

# Recognition of Foreign Money Judgments in the United States

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The Law Offices of  
*Sweet & Walker, PC*

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## Litigating Foreign Money Claims: What is the Required Currency?

Federal courts required judgments in U.S dollars based on two theories

- Sovereignty theory
  - *Hicks v. Guinness* (1925) 269 U.S. 71
  - *Frontera Transp. Co. v. Abaunza* (5<sup>th</sup> Cir. 1921) 271 F. 199
- The Coinage Act of 1792, Sec. 20
  - “[M]oney of the account of the United States shall be expressed in dollars . . . And all accounts in the public offices and all proceedings in the courts of the United States shall be kept in conformity of this regulation.”
  - *Shaw, Savill, Albion & Co. v. The Fredericksburg* (2d Cir. 1951) 189 F.2d 952
  - *International Silk Guild v. Rogers* (D.C. Cir. 1958) 262 F.2d 219

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## Currency Under Federal Law

- The Coinage Act of 1792, 1982 revision: 31 U.S.C. § 5101
  - Eliminated the currency language but majority of federal courts still hold suits must be in U.S. dollars
    - *Sainz Gonzalez v. Banco de Santander-Puerto Rico* (1<sup>st</sup> Cir. 1991) 932 F.2d 999
    - *Newmont Mines Ltd. v. Adriatic Ins. Co.*, (2d Cir. 1986) 609 F.Supp. 295
    - *Dynamic Cassette Int’l Ltd. v. Mike Lopez & Assoc.* (E.D.N.Y. 1996) 923 F.Supp. 8
    - *Cf. Competex, S.A. v. LaBow* (2d Cir. 1986) 783 F.2d 333 (questioning this rule given the revision)

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## Currency Under Federal Law

- Some later decisions have held there is no longer a bar due to the amendment
  - *In re Oil Spill by the Amoco Cadiz* (7<sup>th</sup> Cir. 1992) 954 F.2d 1279 (holding that the judgment currency should be that selected by the parties in their dealings)
  - *Mitsui & Co., Ltd. v. Oceanrawl Corp.* (S.D.N.Y. 1995) 986 F.Supp. 202 (awarded a foreign money judgment based on an international arbitration award denominated in yen)
  - *Competex, S.A. v. LaBow* (2d Cir. 1986) 783 F.2d 333 (questioning the rule requiring U.S. dollars)

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## Currency Under State Law

- Many state courts followed federal precedent and required conversion
  - *Teca-Print A.G. v. Amacoil Mach., Inc.* (N.Y. Sup.Ct. 1988) 525 N.Y.S.2d 535 ("It is generally unquestioned that there is no power in the State and Federal courts to award judgments in a foreign currency.")
  - *El Universal Compania Periodistica Nacional, S.A. de C.V. v. Phoenician Imports, Inc.* (Tex.App.Ct. 1990) 802 S.W.2d 799
- Many states enacted statutes that arguably require suits to be filed in U.S. dollars
  - *e.g.*, Arkansas; California\*; Idaho\*; Iowa; Louisiana; Maryland; Michigan; Montana\*; Nevada; New Mexico\*; New York\*\*; South Carolina; Tennessee; Vermont; West Virginia; Wisconsin\*
  - \*These statutes appear to conflict with the states' enacted Uniform Foreign Money Claims Act
  - \*\*New York's statute allows for foreign money judgments, but those judgments "shall" be converted to U.S. dollars on the judgment date

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## Currency Under State Law

- Today: More states are allowing foreign money judgments
  - Some states have specific statutes allowing for judgments to be in a foreign currency
    - *See, e.g.*, N.Y. Jud. Law § 27(b) (although it requires conversion on judgment date)
  - At least one state court has allowed foreign currency judgments
    - *e.g.*, *Manches & Co. v. Gilbey* (Mass. 1995) 646 N.E.2d 86
  - 22 states/territories have adopted the Uniform Foreign-Money Claims Act ("UFMCA")
    - California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Minnesota, Montana, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, U.S. Virgin Islands, Utah, Virginia, Washington, Wisconsin

