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SERVICE OF PROCESS IN LATIN AMERICA

PRESENTATION BY JULIE C. FERGUSON
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I. INTRODUCTION

The focus of my presentation is on the service of judicial documents in Latin America. While various methods may be available, the two most common are 1) the machinery of the Inter-American Convention on Letters Rogatory, and 2) a formal letter of request from a court in the requesting country to the appropriate judiciary authorities in the requested country. I will provide a general overview of these two methods and the advantages and disadvantages of each.

II. FEDERAL AND STATE RULES ON SERVICE OF PROCESS

A. Federal Rules of Civil Procedure

In the United States, federal or state law must authorize service of process. Rule 4(f) of the Federal Rules of Civil Procedure governs service of process outside the United States. This rule was amended in 1993 to make specific mention of the Hague Service Convention and other treaties governing service of documents in foreign countries. The revision was designed to encourage resort to internationally agreed means of service and to make attorneys aware of their availability. Rule 4(f)(1) Fed. R. Civ. P. provides the first authorized

manner of service of process abroad. It states that service may be made by any internationally agreed upon means, and specifically mentions the Hague Service Convention. The United States is also a party to the Inter-American Convention ("Inter-American Convention on Letters Rogatory"), which is of more particular relevance for our purposes today.

Rule 4(f)(2)(A) provides that if there is no internationally agreed upon manner for service in a foreign country, the counsel or party in the United States may serve in any manner described by law in the foreign country. Rule 4(f)(2)(B) provides that service may be undertaken as directed by the foreign authority in response to a letter rogatory issued by a United States court. Finally, Rule 4(f)(2)(C) provides that, unless prohibited in a foreign country, United States counsel may serve by personal delivery or by mail requiring a signed receipt to be addressed and dispatched by the clerk of court. These last two methods of service are not highly recommended. Even though private service of process is valid under United States law, we do not recommend trying it abroad. Some persons not qualified to serve process according to the laws of a foreign country may find themselves subject to sanctions for attempting service.

B. State Rules

In addition to the Federal Rules of Civil Procedure, each state in the United States has enacted certain statutes or rules that govern the service of process. A few have adopted rules modeled after the Federal Rules of Civil Procedure. Other states, such as Florida, do not have a specific provision for foreign service of process. Courts in these states are lenient, however, and they usually permit foreign service to be made as long as the state law does not prohibit it. I am not aware of any state statute that prohibits foreign service.

C. Determining the Appropriate Method for Service of Process

The decision as to which method to employ for extraterritorial service of process depends greatly on the circumstances and on the law of the country in which the documents are going to be served. It is very important that counsel undertake a study of the relevant laws in the foreign country. Several factors should be considered. Who is to be served? Is it an American or a non-resident alien? A foreign

company? Is there any manner in which the party may be served in the United States? For example, United States courts have held that foreign subsidiaries, and United States subsidiaries of foreign companies, may be served in the United States and that service may be effective on the parent company abroad, depending on the circumstances. It is also important to consider whether time is of the essence, because some methods of service are quicker and more efficient than others. There is, however, no foolproof method; a means employed in the past may no longer be effective because of a change in law or political circumstances.

III. SERVICE OF PROCESS UNDER THE INTER-AMERICAN CONVENTION

I would like to start with a general overview of the Inter-American Convention on Letters Rogatory. Currently Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela are members of the Inter-American Convention. This fact must be qualified noting that, as of April 1997, Venezuela does not appear to be executing requests forwarded under the Inter-American Convention. Also, Columbia has ratified the Convention, but has not yet designated a central authority to send and receive requests. The Colombian government is requesting that letters of request be sent through diplomatic channels. Until a central authority is designated, Colombians may send requests for service to the United States central authority.

The Inter-American Convention is comprised of both an initial Convention, which was adopted at the first conference on international law in Panama City in 1975, and the additional Protocol, which was adopted in 1979. The additional Protocol is the result of a U.S. revision, which was initiated after several signatories determined that the original Convention was insufficient in a number of areas. Both the Convention and the Protocol are easily found in Martindale-Hubbell's volume on international conventions. The Protocol makes several important changes to the basic Convention. The United States has declared that it maintains a treaty relationship only with countries that are parties to the Convention and the additional Protocol. Counsel must consult the Convention, the additional Protocol, and all declarations and reservations to determine what arrangements for international judicial assistance are in effect between

two countries

The Convention and the Protocol require parties to establish a central authority and to use the central authority as the primary means of transmitting and receiving letters rogatory. The terms "letter rogatory" and "letter of request" are used interchangeably. Article 2 of the Convention limits the Convention's use to civil and commercial matters. Although article 16 allows the Convention's application to criminal matters, only Chile has declared that it will apply the Convention in such cases.

