Procedure for Enforcing Foreign State, Federal, and Foreign Country Judgments in Texas, Renewal of Texas Judgments, and Revival of Dormant Texas Judgments: Foundations and Recent Case Law

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PREFACE

Scope of Article

This paper discusses foundational concepts and recent case law regarding mechanisms and considerations in domesticating a judgment from a U.S. federal court, a court in another state, and a judgment from a foreign country in sections I and II respectively. Section III discusses renewing a Texas state judgment by issuance of a writ of execution, and section IV covers considerations and recent case law on reviving a dormant Texas judgment by scire facias or common-law action on a debt.

Matters Excluded

This paper will not compare the procedure for enforcing foreign judgments before and after amendments in the 1980s to the Uniform Enforcement of Foreign Judgments and the Uniform Foreign Country Money Judgment Recognition Act. Further, this paper will not directly address issues of comity as that could be the subject of another entire paper or textbook and would unnecessarily confuse the reader seeking practical tips for domesticating foreign judgments. Finally, this paper will not directly or separately discuss child support or alimony collection procedures, as those are beyond the experience of the author and he fears his dabbling in that area might be counterproductive to the practitioner.

I.

ENFORCEMENT OF FOREIGN STATE, FEDERAL AND FOREIGN COUNTRY JUDGMENTS

A. Introduction

Often a Texas practitioner specializing in collection litigation will be called upon by a judgment creditor to "domesticate" a judgment in Texas. That means the attorney is asked to turn a judgment from a U.S federal court, a judgment from a court in another state, or a judgment from another country into an enforceable Texas state judgment. In sections I and II of this paper, we will discuss the mechanics of doing this, and survey the statutes and current case law controlling various aspects of this process. The paper will generally approach the topic from the viewpoint of the attorney receiving a call about domesticating a judgment or defending against a judgment that is sought to be domesticated.

B. What is a foreign judgment?

The term "foreign judgment" means a decree or order of a court of the United States or of any other court that is entitled to full faith and credit in Texas. TEX. CIV. PRAC. & REM. CODE ANN § 35.001 (Vernon 2008). Chapter 35 is usually cited as the "Uniform Enforcement of Foreign Judgments Act" or UEFJA (hereinafter "UEFJA"). TEX. CIV. PRAC. & REM. CODE ANN. § 35.002 (Vernon 2008). UEFJA sets out a process for taking a judgment from a U.S. federal court or another state's court and turning it into a Texas judgment.[1] That is, "domesticating" the judgment. However, this is not the only process for domesticating a foreign state's judgment. Section 35.008 expressly permits a judgment creditor to bring a common law action to enforce a judgment instead of proceeding under UEFJA. *Id*. at § 38.001.

UEFJA is not intended to give holders of foreign judgments greater rights than

1 Another set of statutes, Texas Civil Practice and Remedies Code sections 36.001-.008, govern domestication in Texas of a judgment from another country.

holders of domestic judgments. *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 736 (Tex. App.—Houston [14th Dist.] 2008, pet filed). UEFJA is intended primarily to allow a party with a favorable judgment an opportunity to obtain prompt relief. *Id*. at 737.

C. Why domesticate a foreign judgment in Texas?

When a creditor obtains a judgment in another state or in a federal court,[2] he or she may pick up the phone and call a Texas attorney to have the judgment domesticated in Texas. Why? The answer is that domesticating a judgment in Texas allows the judgment creditor access to all of the remedies in aid of judgment under Texas law. In order to abstract the judgment, record the judgment, obtain writs in aid of collection, etc., one needs to have a valid Texas judgment.

D. OK, I have a foreign judgment and I need to make it a Texas judgment. What do I do?

Once you get hired to domesticate the foreign judgment, you have to decide whether to do so under UEFJA or a common law action to enforce a judgment. The common law action and its benefits and drawbacks are discussed in section I(K), *infra*, of this paper. Let us assume you start with UEFJA.[3] What is UEFJA? UEFJA codifies the Full Faith and Credit Cause of the United States Constitution.[4] Prior to UEFJA, a judgment would be filed in a new lawsuit, the purpose of which was to prove that the judgment was obtained properly. UEFJA somewhat simplifies the process by mandating the adherence to certain technical steps. After following the proper steps, the judgment is "domesticated" and is treated as a Texas judgment for all intents and purposes. It can then be abstracted and executed upon.

At least forty-four states, the District of Columbia, and the Virgin Islands have adopted UEFJA, which provides a speedy and economical method of complying with the U.S. Constitution's requirement of giving full faith and credit to the judgments of other state courts. UNIF. FOREIGN JUDGMENTS ACT, prefatory note, 13 U.L.A. 150 (1986). When another state's judgment or the judgment of a U.S. federal court is filed in Texas in compliance with UEFJA, the foreign judgment becomes enforceable as a Texas judgment. *Walnut Equip. Leasing Co. v. Wu*, 920 S.W.2d 285, 286 (Tex.1996); *Reading & Bates Const. Co. v. Baker Energy Resources Corp.*, 976 S.W.2d 702, 712 (Tex. App.—Houston [1st Dist.] 1998, pet. denied).

1. Change in statute in 1985.

It is important for the practitioner to review cases primarily from after 1985, as the current UEFJA was codified in Texas with an effective date of September 1, 1985. The old statute, Vernon's – Arts. 2328b-5, 2328b-6, was repealed by Acts 1985, 69th Leg., ch. 959, § 9(1), eff. Sept. 1, 1985. The

2 Texas Civil Practice and Remedies Code section 35.001 defines a "foreign" judgment as a "judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state." The act applies to all federal court judgments just as it applies to foreign state judgments. *Tanner v. McCarthy*, 274 S.W.3d 311, 320 (Tex. App.—Houston [1st Dist.] 2008, no pet.). For a further discussion of federal judgments, see section I(L) of this paper, *infra*.

3 TEX. CIV. PRAC. & REM. CODE § 35.001 et seq. (Vernon 2008).

4 U.S.CONST. art. IV, § 1 ("Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof").

differences in procedure prior to and after this effective date are beyond the scope of this paper, though they are not tremendous.

2. How much time do I have to file?

When the attorney gets the assignment to domesticate a foreign judgment, he or she should first ask the client or referring attorney how old the judgment is. Under Texas Civil Practice and Remedies Code section 16.066(b), an action against a person residing in this state for ten years prior to the action may not be brought on a foreign judgment rendered more than ten years before the commencement of the action in this state.[5] *See also McCoy v. Knobler,* 260 S.W.3d 179, 185-86 (Tex. App. Dallas 2008, no pet.). In addition, an action on a foreign judgment is also barred in Texas if it is barred under the laws of the jurisdiction in which it was rendered. Tex. Civ. Prac. & Rem. Code § 16.066(a) (Vernon 2008).[6] That limitations section applies to all foreign judgments, including judgments from foreign states as well as foreign countries. TEX. CIV. PRAC. & REM. CODE § 16.066(c) (Vernon 2008).

Thus, the attorney seeking to domesticate the judgment in Texas must first determine if they can file the judgment in Texas within 10 years of either (1) the date the judgment was "rendered" in the other state, or (2) the date on which the debtor began residing in Texas. *See Carter v. Jimerson*, 974 S.W.2d 415, 417 (Tex. App.—Dallas, 1998, no pet.). Further, the judgment creditor must determine if the action is barred by limitations in the jurisdiction where it was rendered. TEX. CIV. PRAC. & REM. CODE ANN. § 16.066(a). As for the latter determination, the practitioner would need to look at the individual state or country in which the judgment was rendered to find the analogous statute of limitations dealing with enforcement of judgments in that jurisdiction.

3. When is a judgment "rendered" for purposes of UEFJA and Texas Civil Practice and Remedies Code section 16.066 et seq.'s 10-year limitations period?

For purposes of applying Texas statute of limitations to a foreign judgment sought to be enforced in Texas, the rendition date of the foreign judgment is a question of law for Texas courts. *Lawrence Systems, Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 209 (Tex. App.—Amarillo 1994, writ denied).

The ten-year statute of limitations on actions to enforce foreign judgments applies equally

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5 This limitation applies to both UEFJA actions and common law actions to enforce a judgment. *Lawrence Systems, Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 209 (Tex. App.—Amarillo 1994, writ denied) (citing *Collin County Nat. Bank v. Hughes*, 220 S.W.767 (Tex. 1920) and *Ferguson-McKinney Dry Goods Co. v. Garrett*, 252 S.W. 738 (Tex. Comm'n App. 1923, judgm't adopted)). For a discussion of the common law action to enforce a judgment, see section I(K) of this paper, *infra*.

6 *See Omick v. Hoerchler*, 809 S.W.2d 758, 759 (Tex. App.—San Antonio 1991, pet. denied) (noting that Texas Civil Practice and Remedies Code section 16.066(a) provides that an action on a foreign judgment is barred in this state if the action is barred under the laws of the jurisdiction where rendered). In *Omick*, the divorce decree was rendered in October, 1979, in Missouri, and wife filed her action to enforce the foreign judgment in Texas on July 30, 1987, less than 10 years later. Had the action been filed in Missouri instead of Texas, the action would not have been barred by any Missouri statute of limitation. If the action had been time-barred under Missouri law, the Texas court would not have the power to enforce that judgment. The effect of section 16.066(a) is to make the limitation statute of the foreign state applicable to the Texas judgment. *Id.*, (citing *Gould v. Awapara*, 365 S.W.2d 671, 673 (Tex.Civ.App.-Houston 1963, no writ)).

to proceedings under UEFJA as it does to common-law actions for enforcement of foreign judgments. That is, the filing of a foreign judgment under UEFJA is an enforcement "action" within the meaning of the limitations statute. *Id.* at 208. In this regard, *Lawrence Systems, Inc.* was a case of first impression, deciding for the first time that section 16.066(b) applied to actions brought under UEFJA. *Id.* at 206.

A judgment is rendered in Texas by the judicial act by which the court settles and declares the decision of the law upon the matters at issue. *Id*. at 209. A judgment is rendered when the decision is officially announced either orally in open court or by memorandum filed with the clerk. *Id*. (citing *Knox v. Long*, 257 S.W.2d 289, 292 (Tex. 1953)).

In Texas, judgments may be rendered orally or in writing. *Lawrence Systems, Inc.*, 880 S.W.2d at 209 (citing *Reese v. Piperi*, 534 S.W.2d 329, 330 (Tex.1976); *Comet Aluminum Co. v. Dibrell*, 450 S.W.2d 56, 58-59 (Tex. 1970); and *Bridgman v. Moore*, 183 S.W.2d 705, 708 (Tex. 1944)). In *Lawrence Systems, Inc.*, the question was when the foreign state judgment was "rendered", *Lawrence Systems, Inc.*, 880 S.W.2d at 209-11, and the court examined the foreign state proceeding in light of the Texas law principles discussed above. Therefore, *Lawrence Systems, Inc.* appears to be good authority for the proposition that the foreign state judgment is rendered when it is officially announced orally in open court, or in a written memorandum to the clerk. If you find that there is a strong possibility that the judgment was "rendered" in the foreign state more than 10 years ago (or under a possibly shorter period as dictated by section 16.066(a)) then proceed with caution in accepting the assignment.[7]

At a minimum, it is logical to conclude that the party seeking to show that the foreign state's law is different than Texas's law regarding rendering of a judgment would need to plead and prove the foreign state's law. *Cf. Stine v. Koga*, 790 S.W.2d 412, 414 (Tex. App.—Beaumont 1990, writ dism'd by agreement) (discussing, in the full faith and credit context, the presumption that the foreign state's law is identical to Texas law in the absence of pleading and proof to the contrary).

4. Where in Texas do I domesticate the judgment?

The next determination for the attorney, after he or she has decided that domestication in Texas is not time-barred, is venue. Where in Texas do I file?

As a matter of first impression, a divided Houston 14th Court of Appeals recently decided that state venue statutes apply to UEFJA. *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 741-42 (Tex. App. Houston [14th Dist.] 2008, pet. filed). Thus, a defendant who is a natural person is entitled to be sued in the county of his or her residence if the defendant is a natural person. TEX. CIV. PRAC. & REM. CODE §

7 The practitioner should be careful not to confuse the issue of when a foreign state "renders" a judgment for the purpose of applying Texas Civil Practice and Remedies Code section 16.066(b) with the issue of when a domesticated judgment is "rendered" in Texas. A Texas judgment resulting from judgment creditor's filing of a foreign judgment pursuant to UEFJA was "rendered," within the meaning of the statute making a judgment dormant if a writ of execution is not issued within ten years after rendition of judgment (TEX. CIV. PRAC. & REM. CODE ANN. § 34.001(a) (Vernon 2008)), on the date when the foreign judgment was properly filed in Texas, not on the subsequent date when the judgment debtor's motion for new trial was overruled by operation of law. *Ware v. Everest Group, L.L.C.*,238 S.W.3d 855, 863-64 (Tex. App.—Dallas 2007, pet. denied).

15.002(a)(2) (Vernon 2002) (pending the Texas Supreme Court's take on the matter). Apparently, for the purposes of the venue statute, according to the *Cantu* court, the domestication "cause of action" accrues when the foreign judgment is properly filed in a Texas court. The *Cantu* court noted that in *Moncrief v. Harvey*, No. 05-90-01116-CV, 1991 WL 258684 *2 (Tex. App.—Dallas November 26, 1991, writ denied) (not designated for publication), the Dallas Court of Appeals held that the judgment debtor waived any venue challenge by appearing in the foreign state's court. *Cantu*, 251 S.W.3d at 740. The *Cantu* court disagreed, pointing out that it would be hard to imagine predicting the need to challenge Dallas venue in a foreign state's court. *Id*. Nor could the *Cantu* court discern how the judgment debtor could preserve error under those circumstances. *Id*. The practitioner would likely be safest following the Texas venue statutes in determining where to file the domestication action.

5. Filing the domestication action.

Once the attorney has determined that the domestication action would be timely, and has determined where to file it, what is involved in actually filing the domestication action? The mechanics of this process--assuming the attorney is proceeding under UEFJA, as opposed to a common-law action to enforce a judgment--are governed by Texas Civil Practice and Remedies Code sections 35.003(a), 35.004, and 35.005.

The first thing to do is to file the judgment. How do I do that?

> A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state.
>
> TEX. CIV. PRAC. & REM. CODE § 35.003(a) (Vernon 2008).

a. What is an "authenticated judgment?"

What does "authenticated" mean in the context of section 35.003(a)? Generally speaking, to be entitled to full faith and credit in another state under 28 U.S.C. § 1738, the judgment must be attested to by the clerk of the court rendering the judgment and the seal of the court, if a seal exists, must be affixed. In addition, a certificate of a judge of the court that the attestation is in the proper form must accompany the judgment. *Medical Administrators, Inc. v. Koger Properties, Inc.*, 668 S.W.2d 719, 721 (Tex. App.—Houston [1st Dist.] 1984, no writ); *Paschall v. Geib*, 405 S.W.2d 385, 387 (Tex. Civ. App.--Dallas 1966, writ ref'd n.r.e.). However, section 1738 is not the exclusive procedure for authenticating the judgment of a foreign state. *Medical Administrators, Inc.*, 668 S.W.2d at 721. Evidence of judicial proceedings of another state may be admissible even if less is shown than required by the federal statute, as long as it conforms to the rules of evidence of the forum state. *Id*. (citing *Donald v. Jones*, 445 F.2d 601, 606 (5th Cir.), *cert. denied*, 92 S.Ct. 537 (1971)). In *Medical Administrators, Inc.*, the court stated that it was acceptable that the deputy clerk, rather than the clerk, attested to the judgment. *Medical Administrators, Inc.*, 668 S.W.2d at 722.

