

# Recognition of Foreign Judgments in the United States

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Every year, thousands of foreign court judgments are brought to U.S. federal and state courts for recognition and enforcement, raising thorny issues for both U.S. and foreign lawyers seeking to obtain, or oppose, recognition. Carlton Fields shareholder Oleg Rivkin, who focuses on international litigation and arbitration, frequently helps corporate and commercial clients obtain or oppose recognition of foreign judgments in U.S. courts. In a recent interview, he provided background on the issue and touched on the challenges these matters present. A condensed version of that conversation follows.

**Q.** *What types of businesses are likely to confront recognition and enforcement issues?*

**Mr. Rivkin:** Any that are involved in cross-border transactions or that have any international dimension—especially those with agreements that allow them to be sued in foreign courts. Companies with assets in the U.S. must be particularly concerned. Invariably, parties seek recognition of judgments in U.S. courts because that’s where the judgment debtor’s assets are located. Most American companies that do business abroad have the bulk of their assets in the U.S.

**Q.** *Are there any threshold requirements for recognition?*

**Mr. Rivkin:** Yes. As a rule, only money judgments will be recognized, not those granting injunctive or declaratory relief. Additionally, judgments must be final, with all appeals exhausted. Judgments for penalties, like tax for example, and those arising out of domestic disputes are generally not recognized.

**Q.** *What law governs the recognition and enforcement of foreign judgments?*

**Mr. Rivkin:** It varies by state. The U.S. is not a party to any international treaty, and there is no governing federal law. There are, however, three standards applied: the 1962 Uniform Foreign

Money-Judgments Recognition Act, adopted by 16 states; the 2005 Uniform Foreign-Country Money Judgments Recognition Act, adopted by 18 states; and the Restatement (Third) of Foreign Relations Law, followed by 16 states.

**Q.** *How has the issue arisen in your cases?*

**Mr. Rivkin:** As an example, an American company does business with a foreign company and the two sign an agreement that contains a forum selection clause that provides for resolution of all disputes in a New York court. A dispute arises, and the foreign company decides it would rather sue in its own country's courts. For this example, let's say the country is Argentina. The U.S. company may protest, but the Argentine court decides to disregard the forum selection clause on the ground that the U.S. company is doing business in Argentina and therefore subject to its laws. When the Argentine company gets a judgment, it has only a piece of paper. Since the U.S. company's assets are in the U.S. it brings that judgment here to collect. Again, the U.S. company objects, this time to recognition. In this case, the U.S. court will likely refuse recognition of the Argentine judgment based on the forum selection clause.

**Q.** *What are the greatest challenges for U.S. lawyers handling these cases?*

**Mr. Rivkin:** A U.S. lawyer seeking or opposing recognition will often need to become well versed in the foreign legal system from which the judgment originated. This means working with foreign lawyers and legal experts, gathering evidence, and then presenting it to a U.S. judge in a comprehensible manner that advances your client's interests. A lawyer becomes a cultural interpreter of sorts.

**Q.** *Do you see any trends regarding the recognition of foreign judgments?*

**Mr. Rivkin:** The trend is toward a more international approach that provides for greater recognition of foreign judgments. One traditional objection to recognition has been that foreign courts do not provide due process, as American lawyers understand the term. However, courts are increasingly finding that, in this context, the term 'due process' need not mirror the complex American concept. Rather, it refers to a process that can be described as 'fundamentally fair.' One influential court has termed this "international due process." Another trend is that U.S. courts are delving more deeply into the workings of foreign court systems when faced with challenges to recognition based on partiality, fraud, etc.

These and other issues will be discussed in greater depth during [A Primer on Foreign Judgments; a webinar on Recognition of Foreign Judgments in the United States](#). [Register for this complimentary webinar, which takes place July 24, 2014.](#)

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