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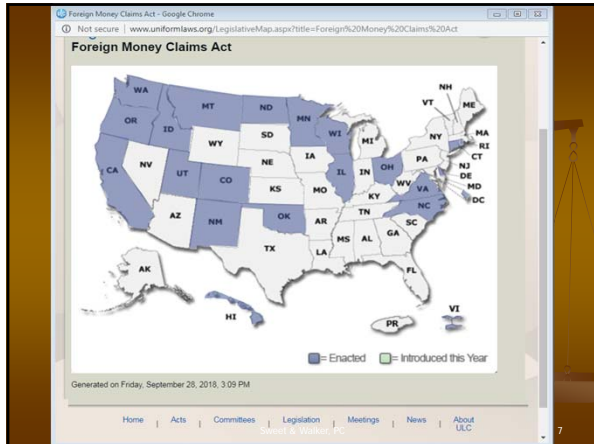
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### Currency Under the Uniform Foreign-Money Claims Act

- Authorizes courts to enter judgments in foreign currency
  - Purpose: To restore the aggrieved party to the economic position it would have been in had the wrong not occurred
- Allows parties to contractually agree to a currency in the contract (Section 4(a))
- If no agreement, requires that a claim on a foreign-money claim be payable in the money:
  - That is regularly used between the parties;
  - That was used at the time of the transaction in international trade, by trade usage or common practice; or,
  - That was the money which the loss was ultimately felt or will be incurred by the claimant (Section 4b).

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### Currency Under the Uniform Foreign-Money Claims Act

- The foreign money judgment is payable in that foreign money *or, at the option of the debtor*, in the amount of U.S. dollars needed to purchase the foreign money on the conversion date at a bank-offered spot rate (Section 7).
  - The conversion date is the banking date before the payment is made
- Costs must be entered in U.S. dollars
- Payment made in U.S. dollars must be accepted and credited in the amount of foreign money that could be purchased at a bank-offered spot rate of exchange at or near the close of business on the conversion date.

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## Form of Judgment Under the UFMCA

- "IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate – see Section 9) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars."
  - UFMCA treats the right to pre-judgment interest as matter of the substantive law under the state's conflict of laws rules, both as to the right to recover and the rate (Section 9a)
  - Post-judgment interest is the same rate of judgment as any other judgment under the state law (Section 9c)

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## Currency of Sister State Judgments Based on a Foreign Money Judgment Under the UFMCA

- Judgments from other states that are entered in a foreign money must be entered as provided in Section 7, which allows for payment in U.S. dollars, even if the foreign judgment does not allow that option
- Judgments entered on a foreign money claim from another state, which is expressed only in U.S. dollars, must be enforced in U.S. dollars only

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## Conflicts of Law Regarding the Choice of Currency

- Are currency choice laws substantive or procedural under *Erie R.R. Co. v. Tompkins* (1938) 304 U.S. 64?
  - The UFMCA and Massachusetts law conflicts with most federal court decisions
    - Is it procedural, i.e., does federal law apply in diversity and non-diversity suits?
    - Is it substantive, i.e., does state law apply in diversity suits?
- Federal courts have not addressed this issue

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## Litigating Foreign Money Claims: What is the Conversion Date?

### ■ Breach Day Rule

- Convert the foreign currency to U.S. dollars on the date of breach

*Hicks v. Guinness* (1925) 269 U.S. 71

- If a plaintiff has a claim under American law, the breach day rule was applied

### ■ Judgment Day Rule

- Convert the foreign currency to U.S. dollars on the date of judgment

*Deutsche Bank v. Humphrey*, 272 U.S. 517 (1926)

- Where claim arose entirely under foreign law, conversion occurs on judgment day (Note: the conversion actually occurred on the date suit was commenced)

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## Conversion Date

### ■ Payment Day Rule

- Convert the foreign currency to U.S. dollars on the date of payment

*Manches & Co. v. Gilbey* (Mass. 1995) 646 N.E.2d 86

### ■ UFMCA

- The bank-offered spot rate prevailing at or near the close of business on the business day next preceding the day of actual payment
- For execution, an affidavit is required setting forth the conversion date rate and the U.S. dollars needed to buy the foreign money. Any money received is converted the day before the sheriff receives the money.

