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Uniform Enforcement of Foreign Judgments Act

By Paul R. Yagelski, Esq. and Robert A. Galanter, Esq.

The collection of accounts receivable is a crucial aspect of the operation of any business. Of course, when normal collection procedures fail, the matter often results in litigation. This may require a decision regarding where to pursue the litigation: the creditor's home state or that of the debtor. There are a number of advantages for the commercial creditor litigating in its home state, but there may be obstacles to enforcement of such a judgment as well, such as when the debtor's attachable assets are located in another jurisdiction. Fortunately, the risks associated with such a decision can be mitigated through the Uniform Enforcements of Foreign Judgments Act (the "Act"), which permits the enforcement of a judgment obtained in one state in another state by filing the judgment with a clerk of court in the second state pursuant to the procedures set forth in the Act.

In this article we will examine the Act in the context of commercial transactions, but it should be noted that the Act applies to other judgments as well, including divorce proceedings and child support. In examining the Act, we will address how a judgment is transferred from one state to another, potential debtor defenses, and stays of execution.

By way of background, the Act was first propagated by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") in 1948. It was a response to the problem of courts having to give debtors who had already had a trial in the origin state a second full-scale trial in the execution state.¹ This was causing congestion in the courts.² The 1948 Act provided a summary judgment procedure for actions on foreign judgments.³

The current, revised Act was released in 1964, modeled on 28 U.S.C. §1963, the procedure used in the Federal courts for inter-

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¹ Revised UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT Preparatory Note (1964).

² Id.

³ Id.

district enforcement of judgments.⁴ It provides a swift and economical method of enforcing foreign judgments without the cost of further litigation in the execution state.⁵

The Act has been enacted by all states with the exception of California and Vermont, plus the District of Columbia, U.S. Virgin Islands, and Puerto Rico.⁶ If you have obtained a judgment in your state and you have decided that you wish to transfer the judgment to another state for purposes, for example, of execution on the debtor's assets in the other state, you would go to the clerk of the court in your state in which your judgment is registered. At that point, you would request an authenticated copy of your judgment so that you can transfer it to a foreign jurisdiction, i.e., another state.

Once you have obtained the authenticated judgment, it would then be filed with the clerk of the appropriate court of the state in which you want the judgment registered.

At the time of the filing of your judgment, the Act requires that either you as the judgment creditor or your lawyer file with the clerk of the court to which you have transferred your judgment an affidavit setting forth the name and last known post office address of the judgment debtor and your name and post office address.

Upon filing of your judgment and the affidavit, the clerk of the court of the state to which you transferred your judgment will mail a notice of the filing to the judgment debtor and make a note of the mailing in the docket. In addition, you or your attorney may mail a notice of the filing of the judgment to the judgment debtor and file a proof of mailing with the clerk.

Once your judgment is transferred under the Act, it is entitled to be given full faith and credit. The Act does not entitle the judgment debtor to raise any and all defenses which would destroy the full faith and credit of your judgment. This means that your judgment must be given the same recognition and

effect as a judgment would receive in the courts of the state to which you transferred your judgment. Lack of jurisdiction on the part of the court in your own state, where the judgment was originally awarded, or lack of due process are generally the only reasons why the principle of full faith and credit would be denied and your judgment stricken.

Once the judgment is transferred, the judgment debtor may obtain a stay of the enforcement of the judgment if the judgment debtor can show that an appeal is pending or will be taken or that a stay of execution has already been granted. A court will then stay the judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated. A stay may also be granted where the judgment debtor shows that there is any ground upon which the enforcement of the judgment would be stayed in the state of recording. However, the granting of a stay is not a relitigation of the action upon which your judgment was originally entered.

The advantage of the Act is that you as the creditor do not have to go to the state of the judgment debtor to sue. You can sue in your own state and have the judgment obtained therein transferred to another state for recording and then execution. As long as your state had jurisdiction and due process requirements were followed, your judgment is entitled to full faith and credit in the state to which your judgment is transferred. You do not have to sue again on your claim. The Act simplifies the process and greatly reduces the cost.



Paul Yagelski has a robust civil litigation practice that includes commercial litigation, tort litigation, remedial litigation, tax litigation, and bankruptcy actions, with extensive involvement in Chapter 11 proceedings. Paul has litigated before state and federal trial courts and the American Arbitration Association. Paul is also certified by the American Board of Certification in the field of Creditors' Rights. He can be reached at (412) 338-1124 or pryagelski@rothmangordon.com.

⁴ Id.

⁵ Id.