A judgment was properly authenticated, for purposes of a subsequent action to enforce the New York judgment in Texas, where the clerk of the Supreme Court of New York represented that the copy was a full and

correct copy of the order and judgment; the justice of Supreme Court certified that the clerk who subscribed her name to the exemplification was duly elected and sworn and also certified that the seal affixed to the exemplification was the seal of the New York Supreme Court; and the clerk then certified that the Justice was the presiding Justice of the New York Supreme Court. *Harbison-Fischer Mfg. Co., Inc. v. Mohawk Data Sciences Corp.* 823 S.W.2d 679, 684-85 (Tex. App.—Fort Worth 1991), *writ granted, set aside*, 840 S.W.2d 383 (Tex. 1992). In another case, a foreign divorce judgment providing for alimony was properly authenticated and was entitled to full faith and credit in Texas in action to recover unpaid alimony installments, where the divorce judgment was "properly authenticated" by the clerk of the court issuing the judgment. *Garrett v. Garrett*, 858 S.W.2d 639, 641 (Tex. App.—Tyler 1993, no pet.). Authentication can also be waived if there is no objection made. *Bryant v. Shields, Britton & Fraser*, 930 S.W.2d 836, 841 (Tex. App.—Dallas 1996, writ denied). A foreign state's liquidation order for an insurance company was properly before the trial court for full faith and credit consideration in action against the company, whether authenticated or not, because a certified copy of order was admitted into evidence without objection. *Id*.

According to collection-specialist attorney Riecke Baumann, the simplest and most straightforward procedure for authentication is under Texas Rules of Civil Evidence 901(a), 901(b)(7) and 902(11). Obtain a certified copy of the judgment from the court clerk, but remember to check the certification to insure that it is self-authenticating in compliance with TRE 902. *See Sanders v. State*, 787 S.W.2d 435, 438 (Tex. App.-Houston [1st Dist] 1990, pet. ref'd). Texas Revised Civil Statutes art. 3731a, § 4 (Vernon Supp.1983), provides that foreign judgments and other official papers may be evidenced "by a copy or electronic duplication attested by the officer having the legal custody of the record, or by his deputy." The attestation must be accompanied by a certificate that the attesting officer has the legal custody of such writing and may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of his office. This is also referred to as an *exemplified copy* of the judgment. *Id.; see also Medical Administrators, Inc.*, 668 S.W.2d at 721-22.

Finally, a copy of a judgment entered in another state may be authenticated via the testimony of a witness who has compared the copy to be admitted with the original record entry of the judgment. The offered copy would be admissible as an "examined copy." *Schwartz v. Vecchiotti*, 529 S.W.2d 603, 604-05 (Tex. Civ. App.-Houston [1st Dist.] 1975, writ ref'd n.r.e.).

b. What is a court of competent jurisdiction in the state under section 35.003(a)?

A "court of competent jurisdiction," for purposes of UEFJA section 35.003(a) is one having authority over the defendant, authority over the subject matter, and the power to enter the particular judgment rendered. *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 735 (Tex. App. Houston [14th Dist.] 2008, pet. filed) (citing *State v. Hall*, 794 S.W.2d 916, 919 (Tex. App.—Houston [1st Dist.] 1990), *aff'd*, 829 S.W.2d 184 (Tex. Crim. App. 1992)). Thus, the court of competent jurisdiction provision of section 35.003(a) appears limited, in Texas, only by the holding in *Cantu* regarding the venue discussed in section

I(D)(4) of this paper, *supra*.

c. What else do I need to file besides the authenticated copy of the foreign judgment? Affidavit; notice.

Pursuant to Texas Civil Practice and Remedies Code section 35.004(a), the attorney must also file an affidavit with the Texas clerk. TEX. CIV. PRAC. & REM. CODE ANN. § 35.004(a) (Vernon 2008). The affidavit must show the name and last known post office address of both the judgment creditor and the judgment debtor. *Id*. Once that is accomplished, the Texas clerk shall promptly mail notice of the filing to the judgment debtor at the given address, and shall note the mailing on the docket. *Id*. § 35.004(b). The clerk's notice must include the name and address of the judgment creditor as well as for any Texas attorney of the judgment creditor. *Id*. § 35.004(c). Alternatively, the judgment creditor may send notice of the filing directly to the judgment debtor and file proof of mailing with the clerk of the Texas court. *Id*. § 35.005(a). If the judgment creditor sends notice to the debtor directly and files proof of mailing with the clerk, then failure of the clerk to send the required notice will not affect the enforcement proceedings. *Id*. § 35.005(b) (Vernon 2008).[8]

8 Thus, as my friend Riecke Baumann says, "Always send the notice, unless you watch the clerk do it and check the envelope, green card, etc., which is unlikely. Make sure the envelope says, 'Address Correction Requested.' The statute does not require certified mail, but most judges consider T.R.C.P. 21a to apply, and require certified mail. Serving, 'both ways,' i.e., certified and first class, keeps the judge on your side when the defendant claims lack of notice. If you rely upon some poor clerk to prepare the notice, the task will, invariably, fall upon someone with two days' experience, it'll be done wrong, and you'll be sued for wrongful execution, garnishment, etc. (*cf*. Murphy's Law, ad nauseum)."

d. What happens if I do not file the affidavit or give notice?

What happens if I do not file the affidavit at the time I file the authenticated foreign state judgment? Failure to file the affidavit is not a jurisdictional defect. Although the filing of an affidavit at the time that an authenticated foreign judgment is filed is a specific requirement for enforcing a foreign judgment under UEFJA, it does not follow that the failure to comply presents a jurisdictional, rather than a procedural, bar to the domestication of a foreign judgment. *Tanner v. McCarthy*, 274 S.W.3d 311, 316 (Tex. App.—Houston [1st Dist.] 2008, no pet. h.) (citing *Igal v. Brightstar Info. Techn. Group*, 250 S.W.3d 78, 83-84 (Tex. 2008)). In another case, the court stated that the requirement of an affidavit showing the name and last known post office address of judgment debtor and judgment creditor is an essential element of UEFJA, which, when successfully completed, transforms the judgment of a foreign state into a final Texas judgment for which enforcement will lie. *Wu v. Walnut Equipment Leasing Co.*, 909 S.W.2d 273, 278 (Tex. App.—Houston [14th Dist.] 1995), *rev'd*, 920 S.W.2d 285 (Tex. 1996). However, a foreign judgment without this affidavit ceases to have the same effect as a judgment of the court in which it was filed. Thus, while the failure to file the affidavit together with the authenticated judgment under Texas Civil Practice and Remedies Code sections 35.003(a) and 35.004(a) is not jurisdictional, but until it is fixed, the judgment is not considered filed or domesticated in Texas. For example, in *Tanner*, the court stated that the requirement for enforcing a foreign judgment under UEFJA that an affidavit containing specific information be filed at the same time as the authenticated foreign

judgment is distinct from the requirement that notice be given to the judgment debtor. Although UEFJA provides alternative means for providing notice of the filing of the judgment to the debtor (TEX. CIV. PRAC. & REM. CODE ANN. §§ 35.005(a) & (b) (Vernon 2008)), nothing in the alternate notice section relieves the creditor of his responsibility to file the *affidavit* required to be filed at the same time as the authenticated foreign judgment. *Tanner*, 274 S.W.3d at 316.

Likewise, although failure to serve notice to debtors at last known address was a technical violation of UEFJA, mailing of the notice was not a jurisdictional act, and the judgment debtor suffered no prejudice because at the time notice was received, he had the same remedies available that he had at the time notice of filing was improperly served. *Tri-Steel Structures, Inc. v. Hackman*, 883 S.W.2d 391, 394-95 (Tex. App.—Fort Worth 1994, writ denied). Moreover, UEFJA does not require *proof* that the judgment debtor received the notice of filing of the foreign judgment, nor does it require that the judgment debtor *actually receive* notice, but only requires that notice be sent by regular mail in one of two ways. *Id*. at 394 (emphasis added). In *Tri-Steel*, the court held that the notice requirements of UEFJA were followed where both the clerk of the court and the judgment creditor filed proof of mailing of the notice of filing of foreign judgment to judgment debtor, notwithstanding the fact that notice was not received. *Id*. at 395-96.

In *Jack H. Brown & Co. v. Northwest Sign Co.*, 665 S.W.2d 219, 221-22 (Tex. App.—Dallas 1984, no writ), the court denied relief to the judgment creditor because the affidavit filed with the judgment mentioned the wrong judgment debtor and none other. The court stated:

> although the statute provides that the foreign judgment has the same effect as a judgment of the court in which it is filed, it has that effect only when the judgment complies with the statutory requirements of authentication and the filing of an affidavit naming the parties and giving their addresses. A judgment debtor cannot be expected to respond and take such measures as may be available to him to avoid enforcement of a foreign judgment unless the statutory requirements have been met.

Id. Thus, failure to file the section 35.004(a) affidavit at the time of filing will prevent enforcement of the judgment, but it may be corrected. Moreover, UEFJA only requires proof of mailing of the notice required in section 35.004(b) or 35.005(a), and not proof of receipt.

6. What is the effect of filing the judgment?

Now, let us assume the attorney is at the clerk's office, ready to file the foreign judgment and affidavit; or, better yet, they are filing it electronically. The filing of a final,[9] valid and subsisting foreign judgment not only initiates enforcement proceedings, but also automatically creates an enforceable Texas state judgment. *Bahr v. Kohr*, 928 S.W.2d 98, 100 (Tex. App.—San Antonio 1996, writ denied). When a judgment creditor proceeds under UEFJA, the filing of a foreign judgment comprises both plaintiff's original petition and final judgment. *Walnut Equipment Leasing Co., Inc. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996). When a judgment creditor chooses to proceed under

9 The finality requirement of the foreign judgment will be discussed in this paper in section I(D)(10), *infra*.

UEFJA, filing of the foreign judgment acts as though the plaintiff filed his or her original petition and final judgment simultaneously; the filing initiates the enforcement proceeding, but it also instantly creates a Texas judgment which is enforceable. *Wu*, 909 S.W.2d at 277 (citing 5 ROY W. MCDONALD, TEXAS CIVIL PRACTICE, § 32:8 at p. 463 (1992)), *rev'd, Walnut Equip. Leasing Co. v. Wu*, 920 S.W.2d 285 (Tex. 1996). Filing a foreign judgment under UEFJA has the effect of initiating enforcement proceeding and rendering a final Texas judgment simultaneously. *Lawrence Systems, Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 208 (Tex. App.—Amarillo 1994, writ denied) (citing *Moncrief v. Harvey*, 805 S.W.2d 20, 23 (Tex. App.—Dallas 1991, no writ)). Where a judgment creditor chooses to proceed under UEFJA, the filing of the properly authenticated foreign judgment comprises both a plaintiff's original petition and a final judgment. *Wolf v. Andreas*, 276 S.W.3d 23 (Tex. App.—El Paso 2008, pet. withdrawn); *BancorpSouth Bank v. Prevot*, 256 S.W.3d 719, 722 (Tex. App.—Houston [14th Dist.] 2008, no pet. h.) (same); *Ware v. Everest Group, L.L.C.*, 238 S.W.3d 855, 863 (Tex. App.—Dallas 2007, pet. denied) (same); *Brown's Inc. v. Modern Welding Co.*, 54 S.W.3d 450, 453 (Tex. App.—Corpus Christi 2001, no pet.) (same); *Dear v. Russo*, 973 S.W.2d 445, 446 (Tex. App.—Dallas 1998, no pet.) (same).

7. How is the foreign judgment treated upon filing?

Now that the attorney is about to file the judgment and affidavit pursuant to UEFJA, how will the clerk treat the filing?

First, the judgment creditor must, at the time of filing, pay to the clerk of the court the amount as otherwise provided by law for filing suit in the courts of Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 35.007 (a) & (b) (Vernon 2008). In addition, the judgment creditor must pay any other fees provided for by law for other enforcement proceedings as provided by law for judgments of the courts of Texas. *Id*. § 35.007(c).

Thereafter, the clerk is required to treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed. *Id*. § 35.003(b).

Moreover, the foreign state judgment has the same effect, and is subject to the same procedures, defenses and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed. *BancorpSouth Bank*, 256 S.W.3d at 723; *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 484 (Tex. App.—Houston [14th Dist.] 2004, pet. denied). By complying with statutes, a judgment creditor could use the same procedures for enforcing or satisfying a foreign judgment as are available for enforcement or satisfaction of a judgment of a Texas court.[10] *Hennessy v. Marshall*, 682 S.W.2d 340, 343 (Tex. App.—Dallas 1984, no writ) (discussing predecessor statute).

10 The section of UEFJA providing that a filed foreign judgment is subject to the same procedures, defenses, and proceedings for vacating a Texas judgment, TEX. CIV. PRAC. & REM. CODE ANN § 35.003(c), refers to the procedural devices available to vacate a Texas judgment. It does not mean that the foreign judgment can be vacated for any reason sufficient to support a traditional motion for new trial. *Mindis Metals, Inc.*, 132 S.W.3d at 485-86; 48 Tex. Jur. 3d Judgments § 185 (noting that the trial court's only alternatives, when a duly authenticated foreign judgment is filed in Texas, are to enforce the judgment or declare it void for want of jurisdiction). For a discussion of setting aside a foreign judgment under jurisdictional or full faith and credit grounds, see sections I(E)(2) & (3) of this paper, *infra*.

8. Who has the initial burden of proof upon filing? Does the burden shift?

Now that the judgment is filed, what burden does the judgment creditor have? The judgment creditor has the initial burden of showing that the judgment appears to be a valid, final and subsisting judgment. *H. Heller & Co. v. Louisiana Pac. Corp.*, 209 S.W.3d 844, 849 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (citing *Mindis Metals*, 132 S.W.3d at 484).[11] Then the burden shifts to the judgment debtor to show that the foreign state had lacked jurisdiction over the debtor or the judgment, or that the judgment is not entitled to full faith and credit. *H. Heller & Co.*, 209 S.W.3d at 849.

Where a foreign judgment appears to be a final, valid, and subsisting judgment, its filing makes a prima facie case for the party seeking to enforce it. The burden then shifts to party resisting judgment to establish that the judgment is not final and subsisting. *Dear v. Russo*, 973 S.W.2d 445, 446 (Tex. App.—Dallas 1998, no pet.); *Reading & Bates Const. Co. v. Baker Energy Resources Corp.*, 976 S.W.2d 702, 712 (Tex. App.—Houston [1st Dist.] 1998, pet. denied); *Russo v. Dear*, 105 S.W.3d 43, 46-47 (Tex. App.—Dallas 2003, pet. denied); . *BancorpSouth Bank v. Prevot*, 256 S.W.3d 719, 722-23 (Tex. App.—Houston [14th Dist.] 2008, no pet. h.). Once the prima facie case is made by the judgment creditor, the, the judgment debtor has the burden of showing that the judgment is interlocutory or subject to modification under the law of the rendering state, that rendering court lacks jurisdiction, or that the judgment was procured by fraud or is penal in nature. *Baker Energy Resources*, 976 S.W.2d at 46.

See also Knighton v. International Business Machines Corp., 856 S.W.2d 206, 209 (Tex. App.--Houston [1st Dist.] 1993, writ denied); *State on Behalf of Clanton v. Clanton*, 807 S.W.2d 844, 846 (Tex. App.--Houston [14th Dist.] 1991, no writ); *Karstetter v. Voss*, 184 S.W.3d 396, 401(Tex. App.--Dallas 2006, no pet.); *Jonsson v. Rand Racing, L.L.C.*, 270 S.W.3d 320, 323-24 (Tex. App.--Dallas 2008, n.pet. h.) (applying the same burden shifting rule even in the case of a default judgment in the foreign state); *Boyes v. Morris Polich & Purdy, LLP*, 169 S.W.3d 448, 455 (Tex. App.--El Paso 2005, no pet.).

