27. *Williams v. Lakeview Co.*, 13 P.3d 280, 282 (Ariz. 2000).
28. *Id.* (citing *Helicopteros Nacionales de Columbia S.A. v. Hall*, 466 U.S. 408, 414 (1984)).
29. *Id.* (citing *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 381 (9th Cir. 1991)).
30. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 482 cmt. c.
31. *Id.*
32. *Id.*; see also *Enforcement and Recognition Symposium*, *supra* note 6, at 155-56 (discussing the various methods that courts use to treat a challenge to jurisdiction that was already litigated and decided by the foreign court).

33. *Ryckman*, 30 P.3d at 126; *Rotary Club of Tucson v. Ramos de Pena*, 773 P.2d 467, 469-70 (Ariz. Ct. App. 1989); *Southwest Livestock & Trucking Co. v. Ramon*, 169 F.3d 317, 321 (5th Cir. 1999).
34. *Hilton v. Guyot*, 159 U.S. 113, 202 (1895); *Glaverbel Societe Anonyme v. Northlake Marketing & Supply, Inc.*, No. 2: 96-CV-32-TS, 1998 U.S. Dist. LEXIS 18820, at *1, *13-16 (N.D. Ind. Mar. 31, 1998) (concluding that discovery in Belgian courts was fundamentally fair even though it differed from American discovery).
35. 159 U.S. at 113.
36. *Id.* at 204-05.
37. 773 P.2d at 467.
38. *Id.* at 470.
39. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 482(2) (1987).
40. *See id.* § 481(1); *Ryckman*, 30 P.3d at 127 (concluding that defendant's averments failed to establish a triable issue of fact).
41. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 481 cmt. d.
42. Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Feb. 10, 1969, 20 U.S.T. 361.
43. *See Enforcement and Recognition Symposium*, *supra* note 6, at 155-56.
44. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950).
45. *Roy v. Buckley*, 698 A.2d 497, 502-03 (Me. 1997).
46. *Taban v. Hodgson*, 662 F.2d 862, 864-65 (D.C. Cir. 1981).
47. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 482 cmt. e (1987).
48. *Id.*
49. *Id.*
50. *Ryckman*, 30 P.3d at 127.
51. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 482 cmt. f.
52. 213 F.3d 1169 (9th Cir. 2000) (interpreting Arizona law).
53. *Id.* at 1172.
54. *Id.*
55. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 482 cmt. g.
56. *Id.*
57. *Cf. Porter v. Porter*, 416 P.2d 564 (Ariz. 1966) (Not recognizing an Idaho decision that did not give full faith and credit to a prior Arizona decision, the Court stated, "A foreign judgment will not be given greater effect than a domestic judgment on the same issue.>").
58. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 482 cmt. h.
59. *Id.*
60. 159 U.S. 113 (1895).
61. *Id.* at 228.
62. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 481 cmt. d.
63. R. Doak Bishop & Susan Burnette, *United States Practice Concerning the Recognition of Foreign Judgments*, 16 INT'L LAW. 425, 435-36 (1982).
64. *See e.g., De la Mata v. Am. Life Ins. Co.*, 771 F. Supp. 1375, 1382-83 (D. Del. 1991); *Nicol v. Tanner*, 256 N.W.2d 796, 801 (Minn. 1976).
65. *Springfield Credit Union v. Johnson*, 599 P.2d 772, 776 (Ariz. 1979) (interpreting *Barber v. Barber*, 323 U.S. 77 (1944)).
66. *Cf. Schoenbrod v. Siegler*, 230 N.E.2d 638, 641 (N.Y. 1967) (holding that foreign judgment could be collaterally attacked because Mexico's principles of *res judicata* would such an attack).
67. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 482 cmt. i.
68. *Id.*