



THE FLORIDA BAR INTERNATIONAL LAW SECTION

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INTERNATIONAL LAW SECTION OF THE FLORIDA BAR PROPOSAL TO AMEND SB 760 (BEAN) / HB 623 (BYRD) ON DOMESTICATION OF OUT-OF-COUNTRY MONEY JUDGMENTS

To encourage international trade and to encourage other countries to recognize Florida judgments, the state established a framework for the recognition of out-of-country judgments. To establish such a framework, Florida adopted certain provisions of the 1962 version of Uniform Foreign-Country Money Judgments Recognition Act. See section 55.605, Fla. Stat. Currently, the statute provides three grounds upon which a court *must* refuse to recognize an out-of-country money judgment (ss. 55.605 (1)(a)-(c)) and eight grounds upon which a court *may* refuse to recognize an out-of-country money judgment (ss. 55.605 (2)(a)-(h)).

SB 760 / HB 623 seek to revise section 55.605 by adding two additional discretionary grounds for non-recognition, based on the 2005 version of the Uniform Foreign-Country Money Judgments Recognition Act. Pursuant to the bills, a Florida court is not required to recognize or enforce a foreign judgment if:

(2) An out-of-county foreign judgment need not be recognized if:

- (i) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.
- (j) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

The International Law Section of The Florida Bar ("ILS") has numerous practitioners who work in the field of out-of-country judgment domestication and believe the present statutory framework is adequate, but appreciate the objective behind SB 760 / HB 623.

However, from their practical experience, the ILS believes that the language in proposed subsection (2)(i), concerning the establishment of "substantial doubt" about the integrity of the rendering court, creates an unfairly low bar to potentially prevent Florida collection efforts on a valid, legitimate out-of-country judgment. The ILS proposes an amendment to the bills to address this concern.

For example, under the bills, if Florida counsel for the judgment debtor (who was proven in the foreign court to have breached a contract with the Florida plaintiff, or defrauded a Florida plaintiff) argues that the judgment debtor was an unsympathetic party in the foreign tribunal, or

merely argues to the Florida Circuit Court judge that the reputation of the rendering foreign country's courts raises "substantial doubt" as to their integrity, then with such a low standard of proof, and without proving any fraud or unfairness in the foreign court proceeding, the breaching or defrauding judgment debtor could succeed in preventing the domestication of the judgment in Florida.

This could have the unintended consequence of people defrauding Floridians abroad, and then when the Floridian sues abroad and possibly obtains a judgment abroad, the Floridian may be unable to collect in Florida via domestication, despite the judgment debtor having assets in Florida, merely because the judgment debtor raised enough *doubt* as to the propriety of the foreign, rendering court. Florida may, consequently, develop a reputation as a place where foreign court judgments are easily blocked and therefore, Florida is a good place to hide defrauded assets for those who commit frauds abroad.

Moreover, this may also make it harder to have Florida judgments recognized abroad.

To resolve what we believe are these unintended results, the ILS proposes the bills be amended to establish that the party resisting recognition under subsection 2(i) has the burden of establishing that the ground exists by "clear and convincing" evidence.

Accordingly, the ILS suggests the following changes or amendment to the proposed language of SB 760 / HB 623 (changes are underlined):

55.605 Grounds for non-recognition.—

(2) An out-of-country foreign judgment need not be recognized if:

(i) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment. A party resisting recognition of an out-of-country foreign judgment under this subsection has the burden of establishing by clear and convincing evidence that the ground for non-recognition exists.

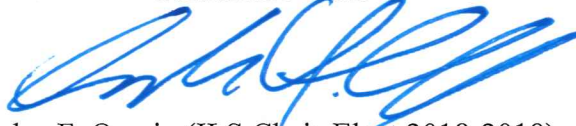
(j) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(3) A party resisting recognition of an out-of-country foreign judgment has the burden of establishing that a ground for non-recognition stated in subsection (1) or

(2) exist.

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