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## Conflicts of Law Regarding Conversion Rules

- Federal courts consider currency conversion rules to be substantive

- State law applied in diversity suits

*e.g., Vishipco Line v. Chase Manhattan Bank, N.A.*  
(2d Cir. 1981) 660 F.2d 854

- Federal law applied in non-diversity suits

*e.g., Shaw, Savill, Albion & Co. v. The Fredericksburg* (2d Cir. 1951) 189 F.2d 952

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## Recognition of Foreign Judgments: Federal Court

- Foreign judgment recognition is governed by state law, except common law applies in federal question cases
  - *Hurst v. Socialist People's Libyan Arab Jamahiriya* (D.D.C. 2007) 474 F.Supp.2d 19
- No federal law regarding procedures for recognizing foreign country judgments
  - The 1961 Hague Convention
    - Created an apostille ("certification") to obtain certain specified information, which can be used to authenticate a judgment (similar to a notary)
  - The 1965 Hague Convention
    - Set forth service of process procedures
  - The 2005 Hague Convention on Choice of Court Agreements
    - Signed by the U.S. in 2009, but not yet ratified or in force
    - Mandates enforcement of exclusive choice of forum clauses. If the clause is silent, it is presumed to be exclusive
- Fed. Rule Civ. Proc. Rule 69
  - Enforced by writ of execution. The procedure for execution follows the state procedure where the court is located, but a federal statute governs to the extent it applies.

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## State Recognition Laws

- Common Law
- Uniform Foreign Money-Judgments Recognition Act
- Uniform Foreign-Country Money Judgments Recognition Act

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## Recognition Under Common Law

- *Hilton v. Guyot* (1895) 159 U.S. 113
  - Provides that comity, or mutual recognition, must be given to foreign country judgments
  - Comity is recognition of another nation's official acts
    - Some states and federal courts have rejected *Hilton's* reciprocity requirements (See, e.g., *Somportex Ltd. v. Phila. Chewing Gum Corp.* (3d Cir. 1971) 453 F.2d 435)
- Restatement of Foreign Relations Law, Sections 481 & 482
  - Recognizes final judgments allowing for a recovery of money, establishing or confirming the status of a person, or determining interests in property
  - Follows the local jurisdiction's enforcement procedures

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## Uniform Foreign Money Judgments Recognition Act ("UFMJRA") of 1964

- Recognizes judgments of a foreign state if it satisfied the standards for recognition, other than a judgment for taxes, a fine or penalty, or a family support judgment
  - "Foreign state"-any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands
  - "Foreign judgment"-any judgment of a foreign state that is *final and conclusive and enforceable* where rendered even if it is subject to appeal or an appeal is pending
    - A court may stay recognition if appeal is pending

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## UFMJRA

- 33 States/Territories originally enacted the UFMJRA:
  - Alaska, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, U.S. Virgin Islands, Virginia, Washington
    - In New York, the UFMJRA is codified in significant part in NY CPLR 53
    - Several states have adopted the 2005 updated Act (*e.g.*, Cal.Civ.Code §§ 1713 *et seq.*)

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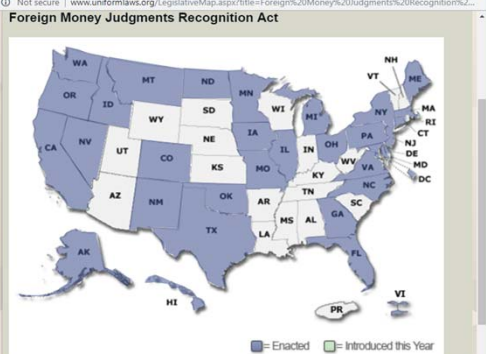
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Foreign Money Judgments Recognition Act - Google Chrome

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## Recognition Under the UFMJRA

- A foreign judgment is conclusive “to the extent that it grants or denies recovery of a sum of money”
- A foreign judgment is not conclusive if:
  - Foreign system does not provide impartial tribunals or due process of law
  - Foreign court did not have personal or subject matter jurisdiction
- Who’s Law Determines Finality Under the UFMJRA?
  - Courts look to the law of the foreign country to determine if judgment is final

*Manco Contracting Co. v. Bezdikian* (2007) 45 Cal.4th 192 (decided under former UFMJRA) (Qatari judgment became enforceable in California only when the Qatari appellate court issued an amended judgment causing the judgment to become final under Qatari law).

*Mayekawa Manufacturing Co. v. Sasaki* (1995) 76 Wash.App. 791 (finality of foreign judgment is governed by Japanese law).

*S.C. Chimexim S.A. v. Velco Enterprises Ltd.* (S.D.N.Y. 1999) 36 F.Supp.2d 206 (finality of foreign judgment is governed by Romanian law).