Under the full faith and credit clause of the United States Constitution, the burden of showing the invalidity of a foreign judgment is upon one attacking that judgment. *Trinity Capital Corp. v. Briones*, 847 S.W.2d 324, 326 (Tex. App.—El Paso 1993, no writ). Due process mandates that the judgment debtor be given the opportunity to rebut presumption that foreign judgment is entitled to full faith and credit. *Tri-Steel Structures, Inc. v. Hackman*, 883 S.W.2d 391, 396 (Tex. App.—Fort Worth, 1994, writ denied). Pursuant to the full faith and credit doctrine, a Texas default judgment was presumptively valid for purposes of its domestication in Colorado. *Caldwell v. Barnes*, 941 S.W.2d 182, 188 (Tex. App.—Corpus Christi 1996), *rev'd*, 975 S.W.2d 535 (Tex. 1998). Under UEFJA, when a judgment creditor introduces a properly authenticated copy of foreign judgment, the burden of establishing why it should not be given full faith and credit shifts to the judgment debtor. *Markham v. Diversified Land & Exploration Co.*, 973 S.W.2d 437, 439 (Tex. App.--Austin 1998, pet denied). The fact that a foreign judgment was taken

11 For example, in one case, a wife who sought to enforce a Florida divorce decree in Texas had the burden of showing that the decree was a final judgment, where it was apparent from face of decree that Florida court had reserved jurisdiction over attorneys' fees and court costs. *Myers v. Ribble*, 796 S.W.2d 222, 223 (Tex. App.—Dallas 1990, no writ).

by default does not defeat its presumption of validity. *Id*. Recitals in a foreign judgment are presumed to be valid and the attacker has the burden to produce evidence showing a lack of jurisdiction. *Id*.

9. Is the shifting burden constitutional?

Yes. It has been held that this presumption of validity of the judgment, and the shift in the burden to the judgment debtor to prove that the judgment is not entitled to full faith and credit is constitutional. *Markham v. Diversified Land & Exploration Co.*, 973 S.W.2d 437, 440 (Tex. App.—Austin 1998, pet. denied) (citing *Walnut Equip. Leasing Co., Inc. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996)).

10. What constitutes a valid final and subsisting judgment?

In order to be entitled to full faith and credit, the foreign state judgment must, at a minimum, be final, as opposed to interlocutory.

The full faith and credit clause of the United States Constitution, U.S. CONST. art. IV, § 1, requires that a court give full faith and credit to the public acts, records, and judicial proceedings of every other state. *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 794 (Tex. 1992). One exception to full faith and credit is where the foreign judgment is interlocutory in the foreign state. *Id*. The law of the foreign state determines whether it is final or interlocutory. *Id*.; *Mindis Metals, Inc.*, 132 S.W.3d at 484; *Dear v. Russo*, 973 S.W.2d at 447 (stating that the Texas court examining the finality of the foreign state judgment cannot rely on Texas law as it relates to the requirement for final judgments or any presumption that Texas law is the same as the foreign state's law);[12] *Bahr v. Kohr*, 928 S.W.2d 98, 100 (Tex. App.—San Antonio 1996, writ denied); RESTATEMENT (SECOND) CONFLICTS OF LAW § 92 (1971). When a judgment creditor files an authenticated copy of a foreign judgment that appears to be a final, valid and subsisting judgment, the judgment creditor makes a prima facie case for the judgment's enforcement that may only be overcome by ***clear and convincing*** evidence to the contrary. *Mindis Metals, Inc.*, 132 S.W.3d at 484 (emphasis added).

In *Medical Administrators, Inc.*, 668 S.W.2d at 722 (Tex. App.--Houston [1st Dist.] 1983, no writ), the court stated the general rule that a judgment leaving any of the issues in the case open for later decision is not final, but interlocutory, and not appealable. Nevertheless, a judgment may be final even though further proceedings incidental to its proper execution are provided for on the judgment's face. *Id.* The finality of a judgment or order is controlled by its substance, not by its label or title or form. *Mindis Metals, Inc.*, 132 S.W.2d at 482.

12 *But see*, *Mindis Metals, Inc.*, 132 S.W.3d at 487. Contrary to the rule stated in *Dear*, the *Mindis* court presumed that Georgia law was the same as Texas law in determining whether a Georgia judgment was final. The *Mindis* court reasoned that the judgment must be final because, as in Texas, an interlocutory judgment could not be enforced by execution, and an appealing party would not be ordered to file a supersedeas bond for an interlocutory judgment. *Mindis* may be distinguishable from *Dear*, however, in that there was apparently no pleading or proof of the foreign state's law. *Id*.; *see also*, *Stine v. Koga*, 790 S.W.2d 412, 414 (Tex. App.—Beaumont, 1990, writ dismissed) (stating that in the absence of pleading and proof of the law of a the foreign state, it is presumed that the law of the foreign state is identical to Texas). Thus, despite the language of *Dear*, if the foreign state's law is better than Texas law, the attorney should be sure to plead and prove it, lest a presumption arise that it is identical to Texas law for full faith and credit purposes.

For example, a Hawaiian foreclosure deficiency judgment against condominium purchasers was not final, and thus was not entitled to full faith and credit in Texas and was not enforceable under UEFJA where the purchasers' counterclaim against the vendor under the Hawaii Uniform Deceptive Trade Practice--Consumer Protection Act was not addressed in the vendor's motion for summary judgment in the Hawaii court, and therefore presumably was not disposed of by summary judgment and was still pending. *Stine v. Koga*, 790 S.W.2d 412, 414-15 (Tex. App.—Beaumont 1990, writ dismissed) (noting that to be entitled to full faith and credit, a judgment must be final, valid and subsisting in the state of rendition, and must be conclusive of the merits of the case) (citing RESTATEMENT (SECOND) CONFLICT OF LAWS sec. 107 (1971)). A domestication order directing the clerk of court to issue all writs or processes requested by a wife to enforce a Florida divorce decree as if it were the same as a judgment of Texas court did not establish that the Florida decree was a final judgment. Rather, it merely transformed a nonfinal Florida judgment into a nonfinal Texas judgment. *Myers v. Ribble*, 796 S.W.2d 222, 224-25 (Tex. App.--Dallas 1990, no writ). In another case, an Arkansas judgment against a defendant, in an action from which a second defendant was discharged in bankruptcy, which judgment was affirmed by Arkansas Court of Appeals, was "final" under Arkansas law, and thus, final for purposes of UEFJA. *State First Nat. Bank of Texarkana, Texarkana, Ark. v. Mollenhour*, 817 S.W.2d 59, 59 (Tex. 1991).

11. It also has to be a "judgment" and it has to actually be filed.

The foreign state judgment also has to be an actual judgment, as opposed to something that is not a judgment. For example, a transcript filed by a foreign judgment creditor with the clerk of court in an attempt to domesticate judgment was not a "judgment" for purposes of UEFJA. *Love v. Moreland*, 280 S.W.3d 334, 337 (Tex. App.—Amarillo 2008, no. pet.). In order to gain the same recognition and effect as a judgment issued by a Texas court, an authenticated foreign judgment had to be filed with the clerk of the Texas court, and the transcript merely contained a description of some items that most likely would be included in a judgment, such as name of parties and amount owed. *Id*. The transcript omitted many elemental items of a judgment, such as the name or signature of the judge who executed the decree and verbiage manifesting the adjudication of rights involved. *Id*. In another case, an authenticated copy of an abstract of a foreign alimony judgment did not meet the requirements of UEFJA that a "copy" of the foreign judgment be filed in a court of competent jurisdiction in the state. *Wolfram v. Wolfram*, 165 S.W.3d 755, 759 (Tex. App.—San Antonio 2005, no pet.). The abstract of judgment was not identical to the original judgment and was not even signed by the judge of the rendering court. *Id*.

Similarly, in *Resource Health Services, Inc. v. Acucare Health Strategies, Inc.*, No. 14-06-00849-CV, 2007 WL 4200587, *1-*2 (Tex. App.—Houston [14th Dist.] November 29, 2007, no pet.) (not designated for publication), the court held that because the judgment creditor only filed the affidavit, and did not actually file a judgment, the domestication proceeding had not commenced, and it was required to dismiss the appeal for lack of appellate jurisdiction. That is, because the UEFJA proceeding had not actually started in the trial court, the thirty day clock for perfecting the appeal had not started to run, so there was no appellate jurisdiction yet.

E. Defending against a domesticated judgment in Texas.

In this section of the paper, we will assume that a facially valid, final and subsisting judgment has been filed in Texas. As the attorney hired to defend against the judgment, how should you approach the assignment? What are some areas of attack?

1. Personal jurisdiction in Texas is *not* an avenue of attack.

Before we discuss the principal lines of assault—that the foreign court lacked jurisdiction to render the judgment, and that the judgment is not otherwise entitled to full faith and credit in Texas--let us discuss at least one avenue that appears *not* to exist. One might think that if your client has no connection with Texas, you could file a special appearance challenging personal jurisdiction in Texas. More than likely, you cannot. There appears to be no requirement of personal jurisdiction in Texas under UEFJA. In a case of first impression, the Fourteenth Court of Appeals so held (under the Uniform Foreign Country Money-Judgment Recognition Act), in *Haaksman v. Diamond Offshore (Bermuda), Ltd.*, 260 S.W.3d 476, 479-80 (Tex.App.--Houston [14th Dist.] 2008, pet. denied). The court principally relied upon a U.S. Supreme Court case, *Shaffer v. Heitner*, 97 S.Ct. 2569, 2583 n. 36 (1977) which dealt with recognition of a judgment from one state to another, but found its reasoning equally applicable to the foreign country money judgment at issue in *Haaksman*. *Haaksman*, 260 S.W.3d at 480.[13] Moreover, in *Haaksman*, the court also held that under the foreign country money judgment statute, there was no requirement that the judgment debtor even maintain property in Texas. *Id*. at 481. The court went on to hold that the judgment creditor could domesticate the judgment in Texas and wait until the judgment debtor appears to be maintaining assets in Texas. *Id*. It seems that another court looking at the jurisdictional issue will reach the same conclusion—that a special appearance motion in the Texas court is a nullity in contesting a statutory UEFJA proceeding.[14]

2. Jurisdiction of the foreign state's court.

We have just seen in the preceding section that the failure of the Texas court to have personal jurisdiction over the judgment debtor does not impede the domestication process in the Texas court. That is a different issue than whether or not the foreign state had jurisdiction over the judgment debtor or the subject matter of the dispute. The failure of the foreign state's court to have jurisdiction over the judgment debtor or the subject matter of the dispute is one of the two main avenues for attacking the domestication of a judgment in Texas. The other is the contention that the judgment is not entitled to full faith and credit in Texas, but the two attacks are different.

This section discusses the attack on the

13 As an aside, in speaking with the Harris County trial court judge on the *Haaksman* case, he informed the author that the court of appeals required him to draft findings of fact and conclusions of law on his special appearance ruling over his protest in light of his own conclusion that personal jurisdiction was not an issue under the foreign judgment collection proceeding before him. He was, of course, proven right, but only after having done the work. *See also*, *Harbison-Fischer Mfg. Co., Inc. v. Mohawk Data Sciences Corp.*, 823 S.W.2d 679, 686 (Tex. App.—Fort Worth 1991), *set aside*, 840 S.W.2d 383 (Tex. 1992) (holding that there was no requirement for the trial court to make findings of fact and conclusions of law in a domestication proceeding).

14 It is not clear whether full faith and credit would make personal jurisdiction of the Texas court over the judgment debtor in a common-law enforcement action irrelevant as well.

domestication based upon a lack of jurisdiction over the judgment debtor or the subject matter of the dispute

Courts of Texas can make reasonable inquiry into the judgment of a foreign state and jurisdiction over the parties. *Karstetter v. Voss*, 184 S.W.3d 396, 401 (Tex. App.—Dallas 2006, no pet.); 34 TEX. JUR. 3d, ENFORCEMENT OF JUDGMENTS § 228 (2005). Judgment without jurisdiction is void. It is not entitled to recognition in any state, and it is subject to collateral attack. *Wu v. Walnut Equipment Leasing Co.*, 909 S.W.2d 273, 281 (Tex. App.—Houston [14th Dist.] 1995), *rev'd*, *Walnut Equip. Leasing Co, Inc. v. Wu*, 920 S.W.2d 285 (Tex. 1996). A foreign state's law governs the validity of service of process in a foreign jurisdiction. *Mayfield v. Dean Witter Financial Services, Inc.*, 894 S.W.2d 502, 506 (Tex. App.—Austin 1995, writ denied).

A judgment debtor can collaterally attack a judgment from the other state. The judgment debtor may challenge the jurisdiction of the foreign state by demonstrating that: (1) service of process was inadequate under the rules of the foreign state, or (2) the foreign state's exercise of in personam jurisdiction offends due process of law. *Markham v. Diversified Land & Exploration Co.*, 973 S.W.2d 437, 439 (Tex. App.—Austin 1998, pet. denied); *see*, *H. Heller & Co., Inc.*, 209 S.W.3d at 849.

Upon such an attack, however, a Texas court has no authority to vacate a foreign default judgment. The trial court's only alternatives, when a duly authenticated foreign judgment is filed in Texas, are to enforce the judgment or to declare the judgment void for want of jurisdiction. *Corporate Leasing Intern., Inc. v. Bridewell*, 896 S.W.2d 419, 422 (Tex. App.—Waco 1995, no writ.). The court may not grant a new trial which puts the parties back where they were before trial in the foreign state. *Trinity Capital Corp. v. Briones*, 847 S.W.2d 324, 327-28 (Tex. App.—El Paso, 1993, no writ).

For example, a Texas court found that a Nevada court had personal jurisdiction over defendant which would support the judgment creditor's attempt to enforce the foreign judgment in Texas. The defendant filed an answer in Nevada and the defendant waived a jurisdictional challenge to the denial of motion to quash service by failing to file immediate appeal. *Boyes v. Morris Polich & Purdy, LLP*, 169 S.W.3d 448, 454 (Tex. App.—El Paso 2005, no pet.); *see also Reading & Bates Const. Co*, 976 S.W.2d at 714-15.

In *Studebaker Worthington Leasing Corp. v. Texas Shutters Corp.*, 243 S.W.3d 737, 740 (Tex.App.—Houston [14th Dist.] 2007, no pet.), the court restated the rule that it was required to apply the law of the foreign state in determining the validity of the foreign judgment. The court found that the foreign state's law upheld contractual forum selection clauses like the one at issue, and found it to be a valid waiver of due process jurisdictional requirements. *Id*. The Court in *Studebaker* held that because the foreign state's assertion of personal jurisdiction did not clearly violate federal due process requirements, the Texas court should enforce the judgment. *Id*. at 740-41; *see also Caldwell v. Barnes*, 941 S.W.2d 182, 188 (Tex. App.—Corpus Christi 1996), *rev'd*, 975 S.W.2d 535 (Tex. 1998) (holding that when a foreign judgment is domesticated in Texas, the judgment debtor may challenge the foreign state's exercise of jurisdiction over him).

A default judgment entered in Washington confirming an arbitration award was void and not enforceable in Texas where the

judgment debtor showed that they did not receive personal service of the confirmation hearing as required by Washington law. *Brown's Inc.*, 54 S.W.3d at 454.

3. Full faith and credit challenge by judgment debtor.

A judgment debtor can mount a challenge to the full faith and credit presumption given to a foreign state's judgment based upon certain exceptions to the full faith and credit clause beyond the lack of jurisdiction discussed in the previous section. Due process mandates that the debtor be given opportunity to rebut presumption that the foreign judgment is entitled to full faith and credit. *Tri-Steel Structures, Inc. v. Hackman*, 883 S.W.2d 391, 396 (Tex. App.—Fort Worth 1994, writ denied);[15] *Schwartz v. F.M.I. Properties Corp.*, 714 S.W.2d 97, 100 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.).