⁶ A few facts about the Uniform Enforcement of Foreign Judgments Act, http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-uefja.asp (last visited Jan. 18, 2011)



Bob Galanter has a broad commercial practice that includes mergers and acquisitions, commercial real estate, commercial leasing, and commercial litigation. His expansive background makes him ideal counsel to small and mid-sized business owners, not only in dealing with commercial and contract issues, but also with shareholder and partnership disputes and the resultant litigation. Bob can be reached at (412) 338-1115 or ragalanter@rothmangordon.com.

2011 Tax filing deadline extended

The Internal Revenue Service opened the 2011 tax filing season by announcing that taxpayers have until April 18 to file their tax returns. The IRS reminded taxpayers impacted by recent tax law changes that using e-file is the best way to ensure accurate tax returns and get faster refunds.

Taxpayers will have until Monday, April 18 to file their 2010 tax returns and pay any tax due because Emancipation Day, a holiday observed in the District of Columbia, falls this year on Friday, April 15. By law, District of Columbia holidays impact tax deadlines in the same way that federal holidays do; therefore, all taxpayers will have three extra days to file this year. Taxpayers requesting an extension will have until Oct. 17 to file their 2010 tax returns.

The IRS also cautioned taxpayers with foreign accounts to properly report income from these accounts and file the appropriate forms on time to avoid stiff penalties.

“The IRS has made important strides at stopping tax avoidance using offshore accounts,” said IRS Commissioner Doug Shulman. “We continue to focus on offshore tax compliance and people with offshore accounts need to pay taxes on income from those accounts.”

The IRS also reminded tax professionals preparing returns for a fee that this is the first year that they must have a Preparer Tax Identification Number (PTIN). Tax return preparers should register immediately using the new PTIN sign-up system available through www.irs.gov/taxpros.

From the IRS Newsroom: www.irs.gov/newsroom

Decennial filing required in 2011

The Commonwealth of Pennsylvania requires all for-profit corporations, non-profit corporations, limited liability companies, limited partnerships, and business trusts to make a decennial filing every ten years [in years ending in 1 (e.g. 2001, 2011, 2021)]. In general, a decennial filing is a report of an entity’s continued existence or use of certain marks. These filings help to identify business names or marks that are no longer in use so that they may be reissued and placed back into the stream of commerce.

There are a couple of exceptions. If your business entity made a new or amended filing with the Corporation Bureau between January 1, 2002 and December 31, 2010 (other than a decennial filing), the entity is exempt from filing in 2011. Fictitious name registrations, name reservations and name searches would all negate your responsibility to file. Nonqualified foreign business corporations which have registered their names pursuant to 15 Pa.C.S. §4131 (requiring annual renewal of the name) are also unaffected. Finally, a corporation that has had officer information forwarded to the Department of State by the Department of Revenue during the preceding ten years under 15 Pa.C.S. §1110 (relating to annual report information) is exempt as well.

Notices from the Corporation Bureau were sent in November to the registered office address of each affected entity. However, failure to receive notice does not relieve you from the responsibility to file. To assist in ensuring that all of Rothman Gordon’s corporate clients are in compliance, we will be mailing additional reminders with a copy of the form (which requires a \$70 filing fee) for your convenience. Alternatively, you may contact our office for a copy of the form or download the form from the Pennsylvania Department of State’s website (www.portal.state.pa.us).

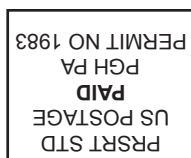
Should you fail to file a decennial report, your entity may no longer have exclusive use of its name after January 1, 2012. While the entity will continue to exist, other businesses will have the option to request the name.

Fresh start to the new year

Many companies get to the end of the year and realize they neglected some of the standard practices that serve to protect and document the business. Certainly with all the other details competing for your attention, it is easy to push these annual chores to the side, but as attorneys, we have to stress – doing so may put you and your company at great risk.

Here is a quick list of duties that you, as a business owner, should ensure is completed and checked off:

1. Update your corporate minute books. Minute books are the official record of your business. They provide an audit backup; record directives; support legal opinions; and can provide a true record of stock ownership.
2. Hold your annual shareholders meeting. It's a good idea to have the shareholders (corporations) or members (LLCs) sign the minutes as well. You may also want to review your financial situation and discuss strategies for the upcoming year.
3. Review insurance coverages and policies.
4. Start collecting data on 1099 forms. Under the new health care act, beginning in 2012 all companies will have to issue 1099 tax forms not just to contract workers but to any individual or corporation from which they buy more than \$600 in goods or services in a tax year. Start collecting the information now to save yourself a lot of headaches next year.
5. Update buy-sell agreements to reflect current value and changed business circumstances.
6. Make sure you have an employee handbook, discrimination policies and social media policies in place. Facebook, LinkedIn, Twitter. They aren't going away and you need to be clear on how your company uses (or does not use) them.



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