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## Exceptions to Recognition Under the UFMJRA

- Foreign judgment need not be recognized if
  - The defendant did not receive notice in time to defend
  - Judgment was obtained by fraud
  - The grounds for the claim or cause of action is repugnant to the state’s public policy
  - The judgment conflicts with another final and conclusive judgment
  - The foreign court proceeding was contrary to an agreement between the parties regarding jurisdiction
  - The foreign court was a seriously inconvenient forum
- Some states still make reciprocity a discretionary ground for recognition and at least two make it a mandatory ground
  - Georgia and Massachusetts

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## Recognition Procedures Under the UFMJRA

- No procedure for recognition under the UFMJRA
- Some states enacted procedural rules
  - Florida-Fla. Stat. Ann. § 55.604
  - Hawaii- Haw. Rev. Stat. Ann. § 658C-4
- Some courts follow the simplified registration procedure for recognition of sister state judgments
  - *Society of Lloyd’s v. Ashenden* (7th Cir. 2000) 233 F.3d 473
  - *Enron (Thrace) Exploration & Prod. BV v. Clapp* (App. Div. 2005) 378 N.J. Super. 8
- Most courts, including New York, require that a suit be filed to recognize the foreign judgment, whether based on common law or statutory law. See CPLR 5303

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## UFMJRA Enforcement

- Enforceable in the same manner as a sister state judgment
- Statute of Limitations – varies per state
  - Foreign country's law, i.e., no statutory limitation as long as the judgment is enforceable in the country where rendered
  - State of limitations applicable to enforcement of a comparable domestic judgment
    - e.g., Manco Contracting Co. v. Bezdikian* (2007) 45 Cal.4<sup>th</sup> 192 (applied a ten-year period applicable to sister-state judgments to a case decided under the UFMJRA)
  - General limitations period under state law
    - Former California law under *Dore v. Thornburgh* (1891) (applied a four-year statute that applied to actions not otherwise provided for)

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## Uniform Foreign-Country Money Judgments Recognition Act ("UFCMJRA")

- Amends and updates the Uniform Foreign Money-Judgments Recognition Act
- Enactments
  - Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Texas, Virginia, Washington
- 2015 Introductions: Massachusetts

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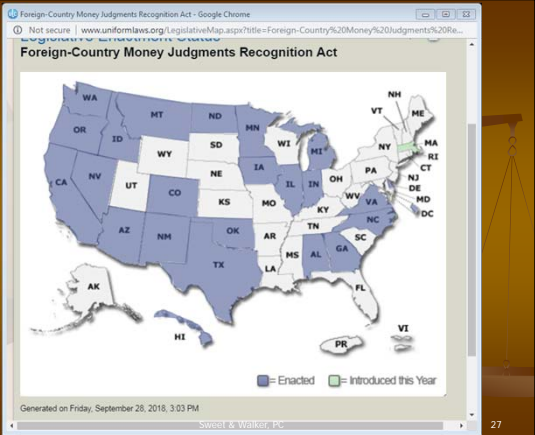
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## UFCMJRA Definitions

- A "foreign country" means a government other than:
  - (1) The United States
  - (2) A state, district, commonwealth, territory, or insular possession of the United States
  - (3) Any other government with regard to which the decision in this state as to whether to recognize a judgment of the government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution
- Foreign-country judgment means a judgment of a court of a foreign country that grants or denies a recovery of a sum of money, except for taxes, fines or other penalties, or family support judgments
  - Must be final, conclusive, and enforceable
  - Still allows a court to stay recognition if an appeal is pending, authorized, or planned, but adds "the time to appeal expires" as an additional provision for duration
  - If an appeal under the foreign law prevents the judgment from being conclusive or enforceable, then an existing appeal prevents recognition under the Act
  - California previously included tribal judgments and will do so again as of 2018

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## UFCMJRA Exceptions to Recognition

- A Foreign judgment is not conclusive if
  - Foreign judicial system does not provide impartial tribunals or due process of law
  - Foreign court did not have personal or subject matter jurisdiction
- Foreign judgment need not be recognized if
  - The defendant did not receive notice in time to defend
  - Judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case
  - The judgment, claim, or cause of action is repugnant to the public policy of the U.S. or state
  - The judgment conflicts with another final and conclusive judgment
  - The foreign court proceeding was contrary to an agreement between the parties regarding forum
  - The foreign court was a seriously inconvenient forum
  - The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court
  - The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law
  - California adds an additional provision dealing with defamation claims and requires the foreign law to provide at least as much protection for freedom of speech as in the U.S. and California (*see also* 28 U.S.C. § 4102 & 4104)

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## Recognition Procedures Under the UFCMJRA

- If recognition is sought as an original matter, the party seeking recognition must file an action in the court to obtain recognition.
- If recognition is sought in a pending action, it may be filed as a counter-claim, cross-claim or affirmative defense in the pending action.