The judgment debtor's right to present defenses to the enforcement of a foreign judgment is implied. There is no express provision or procedural mechanism for such a challenge. *Schwartz v. F.M.I. Properties Corp.*, 714 S.W.2d 97, 100 (Tex. App.—Houston [14th Dist.] 1986, writ ref. n.r.e.).

The burden is on the judgment debtor opposing enforcement of the foreign state judgment in Texas to establish a recognized exception to full faith and credit. *Knighton*, 856 S.W.2d at 209.

As the idea of an "exception" to full faith and credit discussed in *Knighton* suggests, the full faith and credit clause is not "iron clad." *Reading & Bates Const. Co*, 976 S.W.2d at 713 (quoting *Milwaukee County v. M.E. White Co.*, 56 S.Ct. 229, 232 (1935)). The following exceptions to full faith and credit are well established: (1) when a decree is interlocutory; (2) when a decree is subject to modification under the law of the rendering state; (3) when the rendering court lacks jurisdiction;[16] (4) when the judgment was procured by fraud; (5) when limitations has expired. *Id*. These are fact questions, not questions of law. *Id*. Further:

> [a] judgment rendered in one State of the United States need not be recognized or enforced in a sister State if such recognition or enforcement is not required by the national policy of full faith and credit because it would involve an improper interference with important interests of the sister State.

Id. (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 103 reporter's note (1971) & cmt. a (1988)). This last exception is a question of law, not a question of fact. *Id*.

So, for example, a judgment obtained by foreign corporation in Wisconsin was not shown to have been obtained by fraud, as would preclude enforcement of a Wisconsin judgment in Texas under UEFJA. The evidence did not establish that the foreign corporation's lack of a certificate of authority to transact business in Wisconsin was a bar to the foreign corporation maintaining the action in a Wisconsin court. *Navarro v. San Remo Mfg., Inc.*, No. 05-04-01511-CV, 2006 WL 10093, * 3 (Tex. App.—Dallas January 3, 2006, no pet.) (not designated for publication). To avoid the presumption of full faith and credit by alleging fraud in the procurement of the foreign state judgment, the proof must be

15 This case also discusses the requirements of mailing notice of the filing of the foreign judgment in Texas under Texas Civil Practice and Remedies Code sections 35.004(b) & (c) and 35.005(a) & (b), analyzed in section I(D)(5)(c) of this paper, *supra*.

16 See section I(E)(2) of this paper, *supra*.

clear, specific, and tending to establish the fraud. *Id*. at * 2. The foreign state's judgment is entitled to the presumption of validity in the absence of clear and convincing proof to the contrary. *Id*.

The issue, then, is not establishing a meritorious defense to the subject matter of the underlying lawsuit, but to the foreign state judgment's claim to full faith and credit under UEFJA. *Markham*, 973 S.W.2d at 441. In a collateral attack on a foreign state's judgment which is sought to be enforced pursuant to the full faith and credit clause, no defense may be set up that goes to the merits of the original controversy. *Russo*, 105 S.W.3d at 46-47. Thus, in that case, the client's attacks against the private investigator's facially valid and final foreign judgment on claims of libel, slander, and interference with business, in the form of allegations that collateral estoppel and *res judicata* barred the judgment and that the judgment was based on insufficient evidence, did not fall within one of the exceptions to full faith and credit clause, but instead impermissibly attempted to collaterally attack the merits of the judgment. *Id*. at 46. Therefore, Texas was required to give the judgment full faith and credit. *Id*. When a party is attempting to enforce a foreign judgment, the trial court's scope of inquiry into the foreign court's jurisdiction is limited to whether questions of jurisdiction were fully and fairly litigated and finally decided. *Id*. at 47. Thus, because the foreign state court had already ruled on the judgment debtor's special appearance in that court, the matter was not available to be litigated in the Texas court. *Id*.[18]

Under the full faith and credit clause, a valid judgment from one state is to be enforced in other states regardless of the laws or public policy of the other states. *Reading & Bates Const. Co.*, 976 S.W.2d at 712. As a result, the well-established public policy in Texas of not recognizing or enforcing rights arising from gambling transactions could not form a basis to permanently enjoin a Nevada corporation from enforcing a Nevada judgment against a Texas resident. *GNLV Corp. v. Jackson*, 736 S.W.2d 893, 894 (Tex. App.—Waco 1987, writ denied). Texas cannot deny full faith and credit to another state's judgment solely on the ground that it offends the public policy of Texas where a judgment is sought to be enforced. *Id.*

4. No relitigation of issues.

The filing of a foreign state judgment in Texas under UEFJA does not give the judgment debtor a second bite at the apple. He or she may not relitigate matters that were previously decided by the foreign state court. The section of UEFJA providing that a filed foreign judgment is subject to the same procedures, defenses, and proceedings for vacating a Texas judgment, section 35.003(c), refers to the procedural devices available to vacate a Texas judgment. It does not mean that the foreign judgment can be vacated for any reason sufficient to support a traditional motion for new trial. *Mindis Metals*, 132 S.W.3d at 485-86 & n. 7. The attack is a collateral attack, and the merits of the original controversy cannot be challenged. *Id*. at 486 n. 7.

UEFJA cannot be read so as to allow any of the panoply of relief twice; thus, any relief sought and denied in the foreign state cannot again be sought in Texas when the foreign judgment was tendered for local filing and execution. *Merritt v. Harless*, 685 S.W.2d 708, 710-11 (Tex. App.--Dallas 1984, no writ); *see also Russo*, 105 S.W.3d at 47 (holding that because the issue of personal

18 For a further discussion of the Texas court's inability to relitigate matters, see section I(E)(4) of this paper, *infa*.

jurisdiction had been fully litigated in the foreign state court by way of the judgment debtor's special appearance in that foreign state's court, it could not be relitigated in the Texas court).

5. Effect of domesticated judgment on strangers to judgment? Does the misnomer doctrine apply?

Once the judgment is domesticated, who is bound by it? The answer is that only those who were defendants in the foreign state suit who are parties to the judgment are bound by the domesticated judgment.

For example, the domesticated judgment is not binding on a non-party in Texas who was not a party to the underlying litigation in the foreign state. *Sizemore v. Surety Bank*, 200 F.3d 373, 381 (5th Cir. 2000) (holding that full faith and credit does not compel a Texas court to defer to a foreign state's exercise of jurisdiction where the jurisdictional issue was neither fully and fairly litigated, and did not involve the same parties as the Texas litigation).

In *Wolfram v. Wolfram*, 165 S.W.3d 755, 759-60 (Tex. App.—San Antonio 2005, no pet.), the court held that the judgment creditor may only proceed against the original judgment debtor in a UEFJA domestication proceeding. In that case, the court held that the ex-wife could not seek to enforce the amount of a judgment in a direct suit under Uniform Fraudulent Transfer Act against her ex-husband's surviving spouse who was trustee of a revocable living trust created after the ex-wife obtained a foreign judgment. The ex-husband was the only party defendant to the foreign suit and, therefore, the only judgment debtor to the ex-wife. *Id.* Thus, enforcement of the judgment could not have been executed against the surviving spouse. *Id*; *see also Jack H. Brown*, , 665 S.W.2d at 221 (noting that because the first documents purportedly filed as the foreign "judgment" did not mention the petitioner on appeal, the petitioner would have no standing on appeal as he was not a party to the supposedly domesticated judgment).

However, while the domesticated judgment only applies to a judgment debtor from the underlying foreign state judgment, the misnomer doctrine will apply to the UEFJA domestication process. *Brown v. Lanier Worldwide, Inc.*, 124 S.W.3d 883, 895 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (misnomer doctrine is applicable when dealing with enforcement of a foreign judgment where issue was naming judgment debtor as P.L.L.P. instead of L.L.P.); *Hill Country Spring Water of Tex., Inc. v. Krug*, 773 S.W.2d 637, 640-41 (Tex. App.—San Antonio 1989, writ denied).

F. Judgment lien from domesticated judgment created as with any other Texas judgment.

Under UEFJA, a domesticated foreign judgment is treated in the same manner and given the same effect as a Texas judgment. The act does not provide for the creation or the enforcement of liens, except to state in section 35.003(c) that it is subject to the same procedures as a Texas judgment. So, to create a valid judgment lien, the judgment creditor must have the clerk issue judgment abstracts that comply with relevant statutes. *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 930 (Tex. App.--Dallas 1988, writ denied).

G. Time for challenging domestication under UEFJA.

Once the judgment creditor has filed the valid, final and subsisting judgment, what procedure does the judgment debtor employ to raise jurisdictional and full faith and credit challenges? He or she files a motion contesting enforcement of a foreign judgment. This device operates much like a motion for new trial. *Jonsson v. Rand Racing, L.L.C.*, 270 S.W.3d 320, 324 (Tex. App.--Dallas 2008, no pet. h.); *Mindis Metals, Inc.*, 132 S.W.3d at 483; *Moncrief*, 805 S.W.2d at 23. There are sound policy reasons for treating the motion to contest enforcement as a motion for new trial. First, if no new trial motion could be filed, then the appeal would have to be perfected within 30 days. *Id*. at 23-24. Yet, the judgment debtor must also, prior to appeal, present any complaints about the foreign court's judgment with the trial court or risk having waived those complaints on appeal. *Id*. 30 days is a very short window to file a contest to enforcement, get it ruled on, and perfect an appeal. Thus, the court will treat the contest to enforcement as a motion for new trial, extending the court's plenary power and the appellate timetable.

A motion to contest the enforcement of a foreign judgment under UEFJA must be filed within 30 days or the court loses its plenary power. *Malone v. Emmert Indus. Corp.*, 858 S.W.2d 547, 548 (Tex. App.--Houston [14th Dist.] 1993, writ denied) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 35.003(c); TEX. R. CIV. P. 329b; *see also Bahr v. Kohr*, 928 S.W.2d 98, 100 (Tex. App.—San Antonio 1996, writ denied) (holding that the same timetable as for a default judgment and a motion for new trial applies to a domesticated judgment under UEFJA). When a foreign judgment is acted on outside of the 30 day window of plenary power of the trial court, the action is a nullity. *Id*. A foreign judgment that was valid and final, and that was filed in state about four months before it was attacked was outside of trial court's plenary power, and therefore the trial court improperly addressed the foreign judgment and the appellate court lacked jurisdiction to address the merits of the judgment. *Id.*

However, just as with any other final judgment in Texas, the trial court had jurisdiction to enforce the foreign judgment that a judgment creditor filed in Texas pursuant to UEFJA, though the trial court's plenary power over the judgment had expired, because no party filed a post-judgment motion attacking the judgment. *BancorpSouth Bank*, 256 S.W.3d at 729. Nor did anyone file a bill of review. *Id*. Thus, the trial court retained statutory and inherent authority to enforce the judgment. *Id*. 724, 729. As a result, "the trial court ha[d] no alternative but to enforce the judgment . . . ". *Id*. at 729.

In contrast, if the foreign judgment is not properly filed, the 30 day clock will not start. For example, where a foreign judgment, originally filed, did not comply with UEFJA requirements pertaining to authentication and filing of the affidavit naming parties and giving their addresses, the second filing of same judgment was the original filing and the time limits for appeal and writ of error were counted from date of the second filing. *Jack H. Brown & Co.*, 665 S.W.2d at 222.

Further, where the trial court's orders vacating the foreign judgment creditor's original notices of filing of foreign judgment had the effect of rendering those filings nullities, the judgment debtor's motions to contest the enforcement of the judgments filed prior to the amended notices of judgment were premature, and the trial court did not have to rule on them to start the appellate clock. That clock started running upon the filing of the amended notices of

judgment. *Moncrief*, 805 S.W.2d at 24-25. Be careful what you ask for and when you get it as the attorney for a judgment debtor in a UEFJA matter.

An order vacating a domesticated foreign judgment was a final and appealable order disposing of all claims and parties. Therefore, an appeal, rather than a mandamus proceeding, was the appropriate vehicle for reviewing the order. *Mindis Metals, Inc.*, 132 S.W.3d at 482. The trial court in *Mindis Metals, Inc.* ruled that the judgment was not entitled to full faith and credit. That judgment was not enforceable in Texas, and that filing of judgment was of no consequence or effect, and once the court ruled that the judgment was not enforceable in Texas, it terminated the outstanding claims and rights of all parties to the proceeding under UEFJA. *Id*. at 483. That is, granting of a motion to contest enforcement is not like a motion for new trial in the sense that the granting of a motion for new trial is interlocutory (because the parties essentially start over with nothing resolved). Here, upon ruling that the judgment could not be enforced in Texas, there remained nothing for the court to adjudicate. There was no "new" trial to be had because there was no prior trial—just the filing of the foreign judgment. *Id*. Because, in *Mindis Metals, Inc.*, the denial of the contest to enforcement left nothing to be done, it had the effect of being a final, appealable order.

Finally, a judgment creditor may appeal an adverse ruling on a motion to contest enforcement. *Id.* at 484. Likewise, a judgment debtor may appeal an adverse ruling on a motion to contest enforcement as well. *Id*. However, the judgment will stay in place during the appeal. *Id*.

H. Staying enforcement of the foreign judgment.

Once the foreign judgment is domesticated--filed with the affidavit and notice in Texas--the judgment debtor may respond and seek to stay enforcement of the foreign judgment in Texas pursuant to Texas Civil Practice and Remedies Code section 35.006 (Vernon 2008). Section 35.006(a) states:

> If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, that the time for taking an appeal has not expired, or that a stay of execution has been granted, has been requested, or will be requested, and proves that the judgment debtor has furnished or will furnish the security for the satisfaction of the judgment required by the state in which it was rendered, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

Section 35.006(b) states:

> If the judgment debtor shows the court a ground on which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period and require the same security for suspending enforcement of the judgment that is required in this state in accordance with Section 52.006.[19]

One possibility for the attorney defending the judgment debtor is to pursue a

19 TEX. CIV. PRAC. & REM. CODE ANN. § 52.006 (Vernon 2008) deals with supersedeas bonds.

counterclaim and, perhaps, injunctive relief, in the Texas court. In *Mathis v. Nathanson*, No. 03-03-00123-CV, 2004 WL 162965, *1 (Tex. App.--Austin January 29, 2004, pet. denied) (not designated for publication), the judgment debtor filed a declaratory judgment counterclaim seeking to show that he was entitled to an offset of the foreign judgment amount. He further sought a stay under Texas Civil Practice and Remedies Code section 35.006 or an injunction under section 65.011. *Id*. That is, the judgment debtor argued that if he would have been entitled to stay the action in the foreign state's court, he was entitled to a stay in Texas under section 35.006. The court denied the stay and the injunction, reasoning that there was no evidence that the debtor ever raised the issue of indemnity before in the foreign state's court. *Id*. at * 1. Moreover, even if the debtor showed a probable right to prevail on his counterclaim for offset, he failed to show an inadequate legal remedy or irreparable harm from delay in selling his property or costs to regain the assets collected by creditor, and thus was not entitled to an injunction. *Id*. at * 3. Despite this ruling, the artful practitioner might be able to affect a stay of the enforcement proceeding by coupling injunctive relief with a motion to stay under section 35.006 on the basis of alleged irreparable harm if the matter is finalized without an adjudication of the counterclaim for offset.