Another important aspect of the Convention is that it mandates the use of prescribed forms. Attorneys no longer need to create a letter of request. The mandatory forms are comprised of seven pages. Form A is the letter of rogatory itself. It identifies the requesting parties and counsel, the requesting judicial authority, the case number, the central authorities of each country, and information regarding costs. Obviously, Form A is completed by the party requesting assistance, the requesting party.

The requesting party also completes Form B. Form B contains the address of the party to be served, a description of the basis of the complaint or the purpose of the judicial document, the time frame for any response when a response is required, and the legal consequences for failure to respond.

Form C is, in effect, the certificate of service (or non-delivery as the case may be). This form is executed by the central authority in the foreign country and then sent back to counsel in the United States.

The Convention mandates that a number of documents accompany the mandatory forms. The complaint or appropriate pleading must be attached, as well as a certified translation of the document. Counsel must also attach untranslated copies of all documents that are attached as exhibits to the pleading and the ruling or order of the issuing authority here in the United States. The forms and the copies of documents must be submitted in triplicate. This confuses some attorneys because the Hague Convention and other methods require only duplicate copies.

I would like to briefly comment on translations. The Convention says that only the document to be served needs to be translated, in addition, of course, to the information contained in the Form. It is

advisable, however, to translate the forms themselves or to obtain the forms in the language of the country in which the document is served. It is also advisable to translate all exhibits. I tried to serve a complaint in Panama pursuant to the Convention last year. In accordance with the terms of the Convention, I translated the complaint, but I did not translate one exhibit, a promissory note, that would have been very easy and inexpensive to translate. After six months, the letter of request was rejected by the Panamanian Central Authority, in large part, because I did not translate that exhibit. Counsel should translate everything to be safe.

The Convention also requires that the mandatory forms bear the seal and signature of the issuing judicial authority in the requesting country. This, in practical terms, necessitates filing a motion for the issuance of a letter of request in the United States.

Article 3 of the additional Protocol eliminates the legalization and authentication requirements that are present in the original Convention. In practice, however, the procedures may be necessary anyway. In the Panamanian case that I mentioned earlier, the Central Authority rejected my letter of request, not only because the exhibit was not translated, but also because the request was not legalized. I got it back and had it translated, legalized, and re-served. Legalization is a whole topic of discussion itself. We do not have time to go into it today, but counsel should be aware that it is a potential pitfall.

The Convention also provides that parties to the Convention may charge a fee for assistance offered pursuant to the Convention. Countries are supposed to attach schedules of their fees to their deposited documents, however, most have not done this. Argentina and Mexico, for example, do not charge a fee. The United States reserves the right to charge twenty-five dollars, but will waive the fee on the basis of reciprocity. To be safe, it is advisable to write a check for twenty-five dollars to the Central Authority here in the United States. If they do not need it, they will send it back.

Although intended to simplify extraterritorial service, the Convention is not always faster or more efficient than the customary letter rogatory process. It generally takes six months to a year. As I said, it took Panama six months to reject service. Argentina and Peru, I have been advised, are processing requests more quickly—within three or four months. Venezuela is not processing at

all. So, it is difficult to say exactly how long it will take to process a request.

Another interesting note is that, in the United States, there have not been a lot of court decisions dealing with the application of the Inter-American Convention. There have been only four or five decisions in the last couple of years. Several courts have held that the Inter-American Convention is not the exclusive means of service and that, therefore, even if both states are parties to the Convention, they are not required to follow it. Other courts have held that the Convention is not the exclusive means of service, but that if the party chooses to serve by way of a request, it must use the Convention.

IV. SERVICE OF PROCESS WHEN THE CONVENTION IS NOT APPLICABLE

Next I will review what must be done to effect service when there is no Convention in force or when the foreign country is not a party to the Convention. Under these circumstances, service must be made in accordance with United States law, as I explained earlier. Also, if counsel will need to enforce a foreign judgment in the foreign country, counsel should make sure that service is effected in accordance with the laws of that country as well.