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## UFCMJRA Enforcement

- The foreign-country judgment is conclusive between the parties to the same extent as a sister state judgment would be conclusive (full faith and credit)
- Enforceable in the same manner and to same extent as a judgment rendered in that state
- Once judgment is entered, it shall be entered in the currency per the applicable law, *e.g.*, the UFMCA in California
- Statute of Limitations – either: (1) the time during which the foreign-country judgment is effective in the foreign country; or, (2) 15 years from the date it became effective in the foreign country
  - Note: California shortened the time period to 10 years

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## Primary Differences of Acts

- Makes it clear that a judgment entitled to full faith and credit under the U.S. Constitution (i.e., Sister State judgments) is not enforceable under this Act. Recognition by a court is a different procedure than enforcement of a sister state judgment from within the United States.
- Provides that a party seeking recognition of a foreign judgment has the burden to prove that the judgment is subject to the Uniform Act. Burden of proof was not addressed in the 1962 Act.
- Conversely, it imposes the burden of proof for establishing a specific ground for non-recognition upon the party raising it. Again, burden of proof is not addressed in the 1962 Act.
- Defines final, conclusive and enforceable, but the determination is made under the foreign country law.
- Addresses the specific procedure for seeking recognition. The 1962 Act does not address the procedure to obtain recognition at all, leaving that to other state law.
- Provides a statute of limitations on enforcement of a foreign-country judgment. If the judgment cannot be enforced any longer in the country of origin, it may not be enforced in a court of an enacting state. If there is no limitation on enforcement in the country of origin, the judgment becomes unenforceable in an enacting state after 15 years from the time the judgment is effective in the country of origin. (See Comments to UFCMJRA)
  - California shortened the time to 10 years Cal. Code Civ. Proc. § 1721
- Adds 3 discretionary non-recognition grounds: (1) includes U.S. public policy as a basis; (2) includes corruption in particular case as a basis; and, (3) includes lack of due process or impartiality in particular case as a basis.

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## Jurisdiction Requirements Vary

- No personal jurisdiction required to seek recognition of a foreign court judgment.
  - *Beluga Chartering B.V. v. Timber S.A.*, 294 S.W.3d 300 (Tex. App. Houston 14th Dist. 2009) (Texas court would honor the foreign judgment unless one of the exceptions enumerated in the statute was satisfied, and personal jurisdiction in Texas was not listed as a requirement)
  - In New York, personal jurisdiction over the defendant or defendant's property may not be required if a creditor "merely asks the court to perform its ministerial function of recognizing the foreign country money judgment and converting it into a New York judgment[.]" *Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contr. & Fin. Servs. Co.*, 117 A.D.3d 609, 611 (1st Dep't 2014) (emphasis added).
  - However, if a defendant asserts a defense to recognition under CPLR § 5304, personal jurisdiction over the defendant or defendant's property in New York **will likely be required**. See *AlbaniaBEG Ambient Sh.p.k. v. Enel S.p.A.*, 160 A.D.3d 93, 107-08 (1st Dep't 2018)
- Personal jurisdiction over the judgment debtor is required and maintaining assets in the state is insufficient grounds
  - *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory"* (4<sup>th</sup> Cir. 2002) 283 F.3d 208 (cert. denied).
- Sufficient minimum contacts or assets in the state is required
  - *Electrolines v. Prudential Assurance Co.* (2003) 260 Mich. App. 144

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## Recognizing a Foreign Arbitration Award

- U.S. Ratified Treaties
  - Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention") deals only with international arbitration awards
    - Set forth in Chapter 2 of the Federal Arbitration Act (9 U.S.C. §§ 201-208)
  - Inter-American Convention on International Recognition and Enforcement of Foreign Arbitral Awards ("the Panama Convention")
    - Set forth in Chapter 3 of the Federal Arbitration Act (9 U.S.C. §§307-307)
  - Preempts state law
- U.S. Federal Arbitration Act (9 U.S.C. §§1-16)
  - A court *must* grant the award unless a specified ground for denial applies
- File a Petition to Confirm Arbitration Award

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