I. Standard of review

It is not obvious what standards of review apply to different parts of the UEFJA domestication process. First, the abuse of discretion standard applies to determine if the court correctly denied a motion to vacate the filed foreign judgment, just as with review of the court's ruling on a motion for new trial. *Mindis Metals, Inc.*, 132 S.W.3d at 485. However, in the full faith and credit analysis, the trial court is required to give full faith and credit to the foreign state's judgment unless the judgment debtor produces *clear and convincing* evidence entitling him or her to an exception to that rule. *Id*. The court of appeals, then, stated it would review whether the trial court misapplied the law to the established facts in concluding that the judgment debtor established an exception to full faith and credit. *Id*. at 486. It appears that despite the lengthy discussion, the court in *Mindis Metals, Inc.* nevertheless applied an abuse of discretion standard in the end.

In *Tanner v. McCarthy*, 2274 S.W.3d 311, 314 (Tex. App.—Houston [1st Dist.] 2008, no pet. h.), the judgment debtor brought a motion to dismiss the domestication of the foreign judgment brought under UEFJA. The court held that the standard of review of the denial of the motion to dismiss would be the abuse of discretion standard. *Id*. (citing *Enviropower, L.L.C. v. Bear Stearns & Co., Inc.*, 265 S.W.3d 16, 19 (Tex. App.—Houston [1st Dist.] 2008, pet. denied)).

But see, Bryant v. Shields, Britton & Fraser, 930 S.W.2d 836, 841 (Tex. App.–Dallas 1996, writ denied) (holding that the review of the denial of full faith and credit was *de novo*); *Rumpf v. Rumpf*, 237 S.W.2d 669, 673 (Tex.Civ.App.—Dallas 1951) (Bond, C.J., dissenting) (contending that whether Minnesota divorce decree was enforceable by Texas courts presented a question of law under the full faith and credit provision of the United States Constitution), *rev'd*, 242 S.W.2d 416, 416-17 (Tex. 1951) (reaching same conclusion as that expressed by dissent). This issue is clear as mud. The attorney should plead the standard most favorable to their client in any appeal. There is support for both the abuse of discretion and the *de novo* standards of review in the case law.

J. Bill of review is available to judgment debtor after 30 day plenary jurisdiction expires.

After the trial court loses its plenary power after thirty days, it can no longer vacate the final domesticated foreign judgment except by bill of review. Tex. R. Civ. P. 329b(f); *BancorpSouth Bank*, 256 S.W.3d at 729.

And, where a trial court voids its order vacating a foreign judgment after finding that it had acted outside its plenary jurisdiction, the judgment debtors are not denied due process, as they may then pursue a bill of review. *Malone*, 858 S.W.2d at 548-49.

K. Optional common-law procedure under section 35.008.

It is not necessary to proceed under the rubric of UEFJA in order to enforce a foreign state's judgment. Texas Civil Practice and Remedies Code section 35.008 expressly recognizes that "[a] judgment creditor retains the right to bring an action to enforce a judgment instead of proceeding under this chapter." *Wolf v. Andreas*, 276 S.W.3d 23, 25-26 (Tex. App.—El Paso 2008, pet withdrawn). Texas law provides more than one method to present order or judgment from another state to Texas court for enforcement under full faith and credit clause. *Walnut Equip Leasing Co*, 920 S.W.2d at 286;[21] *Bryant*, 930 S.W.2d at 841; *Lawrence Systems, Inc.*, 880 S.W.2d at 206; *Brown's Inc.*, 54 S.W.3d at 453; *Brown*, 124 S.W.3d at 902.

> A valid judgment rendered by a court of another state is conclusive on the merits in the courts of Texas when it is made the basis of an action in Texas.

47 TEX. JUR. 3d Judgments § 75 (citing *Cornell v. Cornell*, 413 S.W.3d 385, 387 (Tex. 1967) (holding that the foreign court's judgment was *res judicata* on the issue in controversy in that case)). Indeed, the attorney electing to pursue a common-law action to enforce a judgment should usually immediately move for summary judgment based upon *res judicata*. The common-law procedure is also often used where the judgment creditor wishes to enforce a foreign judgment in Texas and wishes to add parties to the new lawsuit in Texas.

When a judgment creditor uses a common-law action as the vehicle for enforcement of the foreign judgment, "the proceeding has the same character as any other proceeding . . .". *Brown*, 124 S.W.3d at 902. The judgment creditor files the lawsuit to enforce the judgment, and the judgment debtor, as defendant, can assert defenses and ultimately, an appealable judgment results. *Id*.

A foreign judgment admitted into evidence in an action to enforce a judgment in Texas

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21 Interestingly, in *Walnut Equip. Leasing Co.*, the judgment creditor originally proceeded under UEJFA. Then only more than 30 days later, the creditor abandoned the statutory procedure in favor of a common law action to enforce judgment. The court found the judgment debtor's motion for new trial and appeal were untimely as they were filed more than 30 days after the initial judgment was filed. The amended petition filed more than 30 days after the initial UEJFA filing was considered a nullity. *Walnut Equip. Leasing Co.*, 920 S.W.2d at 286. Thus, the practitioner must be wary of the initial 30 day window if he or she proceeds under UEFJA, as the clock may run out on your own ability to add parties or additional claims to the matter. The court of appeals in *Walnut* had held that the judgment creditor had abandoned the UEFJA framework in his amended petition, and that therefore the judgment debtor's motion for new trial was timely. As stated, the Texas Supreme Court disagreed. *Wu v. Walnut Equipment Leasing Co.*, 909 S.W.2d 273, 279 (Tex. App.—Houston [1st Dist.] 1995), rev'd, *Walnut Equip. Leasing Co. v. Wu*, 920 S.W.2d 285 (Tex. 1996).

that is properly authenticated is entitled to full faith and credit. *Bryant*, 930 S.W.2d at 841. When a judgment creditor brings a common-law action to enforce a judgment, instead of proceeding under UEFJA, his filing of the petition initiates the action, then the judgment debtor, as defendant, can assert his defenses, a judgment results, and the losing party can appeal, just as in any other case. *Wolf*, 276 S.W.3d at 26.

The statute of limitations that bars an action against a person who has resided in this state for ten years prior to the action on a foreign judgment rendered more than ten years before the commencement of the action applies to the common law action to enforce a foreign judgment. *Lawrence Systems, Inc.*, 880 S.W.2d at 206 (citing *Collin County Nat. Bank v. Hughes*, 220 S.W.767 (Tex. 1920) and *Ferguson-McKinney Dry Goods Co. v. Garrett*, 252 S.W. 738 (Tex. Comm'n App. 1923, judgm't adopted)).[21] A creditor seeking to enforce a foreign judgment by filing a common law action may appeal an adverse ruling. *Mindis Metals, Inc.*, 132 S.W.3d at 483-84.

L. Federal court judgments.

Federal court judgments may also be made into Texas court judgments under UEFJA. *Tanner*, 274 S.W.3d at 318-320 (noting that section 35.001 of UEFJA defines a foreign judgment as "a judgment, decree, or order of a court of the United States or any other court that is entitled to full faith and credit in this state")). It is also true that another Texas statute permits the recording and indexing of the abstract of judgment rendered in Texas by a federal court. TEX. PROP. CODE ANN. § 52.007 (Vernon 2007). The recorded and indexed abstract constitutes a lien on and attaches to any real property of the defendant. TEX. PROP. CODE ANN. § 52.001 (Vernon Supp. 2008). The existence of the Property Code section dealing with recording and indexing a Texas federal court abstract of judgment does not preclude domestication of a federal court judgment from Texas under UEFJA. *Tanner*, 274 S.W.3d at 318-20.

The rationale for using UEFJA to enforce a federal court judgment, whether from a Texas federal court or elsewhere, is, of course, that the judgment will become a Texas state judgment, entitling the judgment creditor to the full array of Texas state judgment collection and enforcement procedures.

M. Registration of judgments for enforcement in other districts.

An attorney may also wish to register a judgment from one federal court in another district to one in a local district for enforcement purposes.

28 U.S.C.A. § 1963 states:

> A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States

21 As previously discussed in this paper in section I(D)(2), *supra*, the ten year statute of limitations in Texas Civil Practice and Remedies Code section 16.066 et seq. also applies to actions commenced under UEJFA. *Lawrence Systems, Inc.*, 880 S.W.2d at 211.

> may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.
>
> A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.
>
> The procedure prescribed under this section is in addition to other procedures provided by law for the enforcement of judgments.

The statute was adopted to spare creditors and debtors the additional costs and the harassment of a separate lawsuit which would otherwise be required by way of an action on the judgment in another district court other than that where the judgment was originally obtained. *Home Port Rentals, Inc. v. International Yachting Group, Inc.*, 252 F.3d 399, 404 (5th Cir. 2001).

II.

FOREIGN COUNTRY JUDGMENTS

A. Introduction

Now, instead of a judgment from a foreign state or federal court, let us say that the attorney is called upon to domesticate, in Texas, a judgment from another country. This process is codified like the domestication of foreign state judgments. It is found in Chapter 36 of the Texas Civil Practice and Remedies Code. Chapter 36 is called the Uniform Foreign Country Money-Judgment Recognition Act. TEX. CIV. PRAC. & REM. CODE ANN. § 36.003 (Vernon 2008) (hereinafter UFCMJRA). Section 36.001 states:

> In this chapter: (1) "Foreign country" means a governmental unit other than: (A) the United States; (B) a state, district, commonwealth, territory, or insular possession of the United States; (C) the Panama Canal Zone; or (D) the Trust Territory of the Pacific Islands.
>
> (2) "Foreign country judgment" means a judgment of a foreign country granting or denying a sum of money[22] other than a judgment for: (A) taxes, a fine, or other penalty; or (B) support in a matrimonial or family matter.

TEX. CIV. PRAC. & REM. CODE ANN. § 36.001 (Vernon 2008). The enforcement procedures have a lot in common with the enforcement of foreign state judgments, except that there is no full faith and credit presumption in favor of a foreign country judgment.[23] To wit:

Section 36.004 states:

> Except as otherwise provided by section 36.005, a foreign country judgment that is filed with notice given as provided by this chapter, that meets the requirements of Section

22 UFCMJRA was held not to apply to a judgment from the Philippines that was not a judgment granting or denying a sum of money, but which was for declaratory relief pertaining to a probate matter. *Gustilo v. Gustilo*, No. 14-93-00941, 1996 WL 365994, * 11 (Tex. App.—Houston [14th Dist.] July 3, 1996, writ denied), *cert. denied*, 118 S.Ct. 170 (1997).

23 *See*, *Hernandez v. Seventh Day Adventist Corp., Ltd.*, 54 S.W.3d 335, 336 (Tex. App.—San Antonio 2001, no pet.) (citing *Dear*, 973 S.W.2d at 446), a foreign *state* judgment case, for the proposition that the foreign *country* judgment act is the same as the foreign state act as to the effect of filing the foreign judgment).

> 36.002, and that is not refused recognition under Section 36.0044 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The judgment is enforceable in the same manner as a judgment of a sister state that is entitled to full faith and credit.

TEX. CIV. PRAC. & REM. CODE ANN. § 36.004 (Vernon 2008).

Section 36.002's requirements are that the foreign country's judgment must be final and conclusive and enforceable where rendered, even though an appeal is pending or the judgment is subject to appeal. TEX. CIV. PRAC. & REM. CODE ANN. § 36.002 (a)(1) (Vernon 2008). Or, the judgment may be in favor of the defendant[24] (sic) on the merits of the cause of action and be final and conclusive where rendered. TEX. CIV. PRAC. & REM. CODE ANN. § 36.002(a)(2) (Vernon 2008). The Act does not apply to a judgment rendered before June 17, 1981. TEX. CIV. PRAC. & REM. CODE ANN. § 36.002(b) (Vernon 2008).

Section 36.0044 discusses the methods for the judgment debtor to contest recognition of the foreign country judgment, and section 36.005 lists the grounds for non-recognition of the foreign country judgment in a Texas court. These sections and the case law interpreting them will be discussed below.

B. Filing a foreign country judgment.

Alright, I have been assigned to domesticate a foreign country judgment in Texas. What do I do?

Just as with the Texas filing of a foreign state judgment, the Texas filing of a foreign country judgment symbolizes both a plaintiff's original petition and a final judgment. The filing initiates the recognition proceeding, but also instantly creates an enforceable judgment. *Hernandez v. Seventh Day Adventist Corp., Ltd.*, 54 S.W.3d 335, 336 Tex. App.—San Antonio 2001, no pet.). In determining finality for purposes of the Foreign Country Recognition Act, the court considers whether the judgment is final according to the laws of the foreign country. *Id*. at 337. If the judgment appears facially final, the burden of proving that the judgment is not final is on the judgment debtor. *Id*. In *Seventh Day Adventist*, the evidence supported a finding that the Hong Kong judgment was a final judgment for purposes of UFCMJRA. *Id*. The court held that the judgment debtor failed to present evidence that the judgment was not facially final, according to Hong Kong law, other than the judgment's lack of a registrar's signature. *Id*. The Texas trial court was required to determine whether the judgment creditor invoked the UFCMJRA by satisfying the authentication prerequisites of UFCMJRA prior to determining whether the judgment debtor waived his authenticity challenge for failure to file it timely. *Id*. If the foreign judgment was not facially final, the judgment creditor would bear the burden of producing evidence demonstrating that the judgment was final in order to domesticate it under UFCMJRA. *Id*.

Section 36.0041 of UFCMJRA deals with filing of the judgment, authentication and venue in Texas. It states:

> A copy of a foreign country judgment authenticated in accordance with an act of congress, a statute of this state, or a treaty or other international

24 The author is unsure what the term "in favor of the defendant" means in this context. Perhaps it has to do with collecting costs as the successful party in the foreign country's court.

> convention to which the United States is a party may be filed in the office of the clerk of a court in the county of residence of the party against whom recognition is sought or in any other court of competent jurisdiction as allowed under the Texas venue laws.

TEX. CIV. PRAC. & REM. CODE ANN. §36.0041 (Vernon 2008).[25]

The court in *Seventh Day Adventist* held that the trial court was required to determine whether the judgment creditor invoked UFCMJRA[26] by satisfying the authentication prerequisites of the Act as a preliminary matter. *Id*. at 337. Thus, in that case, the court held that because the judgment creditor had not shown the foreign country judgment to be authentic, the trial court's plenary power thirty day window in section 36.0044 did not start, nor did the appellate clock. *Id*. Therefore, the court held that the trial court had erred in finding that the judgment debtor's contest of the foreign country judgment was untimely and waived. *Id*. at 338.

25 Thus, unlike UEFJA, this statute specifically discusses the proper venue in Texas. For a discussion of venue under UEFJA, see section I(D)(4) of this paper, *supra*.

26 Courts have interpreted UFCMJRA to provide that Texas will recognize a foreign country judgment if four conditions are met: (1) the judgment is final, conclusive, and enforceable where rendered; (2) an authenticated copy of the judgment is filed in the judgment debtor's county of residence; (3) notice of the filing is given to the judgment debtor; and (4) none of the defenses provided in Texas Civil Practice and Remedies Code section 36.005 apply. *Reading & Bates Constr. Co. v. Baker Energy Res. Co.*, 976 S.W.2d 702, 706 (Tex.App.-Houston [1st Dist.] 1998, pet. denied) (citing TEX. CIV. PRAC. & REM.CODE ANN. §§ 36.002, 36.004, 36.0041). UFCMJRA provides that a judgment debtor may, within 30 days of receiving notice of the Texas filing, contest recognition on certain enumerated grounds. TEX. CIV. PRAC. & REM.CODE ANN. §§ 36.0044, 36.005.