A letter of request has been the customary and preferred method for transnational service of process in most civil law countries. It is one of the methods authorized by Rule 4 in the Federal Rules of Civil Procedure. The term "rogatory" basically denotes a formal request from a court in the United States to a court in a foreign country to perform some judicial act. There is no required form that must be prepared when issuing a letter of rogatory. Typically, however, it will contain information similar to that contained in the mandatory forms under the Convention. They state the nature of the judicial assistance being sought, ask that assistance be extended, offer future reciprocity to the requested state, and provide for payment of fees and costs that may arise.

Complainants and their counsel in the United States usually must file a motion requesting the United States court to issue a letter rogatory. Counsel should attach a sample of the letter of request. The letter of request must comply with U.S. procedure as well as with the laws and customs of the receiving state. These, of course, vary from

nation to nation, but they generally request that the letter of request be accompanied by a number of formalities, including the signature of a judge of the issuing court, an authenticated seal of the issuing court, and translations of the request and all other documents.

Depending on whether the two countries are parties to the Hague Convention abolishing legalization, the letter of request may need to be legalized according to the traditional chain authentication procedure. This process requires the clerk to certify the judge's signature, and then the Secretary of State must certify the clerk's signature. Thereafter, the request must be sent to the Department of State or to the Department of Justice and then to the consulate of the foreign country where the document is to be served. It is a very time consuming and costly procedure. Legalization may be essential, however, failure to do so may provide grounds for rejection.

A. Direct Court-to-Court Transmittal

There are basically two ways that the letters of request may be transmitted: direct court-to-court transmittal or transmission through diplomatic channels. In Venezuela, for example, counsel may use the court-to-court method. Of course, one does not really leave it in the hands of the court here to transmit a letter of request to the appropriate court in Venezuela. Rather, it is necessary to hire local counsel in the foreign country. This is advisable because only someone on the spot can effectively usher these letters of requests through the foreign bureaucracy. It is also advisable because local counsel can make sure that the defendant has adequate notice for United States constitutional purposes. They can effect service, collect all the required signatures, and ensure return of get the packet of documents back to U.S. counsel.

B. Transmission Through Diplomatic Channels

The other method of transmitting letters of request is through diplomatic channels. Colombia, for example, asks that letters of request be sent in this manner. The U.S. Department of State is the authority designated to assist United States counsel in sending letters of request to the appropriate foreign authorities. The requirements for the letter of request under this method are similar to those under the court-to-court method. Specifically, counsel must prepare two copies

of the letter of request and certify the translations of all necessary documents. Counsel also must provide a check for one hundred dollars to the U.S. Embassy in the country where the documents are going to be served. The U.S. State Department or the U.S. Embassy will then transmit the request to the foreign ministry who will then direct it to a local court. Counsel needs to direct the State Department or the Embassy as to the form of proof of service needed here in the United States. It is advisable to attach sample affidavits or certificates of service, although we have found that foreign process servers typically do not like to sign the documents that we provide them. They have their own preferred forms, and usually, as long as those forms state the name of the process server and the date service was attempted or accomplished, their forms will suffice.

PRE AND POST LITIGATION ISSUES: VENUE AND ENFORCEMENT OF FOREIGN JUDGMENTS

PRESENTATION BY DAVID A. PEARL
CONCEPCION, SEXTON & URDANETA

I. FORUM NON CONVENIENS

Under most state long-arm statutes, there is usually a way to attain personal jurisdiction over a defendant. If a contract was signed in the state or the defendant has an office in the state, you will usually be able to get personal jurisdiction. However, the Florida courts, like most states, are experiencing delays in civil cases because there are too many cases and not enough judges. In response, last year, the Florida Supreme Court adopted the federal standard of *forum non conveniens* in the case of *Kinney Systems, Inc. v. Continental Insurance Co.*, 674 So.2d 86 (Fla. 1996). This "new" standard, at least for the Florida courts, serves as a way for defendants to request that a case be dismissed in Florida if it would be more properly brought elsewhere.

There are four tests for *forum non conveniens*, as enunciated in *Kinney Systems* and Rule 1.061, Fla. R. Civ. P. First, is there an adequate alternative forum? Second, if the judge determines that an adequate alternative forum exists, the judge must then examine the pri-

vate interests or burdens of the parties. Third, if the burdens to both parties are the same, what public interest does the State of Florida have to continue with the case? Finally, how difficult would it be to bring the case in the foreign country?