1. Affidavit; Notice of Filing

Section 36.0042 of UFCMJRA deals with the affidavit and notice of filing requirements. These are essentially the same as their UEFJA counterparts as far as the author can tell. At the time a foreign country judgment is filed, the party seeking recognition of the judgment or the party's attorney shall file with the clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor. TEX. CIV. PRAC. & REM. CODE ANN. § 36.0042(a) (Vernon 2008). The clerk shall promptly mail notice of the filing of the foreign country judgment to the party against whom recognition is sought at the address given and shall note the mailing in the docket. TEX. CIV. PRAC. & REM. CODE ANN. § 36.0042(b) (Vernon 2008). The notice must include the name and post office address of the party seeking recognition and that party's attorney, if any, in this state. TEX. CIV. PRAC. & REM. CODE ANN. § 36.0042(c) (Vernon 2008).

2. Alternate Notice of Filing

Section 36.0043 has to do with the alternate notice of filing that has its UEFJA counterpart in Texas Civil Practice and Remedies Code section 35.005. The party seeking recognition may mail a notice of the filing of the foreign country judgment to the other party and may file proof of mailing with the clerk. TEX. CIV. PRAC. & REM. CODE ANN. § 36.0043(a) (Vernon 2008). Just as with UEFJA, a clerk's lack of mailing the notice of filing does not affect the conclusive recognition of the foreign country judgment under UFCMJRA if proof of mailing by the party seeking recognition has been filed. TEX. CIV. PRAC. & REM. CODE ANN. § 36.0043(b) (Vernon 2008).

Even in a default situation, the court must comply with the statutory notice requirements. *Allen v. Tennant*, 678 S.W.2d 743, 744 (Tex. App.—Houston [14th Dist.] 1984, no pet.). The court's plenary power and the appellate time clock did not start until the judgment creditor complied with the notice requirements. *Id*.

3. "Recognition" requirement

Under UFCMJRA, a state is not constitutionally required to give full faith and credit to judgments of foreign countries. *Reading & Bates Const. Co.*, 976 S.W.2d at 714. Before a party can enforce judgment from a foreign country in United States court, the judgment creditor must have the foreign judgment "recognized" by a state in which it is seeking to enforce its judgment. *Id*.

Under the predecessor statute to the current UFCMJRA, TEX. REV. CIV. STAT. ANN. art. 2328b-6, a foreign country judgment was held not entitled to recognition and enforcement, where no initial "plenary" suit was filed and no plenary hearing held on issue of whether the foreign country judgment was conclusive. *Hennessy v. Marshall*, 682 S.W.2d 340, 344-45 (Tex. App.—Dallas 1984, no writ). As a result, the trial court's order purporting to recognize the judgment as a Texas judgment was void and of no effect and all subsequent orders were also void. *Id*. at 345. Without the plenary or initial hearing on recognition, the judgment cannot be enforced as a Texas judgment. *Id*.; *but see, Detamore v. Sullivan*, 731 S.W.2d 122, 123 (Tex. App.—Houston [14th Dist.] 1987, no pet.) (holding that the court could not find any procedure within UFCMJRA expressly requiring the plenary suit and hearing before the foreign country judgment would be entitled to recognition) (*disapproved of on other grounds by, Don Docksteader Motors, Ltd. v. Patal Enterprises, Ltd.*, 794 S.W.2d 760, 761 (Tex. 1990)).[27]

C. Contesting recognition of the foreign country judgment.

Section 36.0044 of the UFCMJRA sets forth the procedure for the judgment debtor to contest recognition of the foreign country judgment.

Section 36.0044 states:

> (a) A party against whom recognition of a foreign country judgment is sought may contest recognition of the judgment if, not later than the 30th day after the date of service of the notice of filing, the party files with the court, and serves the opposing party with a copy of, a motion for nonrecognition of the judgment on the basis of one or more grounds under Section 36.005.[28] If the party is domiciled

27 In *Don Docksteader Motors*, the judgment debtor complained that UFCMJRA was unconstitutional because it did not provide for a mechanism by which the judgment debtor could assert grounds for nonrecognition of the judgment.. *Don Docksteader Motors*, 794 S.W.2d at 760-61. The Supreme Court stated that by expressly providing that a foreign country money judgment is enforceable in the same manner as a judgment of a foreign state, UFCMJRA necessarily allows for the bringing of a common-law suit and thereby allows for notice and a hearing at which all defenses including grounds for non-recognition can be asserted. *Id*. The Court also noted the 1989 amendments to the law setting forth the procedural steps for contesting "recognition" of the judgment in sections 36.0041-.0044. *Id*. at 760-61 & n.1. The constitutionality issues in *Don Docksteader Motors* seem to have been resolved with the amendment of the statute.

28 Section 36.005 states:

(a) A foreign country judgment is not conclusive if:

in a foreign country, the party must file the motion for nonrecognition not later than the 60th day after the date of service of the notice of filing.

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(1) the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign country court did not have personal jurisdiction over the defendant; or

(3) the foreign country court did not have jurisdiction over the subject matter.

(b) A foreign country judgment need not be recognized if:

(1) the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to defend;

(2) the judgment was obtained by fraud;

(3) the cause of action on which the judgment is based is repugnant to the public policy of this state;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign country court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

(6) in the case of jurisdiction based only on personal service, the foreign country court was a seriously inconvenient forum for the trial of the action; or

(7) it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, conform to the definition of "foreign country judgment."

(b) The party filing the motion for nonrecognition shall include with the motion all supporting affidavits, briefs, and other documentation.

(c) A party opposing the motion must file any response, including supporting affidavits, briefs, and other documentation, not later than the 20th day after the date of service on that party of a copy of the motion for nonrecognition.

(d) The court may, on motion and notice, grant an extension of time, not to exceed 20 days unless good cause is shown, for the filing of a response or any document that is required to establish a ground for nonrecognition but that is not available within the time for filing the document.

(e) A party filing a motion for nonrecognition or responding to the motion may request an evidentiary hearing that the court may allow in its discretion.

(f) The court may at any time permit or require the submission of argument, authorities, or supporting material in addition to that provided for by this section.

(g) The court may refuse recognition of the foreign country judgment if the motions, affidavits, briefs, and other evidence before it establish grounds for nonrecognition as specified in Section 36.005, but the court may not, under any circumstances, review the foreign country judgment in relation to any matter not specified in Section 36.005.

When a judgment debtor files a timely motion for nonrecognition, the trial court may grant the motion and refuse to recognize foreign country judgment if the motion, affidavits, briefs, and other evidence before the trial court establish grounds for nonrecognition as specified in UFCMJRA. *Haaksman v. Diamond Offshore (Bermuda), Ltd.*, 260 S.W.3d 476, 480 (Tex. App.—Houston [14th Dist.] 2008, pet. denied). However, under the express language of UFCMJRA, the trial court may not, under any circumstances, review the foreign country judgment in relation to any matter not specified in UFCMJRA. *Id*. (citing TEX. CIV. PRAC. & REM. CODE ANN. § 36.0044(g)).

When recognition of the foreign country judgment is not contested or the contest is overruled, a foreign country judgment is conclusive between the parties to the extent that it grants recovery or denial of a sum of money, and it is enforceable in the same manner as a judgment of a sister state entitled to full faith and credit. *The Courage Co., L.L.C. v. The Chemshare Corp.*, 93 S.W.3d 323, 330 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

1. Nonrecognition a question of law or fact?

To the extent that the trial court is determining what the foreign law is, as in a public policy[29] or reciprocity[30] analysis under UFCMJRA, it is answering questions of law. *Reading & Bates Const. Co.*, 976 S.W.2d at 707-08 (citing Texas Rule of Civil Evidence 203; disagreeing with several cases referring to the determination of foreign law as a hybrid question of law and fact). The standard of review, at least according to the Houston First Court of Appeals is *de novo*, therefore, because the trial court has no "discretion" to improperly determine the law or misapply the law to the facts. *Id*. at 708 (disagreeing with several courts which suggested the standard of review is abuse of discretion in ruling on recognition of a foreign country's judgment); *see also Society of Lloyd's v. Turner*, 303 F.3d 325, 332 n. 23 (5th Cir. 2002) (noting that little turns on whether it is considered a *de novo* review or abuse of discretion as a mistake of law is not beyond appellate correction).

2. Burden of proof; affirmative defenses.

Who has the burden of proof on the recognition of a foreign country judgment? A judgment debtor who alleges that foreign country judgment should not be recognized on the ground of, for example, non-reciprocity under section 36.005(b)(7) has the burden of proof. *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1005 (5th Cir. 1990); *The Courage Co.*, 93 S.W.3d at 331. In a diversity case in federal court seeking a declaration that the foreign judgment was unenforceable, the plaintiff/judgment debtor still had the burden of proving lack of reciprocity as "affirmative defense". *Hunt v. BP Exploration Co. (Libya) Ltd.*, 580 F. Supp. 304, 309 (N.D.Tex.1984). If the judgment debtor fails to carry his or her burden, the court is required to recognize the foreign country judgment. *The Courage Co.*, 93 S.W.3d at 332. The nonrecognition factors in section 36.005(b) (1) – (7) are affirmative defenses which must be asserted by the judgment debtor. *Hennessy*, 682 S.W.2d at 344.

29 TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(3).
30 TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(7).

3. No second bite at the apple; waiver.

UFCMJRA precludes a judgment debtor from collaterally attacking a foreign judgment where the issue was litigated before the foreign court or the party was given an opportunity to litigate the issue before that court. *Id*.; *Dart v. Balaam*, 953 S.W.2d 478, 480 (Tex. App.--Fort Worth 1997, no writ). To that end, the grounds for nonrecognition of the foreign country judgment may be waived if a party had the right to assert the ground as an objection or defense in the foreign country court but failed to do so. *Dart*, 953 S.W.2d at 480.

D. Mandatory nonrecognition provisions.

UFCMJRA sections 36.005(a)(1)-(3) *require* nonrecognition if they are established.

1. Impartial Tribunal Requirement

Section 36.005(a)(1) first requires that the foreign country judgment have been rendered by a system that provides for impartial tribunals. In one case, the procedures of the English court system, requiring members of English insurance syndicate to immediately fund a reinsurer and to litigate any claims against the overseer of the syndicates later, were not basically unfair under the concept of international due process. *The Society of Lloyds v. Webb*, 156 F.Supp.2d 632, 641 (N.D. Texas. 2001), *aff'd, Society of Lloyd's v. Turner*, 303 F.3d 325 (5th Cir. 2002). Therefore, the judgment of the English court was enforceable against an American member of syndicate under UFCMJRA. *Id*. The court found that the system provided "impartial tribunals or procedures compatible with the requirements of due process of law." *Id*. at 639-40. This was so even though pretrial discovery was barred and the procedures used in English courts were not identical to American procedures. *Id*. at 640. Moreover, the English process did not preclude a member from suing for fraud at a later date if there was "manifest error" in the overseer's calculations. *Id*. at 639.

2. Due process requirement.

Section 36.005(a)(1) also requires that the foreign country's procedures be compatible with the requirements of due process of law. The procedures of the English court system that had approved the English insurance market's self-regulatory reinsurance program--including the market overseer's authorization via its contracts with members to appoint agents to negotiate reinsurance premiums that would bind members without their consent--were fundamentally fair under the federal due process clause. *Turner*, 303 F.3d at 330. A judgment debtor can waive his or her procedural rights in the foreign country's court by refusing to participate when they are otherwise permitted to do so. Sleeping on one's rights in the foreign country's court may have some relevance to whether the Texas court will give any credence to the judgment debtor's complaints about the foreign country's due process protections. *See id*. at 331, n. 20.

3. Personal jurisdiction as a ground for lack of recognition.

For a foreign country's judgment to be conclusive, UFCMJRA section 36.005(a)(2) requires that the foreign country's court had personal jurisdiction over the judgment debtor. The issue is not whether the Texas court has personal jurisdiction over the judgment debtor. *Haaksman*, 260 S.W.3d at

481 (asserting, as one basis for its holding, that UFCMJRA specifically states that personal jurisdiction over the judgment debtor in Texas is not one of the grounds for nonrecognition in section 36.005 allowed to be evaluated by the Texas court). Rather, the issue is whether the foreign country court had personal jurisdiction over the judgment debtor. *Id*. at 479.

Nor does the act require that the judgment debtor have property in the state. *Id*. at 480-81. The court in *Haaksman* held that judgment creditors were entitled to the opportunity to obtain recognition of their foreign country judgments, even if the judgment debtor lacked property in Texas, and the judgment creditor could later pursue enforcement if or when the judgment debtor appeared to be maintaining assets in Texas. *Id*.

Section 36.005(a)(2) must be read together with section 36.006, entitled Personal Jurisdiction. Section 36.006 states:

> (a) A court may not refuse to recognize a foreign country judgment for lack of personal jurisdiction if: (1) the defendant was served personally in the foreign country; (2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him; (3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign country court with respect to the subject matter involved; (4) the defendant was domiciled in the foreign country when the proceedings were instituted or, if the defendant is a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status in the foreign country; (5) the defendant had a business office in the foreign country and the proceedings in the foreign country court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or (6) the defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action arising out of operation of the motor vehicle or airplane.
>
> (b) A court of this state may recognize other bases of jurisdiction.

Therefore, where a judgment debtor had contractually agreed to submit to personal jurisdiction in the foreign country forum, as listed under UFCMJRA section 36.006(a)(3), that was sufficient to satisfy the recognition requirement and domestication in Texas. *Society of Lloyd's v. Cohen*, 108 Fed.Appx. 126, 127 (5th Cir. 2004). An appearance and the ability to have contested personal jurisdiction in the underlying foreign country proceeding may allow a Texas court to uphold domestication under section 36.006. *Norkan Lodge Co. Ltd. v. Gillum*, 587 F. Supp. 1457, 1459-60 (N.D.Tex.1984).

4. Subject matter jurisdiction.

Section 36.005(a)(3) lists a lack of subject matter jurisdiction in the foreign country's court as another ground for non-recognition. The author could not find any cases discussing this section of the statute.

E. Permissive nonrecognition provisions.

Sections 36.005(b)(1)-(7) are grounds for nonrecognition that allow the Texas court to not recognize the foreign country's judgment, but do not require nonrecognition as do sections 36.005(a)(1)-(3).

1. Lack of notice to the judgment debtor in the foreign country's court.

Section 36.005(b)(1) allows a Texas court to not recognize a foreign country's judgment if "the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to defend."

2. Judgment obtained by fraud.

Pursuant to section 36.005(b)(2) a court may refuse to recognize a foreign country judgment obtained by fraud. In a federal case, allegations that there were instances in a Canadian trial proceeding where the plaintiff presented only its side of the evidence and did not fairly and completely present the facts of the dispute, and that deposition and trial testimony were inconsistent, were insufficient to show that the foreign country judgment was procured by fraud. *Norkan Lodge Co*, 587 F. Supp. at 1460-61. The *Norkan Lodge* court discusses *Harrison v. Triplex Gold Mines*, 33 F.2d 667, 671 (1st Cir. 1929) as setting forth the standard for judging fraud in connection with recognizing a foreign country's judgment. *Norkan Lodge Co.*, 587 F. Supp. at 1461. The *Harrison* court noted:

> In any case to justify setting aside a decree for fraud, it must appear that the fraud practiced, unmixed with any fault or negligence of the party complaining, prevented him from making a full and fair defense, and that the fraud complained of was not involved in, or presented to, the court of first instance either at the original trial or in a petition for review. This rule is universal. False testimony or fabricated documents are not sufficient to justify the interference of a court of equity, if they have been presented to the court determining the law and fact in the first instance. The reason for the rule is that there must be an end to litigation.

Harrison, 33 F.2d at 671. The Court in *Norkan Lodge Co.* found that the facts of that case did not rise to this level, and the fact that the judgment debtor did not raise the "fraud" at the trial level or on appeal in the foreign country court weighed strongly against the Texas court's consideration of those issues. *Norkan Lodge Co.*, 587 F. Supp. at 1461.

3. Public policy ground for nonrecognition.

Section 36.005(b)(3) permits a Texas court to refuse to recognize a foreign country judgment if the cause of action on which the judgment is based is repugnant to the public policy of Texas.

The public policy nonrecognition criteria seems somewhat flexible. It could provide fruitful area for litigation. In one case, under UFCMJRA, the appellate court ruled that the trial court erred in refusing to recognize a Mexican judgment which had been entered in favor of a Mexican lender against a corporate borrower. *Southwest Livestock and Trucking Co., Inc. v. Ramon*, 169 F.3d 317, 323 (5th Cir. 1999). The trial court had reasoned that the judgment violated Texas's public policy against usury. *Id*. at 319. The appellate court reversed, finding that the underlying action for

collection of a promissory note was not repugnant to Texas public policy and that Texas public policy against usury was not inviolable, and the case did not involve the victimizing of a naive consumer. *Id*. at 323.

Courts consistently hold that the level of contravention of public policy must be high to satisfy 36.005(b)(3). *Id*. at 321; *Turner*, 303 F.3d at 331-32.

English judgments requiring American members of an English insurance market to pay reinsurance premiums based on contracts entered into by substitute agents appointed by a market overseer were based on a cause of action not repugnant to Texas public policy: breach of contract. *Id*. at 332-33. Thus, the judgments were not unenforceable under the public policy exception of UFCMJRA. *Id*. That the standards for evaluating the cause of action were allegedly less demanding for the plaintiff under English law did not determine repugnancy. *Id*.; *see also Norkan Lodge Co.*, 587 F. Supp. at 1461 (holding that the trebling of costs, causes of action for trespass and conversion, and the assessment of damages for these intentional torts did not render the judgment unenforceable in Texas under the public policy exception).

Finally, where the public policy that is possibly being offended is not *Texas* policy, but rather, *federal* policy, a Texas court could not refuse to recognize the foreign country judgment for intellectual property infringement. *Reading & Bates Const. Co.*, 976 S.W.2d at 708.[31]

4. Other final and conclusive judgment.

In *Brosseau v. Ranzau*, 81 S.W.3d 381, 389 (Tex. App.—Beaumont 2002, pet. denied), the court discussed UFCMJRA section 36.005(b)(4). That section permits nonrecognition if the judgment sought to be domesticated conflicts with another final and conclusive judgment. In *Brosseau*, the court of appeals held that the trial court did not err in refusing to recognize a Mexican judgment and accord it collateral estoppel effect. *Id*. at 390. The court held that the Mexican judgment holding that an individual had never been a stockholder in a particular company conflicted with a bankruptcy court order conveying stock certificates to the individual. *Id*.

5. Contrary to an agreement between the parties to settle or otherwise proceed out of court.

Arbitration agreements are typical of agreements discussed under section 36.005(b)(5). That section allows for the nonrecognition of foreign country judgments if the proceeding in the foreign country court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceeding in that court.

Thus, where an arbitration agreement was

31 *Reading & Bates* is also interesting in that it involved a Canadian judgment that was first domesticated in Louisiana before it was sought to be domesticated in Texas. *Reading & Bates Const. Co.*, 976 S.W.2d at 706. The Texas court held that the judgment creditor could not avoid the requirements of UFCMJRA by running a foreign country judgment through Louisiana. *Id*. at 715. The Louisiana judgment recognizing the Canadian judgment was not entitled to full faith and credit in Texas under UEFJA because it was held that such recognition or enforcement would involve improper interference with important interests of Texas. *Id*. at 714-15. The Canadian judgment could not be clothed in the garment of a foreign state's judgment in order to evade the more onerous process for recognition of a foreign country judgment in Texas under UFCMJRA. *Id*. at 715.

waived by substantially invoking the litigation process in the foreign country jurisdiction, the judgment debtor could not avoid recognition of the foreign country judgment in Texas court by claiming that parties had agreed to submit any disputes to arbitration rather than resolving them in court. *Hunt*, 580 F. Supp. at 309. *But see, The Courage Co.*, 93 S.W.3d at 331 & n. 5 (finding that a foreign country judgment in a breach-of-contract action was not entitled to recognition and enforcement in Texas under UFCMJRA where the parties to the contract agreed to arbitrate any disputes arising under the contract).

6. Where personal jurisdiction in the foreign country court is based only on personal service; Forum non conveniens.

Section 36.005(b)(6) of UFCMJRA allows the Texas court to refuse to recognize a foreign country judgment where jurisdiction in the foreign country's court is based only on personal service of the judgment debtor and the foreign country's court is a seriously inconvenient forum for the trial of the action.

In *Dart*, 953 S.W.2d at 482-83, the judgment debtor tried to invoke the exception to recognition in section 36.005(b)(6). He argued that Australia's jurisdiction over him was only based on personal service, and that the Australian court was a seriously inconvenient forum. *Id*. at 482. The court first held that jurisdiction over the judgment debtor in Australia was based on his unconditional appearance, the filing of a counterclaim, *and* personal service. *Id*. (emphasis added). Therefore, section 36.005(b)(6) did not apply. *Id*. Further, the court stated that the convenience of the forum had to be ascertained by looking at the facts as they existed at the time the lawsuit in Australia was filed. *Id*. at 482-83 & n.2 (citing the Texas forum non conveniens statute, TEX. CIV. PRAC & REM. CODE ANN. § 71.051(e) (Vernon 1997)). At the relevant time, the judgment debtor was a resident and citizen of Australia, and the agreement in dispute in the action involved the development of real property in Australia. *Id*. at 482-83. Thus, the trial court did not abuse its discretion in denying the request for nonrecognition. *Id*. at 483.

7. Reciprocity

Several cases discuss what is commonly referred to as the "reciprocity" ground[32] for nonrecognition contained in Texas Civil Practice and Remedies Code section 36.005(b)(7). Section 36.005(b)(7) allows a Texas court to refuse recognition of a foreign country judgment where:

> it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, conform to the definition of 'foreign country judgment.'

The decision not to recognize a foreign judgment due to lack of reciprocity can only be set aside on appeal upon a clear showing of abuse of discretion. *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1007 (Tex. 1990).

In *Norkan Lodge Co.*, the court held that there was no showing that the Canadian courts would not recognize a judgment based upon trespass and criminal conversion entered by Texas courts so as to permit the Texas court to refuse to enforce such a judgment from the Canadian court. *Norkan*

32 *Reading & Bates Const. Co.*, 976 S.W.2d at 706.

Lodge Co., 587 F. Supp. at 1461; s*ee also Don Docksteader Motors*, 794 S.W.2d at 761; and *Reading & Bates Const. Co.*, 976 S.W.2d at 712 (holding that Canadian courts will not automatically refuse to enforce foreign country judgment on the sole basis that damages were excessive compared to Canadian standards; therefore, the Texas court could not deny recognition to Canadian judgment under UFCMJRA on the basis of lack of reciprocity).

The judgment debtor who alleges that the foreign country judgment should not be recognized on the ground of non-reciprocity has the burden of proof. *Banque Libanaise* 915 F.2d at 1005; *The Courage Co.*, 93 S.W.3d at 331. Although the judgment creditor which operated in Abu Dhabi cited relevant Abu Dhabi law providing for recognition of foreign judgments at the Abu Dhabi court's discretion, an attorney practicing in Abu Dhabi testified that the local courts favored resolution of disputes in the local forum under local law and that Abu Dhabi courts had a certain skepticism toward the unquestioned application of western legal principles, at least where they worked to the disadvantage of local parties. *Banque Libanaise*, 915 F.2d at 1005-06.

F. Stay in Case of Appeal

If the defendant satisfies the court either that an appeal is pending or that the defendant is entitled and intends to appeal from the foreign country judgment, the court may stay the proceedings until the appeal has been determined or until a period of time sufficient to enable the defendant to prosecute the appeal has expired. Presumably, this will work like the stay provision in UEFJA. TEX. CIV. PRAC. & REM. CODE ANN. § 35.006 et seq. (Vernon 2008).

The party seeking to stay the proceeding in Texas should do so early in the proceeding, as soon as it becomes clear that, for example, the foreign country's court may have reversed itself. In *Gustilo v. Gustilo*, No. 14-93-00941, 1996 WL 365994, * 11 n.6 (Tex. App.—Houston [14th Dist.] July 3, 1996, writ denied), *cert. denied*, 118 S.Ct. 170 (1997), the judgment creditor sought to use the foreign court's judgment on appeal as a bar to the Texas proceeding it had started. The Texas court had ruled against the judgment creditor, and the foreign country's court entered a favorable ruling for the judgment creditor. *Id*. Because the judgment creditor did not seek a stay under section 36.007 while the foreign country matter proceeded through its appellate process, the Texas court would not grant the requested relief. *Id*.

G. Other Foreign Country Judgments

Section 36.008 states that the "chapter does not prevent the recognition of a foreign country judgment in a situation not covered by this chapter." There are no Texas cases discussing this provision. However, in *Zalduendo v. Zalduendo*, 360 N.E.2d 386, 390 (Ill. App.—1977)[33] the court stated that Illinois law would not allow the foreign country's judgment for alimony and child support to be enforced in Illinois. The court held that the analogous section dealing with situations not otherwise covered by UFCMJRA would not allow enforcement under principles of comity, either. *Id*.

III.

33 *Superseded by statute as recognized in, Pinilla v. Harza Eng'g Co.*, 755 N.E.2d 23, 26 (Ill. App.—2001).

RENEWAL OF TEXAS JUDGMENTS

A. What does it mean to renew a Texas judgment?

Section 34.001 of the Texas Civil Practice and Remedies Code specifies the time after which a Texas judgment becomes dormant, and the mechanism for renewing the judgment. Section 34.001 is entitled, "No Excecution on Dormant Judgment" and it states:

> (a) If a writ of execution is not issued within 10 years after the rendition of a judgment of a court of record or a justice court, the judgment is dormant and execution may not be issued on the judgment unless it is revived.
>
> (b) If a writ of execution is issued within 10 years after rendition of a judgment but a second writ is not issued within 10 years after issuance of the first writ, the judgment becomes dormant. A second writ may be issued at any time within 10 years after issuance of the first writ.

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

Renewal of a Texas judgment is important because once a Texas judgment becomes dormant, then if it is not revived (see section IV of this paper, *infra*) it is barred forever. *Andrews v. Roadway Exp. Inc.*, 473 F.3d 565, 569 (5th Cir. 2006); *TAPSS, L.L.C. v. Nunez Co.*, 368 B.R. 575, 577-78 (W.D. Tex. 2005), *aff'd*, *In re Rippstein*, 195 Fed.Appx. 200 (5th Cir. 2006), *cert. denied*, *TAPSS, L.L.C. v. Nunez Co.*, 127 S.Ct. 1006 (2007). Once a judgment lien terminates because the underlying judgment has become dormant, it can never be extended. *Olivares v. Nix Trust*, 126 S.W.3d 242, 249 (Tex. App.–San Antonio 2003, pet. denied), *cert. denied*, 125 S.Ct. 91 (2004).

B. When is a judgment "rendered" for the purposes of section 34.001?

Well, the previous two sections of this paper, sections I and II, were about domesticating foreign state and foreign country judgments. Before we leave those subjects behind completely, we can look at a case involving the domestication of a foreign judgment to help understand when a judgment is "rendered" under section 34.001. A foreign judgment is rendered when it is filed in Texas under UEFJA. *Ware v. Everest Group, L.L.C.*, 238 S.W.3d 855, 864 (Tex. App.–Dallas 2007, pet. denied). It is not "rendered" for purposes of section 34.001 at a later date when the motion for new trial is denied. *Id*. at 863. The court in *Ware* also held that the Texas judgment that was rendered was a separate and distinct judgment from the foreign state judgment for purposes of determining when the ten year period for dormancy starts. *Id*.; *see also Andrews*, 473 F.3d at 569 (holding that the ten year period for dormancy began to run when the U.S. Supreme Court denied review of the judgment by denying the petition for certiorari). *See also*, *John F. Grant Lumber Co. v. Bell*, 302 S.W.2d 714, 717 (Tex.Civ.App.–Eastland 1957, writ ref'd.) (holding that the ten year period for dormancy after rendition began when the motion for rehearing was overruled by the Supreme Court, and *not* at the later date when the mandate issued). Always assume that the earliest possible date is the correct date to be safe.

C. Tolling the ten year period for dormancy.

Fraudulent concealment of assets will toll limitations for execution of judgment.

Stonecipher's Estate v. Butts' Estate, 591 S.W.2d 806, 809-10 (Tex 1979). Therefore, an action to enforce a judgment would not be barred if reasonable diligence was exercised in attempting to discover the debtors' assets. *Id*. However, an agreement, even if written into the judgment itself, will probably not relieve a judgment creditor of the necessity of having a writ of execution issued within ten years to prevent a judgment becoming dormant. *Commerce Farm Credit Co. v. Ramp*, 116 S.W.2d 1144, 1153 (Tex.Civ.App.–Amarillo, 1938), *aff'd*, *Commerce Trust Co. v. Ramp*, 138 S.W.2d 531 (Tex. Comm'n. App. 1940). Finally, the judgment debtor's absence from the state will not toll the ten year period after which the judgment becomes dormant. *Cadle Co. v. Jenkins*, 266 S.W.3d 4, 7 (Tex. App.–Dallas 2008, no pet.).

D. What does it mean to "issue" a writ of execution?

Both sections (a) and (b) of section 34.001 discuss issuing a writ of execution. A writ of execution is a writ sought by a judgment creditor to enforce a judgment. *Rollins v. American Exp. Travel Related Serv's Co., Inc.*, 219 S.W.3d 1, 3 n. 1(Tex. App.–Houston [1st Dist.] 2006, no pet.). The term "issue" means more than mere clerical preparation of the writ. *Id*. at 4 (citing *Williams v. Short*, 730 S.W.2d 98, 99 (Tex.Civ.App.--Houston [14th Dist.] 1987, writ ref'd n.r.e.)):

> It requires that the writ be delivered to an officer for enforcement. The judgment creditor carries the burden of proving not only clerical preparation of the writ within the statutory time period, but also either actual delivery to the appropriate officer within the period or, if actual delivery is made after expiration of the statutory period, then reasonable diligence in making delivery from the date shown on the writ until actual delivery to the officer.

Id. (internal citations omitted); *Williams*, 730 S.W.2d at 100 (citing *Ross v. Am. Radiator & Standard San. Corp.*, 507 S.W.2d 806, 809 (Tex.Civ.App.--Dallas 1974, writ ref'd n.r.e.)). *See also, Carpenter v. Probst*, 247 S.W.2d 460, 461 (Tex.Civ.App.—San Antonio 1952, writ ref'd.) (holding that an 'issuance' contemplates not only the clerical preparation of an execution, but also includes an unconditional delivery to an officer for enforcement in the manner provided by law). There is a presumption that a sheriff has performed his duty when the writs are delivered to his or her hand and returned nulla bona, or nothing found. *Leonard v. Delta County Levee Improve. Dist. No. 2*, 507 S.W.2d 333, 335 (Tex. Civ.App.–Texarkana), *aff'd*, *Delta County Levee Improve. Dist. No. 2 v. Leonard*, 516 S.W.2d 911 (Tex. 1974), *cert. denied*, 96 S.Ct. 48 (1975).

What is involved in actually issuing a writ of execution or having one issued for the purposes of satisfying this statute? Well, as a practical matter, one writes a letter to the clerk asking for a writ of execution to be issued, and pays the proper fee. After that, the determination of whether a writ of execution is "issued" gets more complicated.