A. Existence of an Adequate Alternative Forum

The first, and most important issue, is the existence of an adequate alternative forum. While the judicial system in the alternative forum does not have to be identical to that of the United States, the system must be fair enough to the notions of due process and to allow the bringing of a claim. For example, assume that an Iraqi national is sued in Florida. He argues that the case should be dismissed for *forum non conveniens* and brought in Iraq. The request would be denied because Iraq is not an adequate alternative forum.

B. The Private Interest Factors

The Court must then examine the "private interests" of the parties. Frequently, when a foreign defendant is sued in the United States he will claim that all employees, documents, and experts are in another country. While you may technically have jurisdiction over a defendant, the location of the evidence may be elsewhere. If it is easier to gather the proof, the witnesses, and documents in the foreign location, the court may dismiss the case and order that the case be brought in the appropriate country. In other words, how practical and expensive will it be to have the case heard locally?

C. The Public Interest Factors

If the "private interest" factors are near equipoise, or equal, the next question is whether Florida has any interest regarding the litigation. Frequently, a plaintiff will bring a case in Florida because he can obtain jurisdiction here but, in reality, the action has no connection with the state. Therefore, why should Florida taxpayers spend money on foreign nationals who have no connection to Florida? Does the case affect Florida's interest? Does it affect the public's interest? Does it involve regulation? Did the injury occur in Florida? The courts will look to see if the case has a connection to Florida. If it does not, they should dismiss it.

D. Ease of Bringing Suit in Foreign Court

Finally, if the first three tests are satisfied, the court must determine how easily the case can be brought in the foreign court. It must be able to be initiated "without undue inconvenience or prejudice." A defendant will usually stipulate to the case being filed elsewhere, including acceptance of the foreign service of process.

E. Applying the Kinney Systems Rules

Let's apply the *Kinney Systems* standards to a factual situation. Assume a gentleman named Mr. Jones lives in Venezuela. He takes his Venezuelan check to a bank, Banco. He says, "Banco, can you give me a check in U.S. dollars because I have to pay someone else." Banco says, "Mr. Jones we know you, give us your Venezuelan check." Mr. Jones gives them the Venezuelan check, and Banco gives Mr. Jones a check in U.S. dollars, drawn on a Miami bank. Mr. Jones takes that Miami check and brings it to another Venezuelan bank to pay off a loan. Well, you know what happens: Mr. Jones's Venezuelan check bounces, Banco then stops payment on the Miami check, the second bank does not know this and tries to cash the Miami check and the check bounces. The second bank, another Venezuelan bank, sues Banco here in Miami. Should the case remain in Florida under the *Kinney Systems* standards?

We represent a bank facing a similar situation. Our client was given the local check. When the local check bounced, our client stopped payment on the Miami check. My client was sued here in Miami by the second bank. We first tried to dismiss the complaint based on lack of personal jurisdiction because our client does not do any business here. The judge denied the motion.

While we were appealing that issue, the *Kinney Systems* case came down. The appellate court remanded the case back to the trial court on the issue of *forum non conveniens*. We went back to the trial court and had limited discovery on the issue of *forum non conveniens*. There was a battle of the experts. The plaintiff had their foreign lawyers submit a twenty-page affidavit, and our foreign lawyers submitted a twenty-page affidavit. We also filed an affidavit from a law school professor opining that Venezuela was a great alternative forum. The trial judge again denied our motion to dismiss. We appealed again.

This case has now gone on for two years. We are trying to have this case brought in Venezuela. We argue that all of the witnesses are there, Mr. Jones is there, that we cannot bring him up here, and that all the bank employees are down there. Alternatively, the plaintiff argues that the Florida courts should hear this case because a Florida check was bounced and that one of the bank officers lives in Florida. How would you rule?

II. ENFORCEMENT OF FOREIGN JUDGMENTS

A. Background

In trying a case, some problems always arise. At the end of the rainbow, of course, the goal is to get a final judgment. You want something that is not just suitable for framing, which unfortunately happens all too frequently. You want to have a piece of paper that you can bring to any court in Florida or any state in the United States to levy against assets of a defendant.

The concept of giving credit to foreign judgments goes back to a case in 1895 when the United States Supreme Court, in *Hilton v. Guyot*, 159 U.S. 113 (1895), recognized the theory of "comity." The Court considered the concepts of reciprocity and convenience, but stated that comity is not absolute.

The theory of comity, unfortunately, only takes us so far. By way of example, earlier this year, I represented a resort hotel in the Caribbean, and we sought injunctive relief and damages against an employee, a Florida resident. Two actions were filed, one in the Caribbean, another in Florida. On the morning of the injunction hearing in Florida, I had the results from the Caribbean action, where the judge ruled in our favor. The judge in Florida thought that was very interesting, but he said he would give as much weight to that order as the Caribbean court would give to his.

You do not want to bring a dual proceeding every time. In cases of injunctive relief, however, you should. Since judges are reluctant to try cases twice, if the case has been filed in a foreign jurisdiction first, they will usually try to give deference to that pending proceeding. If you already have a foreign judgment, however, you do not want to have to retry the case completely. What usually happens is that you will get a judgment in a foreign jurisdiction, but the defen-

dant may have fled or transferred assets to the United States. Unfortunately, the United States, despite *Hilton v. Guyot* from ninety-eight years ago, has not enacted any legislation to recognize foreign judgments.

B. Enforcing Foreign Judgments[*]

Julie Ferguson talked about the Hague Convention and service of process. There is also a Hague Convention on Enforcement of Judgments, although as of last year only three countries had recognized that aspect of the Hague Convention: Cypress, the Netherlands, and Portugal. There are also two Inter-American Conventions on extra-territorial validity of foreign judgments, of which about ten countries in Latin and South America have signed, but the United States has not, at least as of last year. So what do you do? It has basically been left to the states. Unfortunately, Florida, once again, has lagged behind.

In 1962, The National Conference on Uniform State Laws developed model legislation for enforcing foreign judgments. Florida adopted this only recently, in 1994, entitled the Uniform Out-of-Country Foreign Money Judgment Recognition Act, found at Section 55.601 *et. seq.*, Fla. Stats. ("the Statute"). The Statute provides a mechanism by which a plaintiff can record a foreign judgment here and then, hopefully, use that judgment to execute on assets owned by a defendant.

The procedure is very simple. First, take the foreign judgment, get it translated, and then file it with the court here in Florida. The plaintiff and the defendant are placed in a new caption, and you will be given a case number. At the time you file the judgment, you will also file an affidavit listing the name and address of the judgment creditor and the judgment debtor. The Clerk of Court is supposed to take the information on this affidavit and mail a copy of both the Judgment and the affidavit to the debtor, giving him notice of the

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* This topic has been widely published. My presentation today is largely based on a recent article in *Litigation Magazine*, published by the American Bar Association. I also recommend the treatises *International Recognition and Enforcement of Money Judgments*, published by Business Laws, Inc. and *Enforcing Money Judgments*, published by Matthew Bender. They also served as the source of my presentation today.

Florida filings. I usually do not like to do that for overseas cases. More than twenty-three thousand civil actions were filed in Dade County last year, and, unfortunately, the Clerk's office is overworked. Instead, I usually mail the papers myself, giving notice to the court. After thirty days, if you get no response, the Clerk makes a note in the file that no response has been received. Thereafter, the foreign judgment is as good as any domestic judgment and can be executed upon.

As an example, I filed a foreign judgment from Venezuela in Dade County, Florida in October, 1994. It was domesticated by December 1994, and I was able to execute on a bank account. I only had to wait about forty-five days and was able to collect some money from the defendant. The process is ministerial, but it does work. Unfortunately, depending on the size of the judgment or what is at stake, a defendant may dispute the validity of the foreign judgment. I will discuss a few of the grounds under which a foreign judgment will not be recognized.

C. Non-Recognition of Foreign Judgments

1. Dissimilarity of Legal Systems

There are three mandatory grounds for non-recognition of a foreign judgment. First, is the dissimilarity between the legal systems of the two forums. By way of example, if someone was to come here with a judgment from a court in Iraq, chances are that it would not be enforced. Again, the reason is that the Iraqi judicial system, to the extent one exists, is so different and does not have impartial tribunals. The goal is to give full faith and credit to judgments of foreign countries, but we will not merely rubber-stamp a foreign judgment. A foreign country has to have a judicial process that comports with due process. The foreign forum does not have to be identical to the United States, but it has to be fair. This defense is rarely used and is rarely effective.