The first thing to remember is that one should probably seek an actual writ of execution and not a writ of garnishment. *Shields v. Stark*, 51 S.W.540, 540 (Tex.Civ.App.—Fort Worth 1899, no writ) (holding that the issuance of a writ of garnishment was not an execution, so as to prevent a judgment being barred by limitations). *But see, In re V.R.N.*, 188 S.W3d 835, 837 (Tex. App.–Eastland 2006,

pet. denied) (holding that the judgment in that case did not become dormant or stale because the Texas Family Code collection scheme and the judgment creditor's diligence in enforcing the judgment preserved the judgment). Thus, under *In re V.R.N.*, an attorney could argue that vigorous collection efforts including a writ of garnishment may be sufficient to keep any Texas judgment from becoming stale, even in the absence of a writ of execution.

Now, how do you show that the writ of execution was properly "issued?" In *Rollins*, 219 S.W.3d at 4, the court held that a notation on writs of execution issued after issuance of the original writ which stated that the first writ "was returned endorsed as follows: nothing collected" raised a presumption that the original writ was properly issued, for purposes of preserving the judgment under section 36.001.[34] In another case, the court held that writs of execution issued against a levee improvement district to keep a judgment lien alive, even though the property of district was not subject to pay the judgments rendered against the district, were "issued" within the meaning of section 36.001. *Leonard*, 507 S.W.2d at 336.

Likewise, where there was no showing that the sheriff was in any way thwarted or deterred from performing his or her duty when the writ of execution was delivered into his or her hands, the issuance of the writ was completed. *Carpenter*, 247 S.W.2d at 461. *But see, Commerce Trust Co. v. Ramp*, 138 S.W.2d 531, 536 (Tex. Comm'n. App. 1940) (holding that testimony that the writ of execution was handed to the sheriff with the direction that the sheriff should not levy on mortgaged property of one of the judgment debtors (even for a possibly valid reason) was insufficient to show "issuance of execution." The lesson to take from this is that the attorney does not want to signal to the sheriff that the sheriff should do anything but execute the writ if the attorney does not want that writ to be considered a nullity for dormancy purposes.

In *Hughes v. Rutherford*, 201 F.2d 161, 162 (5th Cir. 1953) the judgment creditor sent a writ of execution to the federal marshal within ten years of the judgment being rendered. *Id*. He included a letter stating that if no property was found subject to execution, the marshal should make return. *Id*. The marshal replied that he would make return, but that if the judgment creditor wanted him to perform a further search, the judgment creditor should make a deposit to cover the marshal's expenses for the search. *Id*. The judgment creditor paid the fee but made no deposit for the search. *Id*. The court held there was "issuance of execution". *Id*. at 163 (distinguishing cases in which the judgment creditor delivered the writ to the sheriff, but then thwarted the sheriff's efforts to execute the writ). Similarly, where the alias execution was delivered to the sheriff with the request that execution be returned "nulla bona" and the sheriff having found no property of defendants subject to writ on the county tax rolls made the requested return, and defendants owned no property within the county, the writ of execution was "issued" so that judgment did not become dormant under the statute. *R. B. Spencer & Co. v. Harris*, 171 S.W.2d 393, 395 (Tex.Civ.App.–Amarillo 1943, writ ref'd.); *see also, Walker-Smith v. Coker*, 176 S.W.2d 1002, 1010-11 (Tex. Civ.App.–Eastland 1943, writ ref'd.) (holding that the evidence was insufficient to raise a fact

[34] Indeed, in *Rollins*, the court held that the entire absence of a return does not negate an issuance of the writ. *Rollins*, 219 S.W.3d at 4 (citing *Carpenter*, 247 S.W.2d at 461).

issue for the jury on bad faith in the issuance and return of execution as having been issued as a mere formality to prevent the judgment from becoming dormant. There was insufficient evidence to show that the writ was delivered to sheriff with instructions not to attempt to collect judgment).

However, many courts have found that a lack of diligence or other deficiencies will nullify the "issuance" of the writ. For example, in *Ross v. American Radiator & Standard San. Corp.*, 507 S.W.2d 806, 808-09 (Tex.Civ.App.–Dallas 1974, writ ref'd. n.r.e.), the court held that execution was not "issued" within ten years from the date of issuance of the previous writ of execution where it was clerically prepared on the last day of the ten-year period but not delivered to the sheriff for levy until two months and 18 days thereafter. *See also*, *Williams*, 730 S.W.2d at 100 (same).

Further, in *Cotten v. Stanford*, 147 S.W.2d 930, 933 (Tex.Civ.App. 1941, no writ), the court found that the writ was returned unexecuted. *Id*. The evidence was that the writ was sent to the sheriff but it was not shown how it was sent, who sent it, whether it was received by the sheriff, nor whether the sheriff completed the return of the writ. *Id*. This established that the judgment was dormant at the time of issuance of the writ of execution, more than ten years after the judgment was rendered, and it would not support execution, and authorized an injunction against the seizure and sale of the property at issue. *Id*.

This rule applies even when the principal or owner of the judgment debtor is in bankruptcy. In *In re Kirby*, 55 F. Supp. 525, 527 (S.D. Tex. 1943), *aff'd*, *Yerby v. Kerr*, 143 F.2d 58 (5th Cir. 1944) a judgment was secured against both a bankrupt and a corporation wholly owned by bankrupt prior to adjudication in bankruptcy. The judgment creditor filed a claim on the judgment in the bankruptcy court but no writ of execution was issued on the judgment against the non-bankrupt corporation. *Id*. at 526. The judgment became barred by limitations after 10 years from the date of its rendition, and, hence, a petition in the bankruptcy court seeking to have the judgment paid out of the assets of the corporation which were in the hands of the trustee could not be allowed. *Id*. at 526-27.

E. Who has the burden of proof to show that the writ of execution had been timely issued?

The burden of proof of timely issuance of the writ of execution is on the judgment creditor. Even in a case where the judgment debtor is the plaintiff seeking a declaration of nonliability, the burden is on the judgment creditor/defendant to prove that the execution has been issued on the judgment within the statutory period. *Ross*, 507 S.W.2d at 809. Such proof must include not only proof of the clerical preparation of the writ within the time period, but also either actual delivery to the appropriate officer within the time period, or reasonable diligence in making delivery from the date shown on the writ until the date of actual delivery. *Id*.; *see also Rollins*, 219 S.W.3d at 4 (same).

F. What happens if the writ of execution is issued on a dormant judgment or it subsequently becomes dormant?

A writ of execution issued and executed on a dormant judgment is not void, but merely voidable. *Williams v. Masterson*, 306 S.W.2d 152, 156 (Tex. App.– Houston [1st Dist.] 1957, writ ref'd. n.r.e.) (holding,

therefore, that a purchaser at an execution sale under a dormant judgment takes a valid title). A dormant judgment will also support a writ of garnishment. *Tripplett v. Hendricks*, 212 S.W. 754, 755 (Tex.Civ.App.–El Paso 1919, no writ).

Similarly, because the writ of execution issued upon a dormant judgment is merely voidable and not void, strangers to the judgment cannot collaterally attack the judgment. *See also Hill v. Neuman*, 3 S.W. 271, 272 (Tex. 1887) (same); *Stanford v. Dumas*, 137 S.W.2d 1071, 1073 (Tex.Civ.App.–Amarillo 1940, writ dism'd) (same); *Collins v. Jones*, 79 S.W.2d 175, 177 (Tex.Civ.App.–Beaumont 1935, writ ref'd) (same).

G. Futility of the writ of execution is no defense to the expiration of the dormancy period.

Because issuance of the writ of execution is the only statutory method approved for preserving a judgment, courts have held that it does not matter of issuance of the writ of execution is a futile gesture, it still must be done. Thus, in *Grissom v. F.W. Heitmann Co.*, 130 S.W.2d 1054, 1056 (Tex.Civ.App.–Galveston 1939, writ ref'd.), the court found that even though the sale made under execution after the death of the judgment debtor, who was alive when the judgment was rendered, could not pass title, the issuance of the writ of execution was nevertheless effective to prevent the judgment from becoming dormant.

Similarly, it does not matter if the federal consent decree in *Andrews* was defective in that it did not include the names of relevant parties to the judgment nor state the amount of money to be paid. *Andrews*, 473 F.3d at 569. Such deficiencies did not render futile any attempt of employees to seek a writ of execution in accord with state procedural requirements, and the employees were not excused from the Texas requirement that they seek enforcement within ten years of the date the judgment was rendered. *Id*. And, in *Leonard*, even though the judgment creditor could not actually have a writ of execution executed against the political subdivision/judgment debtor in that case on sovereign immunity grounds, the law still required that a writ of execution be issued to keep the judgment alive against the judgment debtor. *Leonard*, 507 S.W.2d at 336 (holding that the judgment had to be preserved in order for the judgment creditor to be able to seek writ of mandamus to force the judgment debtor to levy taxes to pay the judgment).

H. Will laches bar collection under a non-dormant judgment?

Typically not. As long as a judgment does not become dormant, the doctrine of laches is not ordinarily available as an affirmative defense to an action to collect thereon. *Leonard*, 507 S.W.2d at 336.

IV.

REVIVAL OF JUDGMENTS

A. Introduction

The revival statute, Texas Civil Practice and Remedies Code section 31.006, is the answer to the question of what does the attorney who finds his or her client's judgment to have become dormant do. The current dormant judgment revival statute, section 31.006, is entitled "Revival of Judgment," and states:

> A dormant judgment may be revived by scire facias or by an action of debt brought not later than the second

> anniversary of the date that the judgment becomes dormant.

The act was amended in 1995, and Section 2 of the 1995 amendatory act provides:

> This Act takes effect September 1, 1995, and applies only to an action to revive a judgment brought on or after December 1, 1996. An action brought before December 1, 1996, is governed by the law in effect at the time the action was brought, and that law is continued in effect for that purpose.

The attorney seeking to revive a dormant judgment should therefore generally look to more recent case law in determining a course of action. *See In re Brints*, 227 B.R. 94, 96 (Bkrtcy. N.D. Tex. 1998) (holding that the date on which the motion to revive was filed controlled which version of the statute applied); Where the statute was amended before the judgment became dormant, the revival action would proceed under the amended statute as the judgment debtor had no vested right in the old version of the statute. *F.D.I.C. v. Shaid*, 142 F.3d 260, 262 (5th Cir. 1998).

B. What is scire facias?

Perhaps the first place to start with this statute is to determine what scire facias is. The writ of scire facias (from the Latin meaning, "to cause to be known") is a writ used to enforce the execution of some matter of record on which it is usually founded. The purpose of the writ is to give notice to the defendant of an application for an award or execution. AM. JUR. 2D, Executions and Enforcement of Judgments § 15. The term "scire facias" is not only ascribed to the writ, but also to the whole proceeding that is instituted thereby. *John E. Quarles Co. v. Lee*, 58 S.W.2d 77, 79 (Tex. Comm'n App. 1933). A proceeding on a writ of scire facias, under this statute, is not a new lawsuit, but rather a continuation of the original lawsuit. *Sias v. Berly*, 245 S.W.2d 503, 512 (Tex.Civ.App.-- Beaumont 1950), *rev'd on other grounds*, *Berly v. Sias*, 255 S.W.2d 505 (Tex. 1953).

C. When is the revival statute used?

The statute is used to revive the judgment only after it has become dormant. *Ramp*, 138 S.W.2d at 535. If it is not yet dormant, the revival statute has no applicability as the judgment creditor may have a writ of execution issued to preserve the judgment. *Id*.

D. What is the appropriate court for scire facias in terms of jurisdiction and venue?

One advantage of proceeding with scire facias instead of an action of debt in seeking to revive a dormant judgment is that it acts as a mere continuation of the original suit, and so there is no need to reacquire jurisdiction over the judgment debtor. *Berly*, 255 S.W.2d at 508. Venue of such a proceeding is properly in the same county where the judgment was rendered regardless of the judgment debtor's current residence. *Carey v. Sheets*, 218 S.W.2d 881, 882 (Tex.Civ.App.–Waco 1949, no writ).

E. What form does scire facias take?

Reviving a debt by scire facias is a matter of merely filing a motion. It is not necessary in a scire facias proceeding that any petition accompany the writ. *Polnac v. State*, 80 S.W. 381, 382 (Tex. Crim. App. 1904); *Simmons v. Zimmerman Land & Irr. Co.*, 292 S.W. 973, 975 (Tex.Civ.App.–El Paso 1927, no writ).

F. What is an action of debt under section 31.006?

Section 31.006 allows for an action of debt as an alternate method to revive a dormant judgment. Although the statute does not define an action of debt, a new suit based on the original judgment brought against the judgment debtors is an action on debt sufficient to revive a judgment. *In re Brints*, 227 B.R. at 97. A suit to revive a dormant judgment is "a suit for debt," and there appears to be no distinction between "a suit for debt" and "an action of debt." *Id*. Similarly, an adversary proceeding brought to except a judgment debt from discharge, as a new suit that was based upon the original judgment and brought against the judgment debtor, qualified as an "action of debt" which was sufficient to revive the judgment under section 31.006. *In re Deasy*, 275 B.R. 490, 494 (Bkrtcy. N.D. Tex. 2002), *aff'd*, 66 Fed. Appx. 526 (5th Cir. 2003).

An action of debt does not need to be brought in the same court as the court that rendered the original judgment, unlike a scire facias. *Burge v. Broussard*, 258 S.W. 502, 505 (Tex.Civ.App.–Beaumont 1924, writ ref'd.).

G. Tolling of limitations

Though the statute expressly states that an action to revive a dormant judgment must be brought, whether by scire facias or action of debt, within two years, a practitioner in Texas might find, however, that there is an equitable exception to the two year period for revival of a dormant judgment under section 31.006. In *Harding v. Lewis*, 133 S.W.3d 693, 696 (Tex. App. Corpus Christi 2003, no pet.) the court found both direct and circumstantial evidence that the judgment debtor engaged in a series of purchases, claims of homestead, and re-conveyances of real property which supported the conclusion that the judgment debtor's fraudulent conduct sought to evade execution of judgment against him, thus tolling the two year limitations period for revival of the judgment. *Id*.

The flip side of the holding in *Harding* is, however, that when a judgment creditor files suit to revive a dormant judgment within the applicable period for revival, he or she is under a continuing duty to exercise ordinary diligence to obtain service on the defendant/judgment debtor until service of process is obtained in order to toll running of limitations. *Hughes v. McClatchy*, 242 S.W.2d 799, 804 (Tex.Civ.App. 1951, writ ref'd n.r.e.). Further, in *Ware*, the court stated that the statute tolling a limitations period during a defendant's absence from the state did **not** apply to a judgment creditor's action to revive a dormant judgment. *Ware*, 238 S.W.3d at 865. The court noted that the record did not show that the judgment debtor contracted debt in the state *before* leaving the state. *Id*. It is not one-hundred percent clear that the *Ware* court held that the tolling statute, Texas Civil Practice and Remedies Code section 16.063, could never apply to an action to revive a judgment. Nevertheless, they certainly held it did not apply under the facts of *Ware*. *Id*.

Finally, the court in *Ware* held that the Texas judgment that was created under UEFJA in Texas to domesticate a foreign state's judgment, was a separate judgment from the foreign judgment. *Ware*, 238 S.W.3d at 862. That impacted the court's determination of whether the Texas judgment was barred for purposes of ascertaining whether the action to revive the dormant Texas judgment was barred by limitations. *Id*. That is, they started the

clock from the filing of the Texas domestication proceeding, rather than from the original foreign state judgment date. *Id*.

V.

CONCLUSION

Domesticating a foreign state, federal or foreign-country judgment is not hard. Nor is renewing or reviving a judgment. This paper has given you a step by step guide for completing these tasks in Texas. Armed with the case law in sections I – IV of this paper, the Texas practitioner should be able to provide excellent legal services for his or her client. The attorney need only follow the wording of the statutes closely, and ensure that his or her filings meet the formal criteria. Good luck in undertaking such matters in the future. Feel free to call me at the courthouse if I can be of service.

Mike Engelhart