2. Lack of Personal Jurisdiction

Another mandatory ground for not recognizing a foreign judgment is if there was no personal jurisdiction over that defendant when the judgment was rendered. Julie Ferguson pointed out that personal ju-

risdiction will usually not be a defense if the defendant was served in the foreign state. For example, if we have a judgment from Venezuela and the defendant was in Venezuela when he was served with the lawsuit in Venezuela, he cannot claim that the foreign judgment is invalid. Another ground is if the defendant voluntarily appeared in the other proceeding.

Likewise, if there was a contract at issue, and the defendant contractually agreed to submit to jurisdiction in that foreign country, and a judgment was rendered pursuant to that contract, the judgment will be presumed valid. The goal is that if the defendant was in the foreign jurisdiction at the time the complaint was served upon him and had notice of the proceedings, he had full opportunity to defend himself against the case.

In summary, lack of personal jurisdiction will not be grounds to nullify the intent to enforce the judgment here. Again, the goal is to not try the case twice. If you had the chance in the foreign jurisdiction, the United States courts do not want to try it again here. They want to give full faith and credit to that judgment, and they will enforce it.

This brings us to the important issue of where the case should be brought. Obviously, the goal is to collect the assets, but you want to do it as quickly and as easily as possible. If you have a defendant in a foreign jurisdiction and the assets are there, I recommend you bring it in that jurisdiction. Therefore, if you have a Venezuelan defendant who is here, but the assets are in Venezuela, bring the case in Venezuela.

3. Lack of Subject Matter Jurisdiction

Another mandatory ground for non-recognition is lack of subject matter jurisdiction. That is rarely invoked because courts here in the United States will usually presume that the foreign court did have subject-matter jurisdiction to render the judgment.

4. Lack of Notice

I want to spend a few minutes discussing discretionary grounds for non-recognition in the Statute. Sometimes we will have a defendant who claims that he did not receive notice of the foreign proceeding. He will argue that he never received service of process and did not

have a fair opportunity to contest the judgment rendered in the foreign state. Again, the United States court will give deference to the service of process rules in the foreign jurisdiction. Hence, proper notice is whether you know about a lawsuit.

5. Fraud

Another ground for non-recognition is fraud. Courts usually try to determine whether there are facts that a party did not know that prevented the case from being fairly tried. This differs from the fraud in which the party does know of misstatements. By way of example, let us say there is a case in a foreign jurisdiction and the defendant knows that forged documents are being submitted into evidence and the defendant knows that false testimony has been given. If you want to challenge those documents and testimony, you do it in a foreign jurisdiction because at least you have notice of the fraud. If the court in a foreign jurisdiction believes the fraudulent testimony, you are stuck with it, and the courts here in the United States are not going to retry that issue. Under the Statute, the courts are only going to look at cases where something is hidden and the party did not have a full and fair opportunity to litigate the case.

6. Other Grounds

A further ground is that the judgment conflicts with another order. There might be an agreement between the parties, such as a contractual clause, which says that they cannot bring a case in a foreign country. Finally, for public policy reasons a court in Florida may not give effect to a foreign judgment.

This panel discussion has been very brief. We have tried to provide you with a brief summary of some of the issues that we deal with. We have about five minutes for any questions.

AUDIENCE QUESTIONS

AUDIENCE PARTICIPANT: Are there long-arm statutes for all of the states, such as New York?

DAVID PEARL: Yes. As I mentioned, most long-arm statutes list several grounds to confer jurisdiction. For example, if you breach a

contract in a state, you are subject to jurisdiction. If you have offices in the state, you are subject to jurisdiction. The issue of *forum non conveniens* becomes relevant if the facts can be proved better elsewhere.

AUDIENCE PARTICIPANT: Does having a bank account in the state give personal jurisdiction?

DAVID PEARL: It depends on the long-arm statute, but usually a bank account without more is not enough.

AUDIENCE PARTICIPANT: What about some other elements of international litigation such as discovery and damages. How do you try to enforce them as a matter of law, especially in civil law countries?

JULIE FERGUSON: That is a big issue even at the service of process stage. I discussed earlier a number of things you should take into consideration when deciding how you should serve. One of them is whether a complaint contains a request for punitive damages or whether it is a complaint for collection of tax liabilities or something similar. Often courts will refuse to accept or refuse to forward a letter of request which asks for judicial assistance in serving documents that contain a request for those kinds of damages. The documents will not even get served. There is a problem from the beginning.

DAVID PEARL: Thank you very much.