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May 31, 2002

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Re: International Jurisdiction and Judgments Project

Greetings;

I wish to make the following comments regarding the March 29, 2002 discussion draft of the Institute's proposed statute:

1. §1(b) - Definition of foreign judgment. The definition of a foreign judgment is so broad that it may include prejudgment remedies. This would create an interesting anomaly that foreign prejudgment remedies are enforced in the United States while domestic equivalents are not covered by the full faith and credit clause (because they are not final judgments) or the Uniform Enforcement of Foreign Judgments Act (because they aren't judgments). The words "final order" should be either omitted or modified.
2. §2(c) - Statute of limitations. Why is a statute of limitations included, particularly such a short one? In Connecticut, regular judgments are enforceable for

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twenty years and renewable for twenty five years.¹ Small claims judgments are enforceable (unless renewed) for fifteen years. I can see an argument for adopting the statute of limitations for either the jurisdiction rendering the judgment or the forum, but I see no reason to adopt an artificially short period. Does any state even have such a short period? This should be omitted.

3. **§3(a) - Costs.** It is possible for costs to be awarded to non-parties.² While this is not usual, substituting the word "person" for "party" would avoid the problem.
4. **§3(a) - Foreign Currency.** This conflicts with the concepts behind the Uniform Foreign-Money Claims Act without considering its philosophy of allocating the exchange risk. The exchange risk should rest on the defendant until the judgment is paid. This means the conversion should be done at the time of payment, not the time the judgment is recognized or even the execution being issued. This problem can be avoided by either importing the Uniform Foreign-Money Claims Act or simply saying that judgments can be rendered in a foreign currency.
5. **§5(a)(v) - Forum Selection.** This creates a problem in light of our substantial jurisprudence on waiver of forum selection clauses and waiver of arbitration clauses. The only time this might make sense is if the defendant failed to appear. If they did appear and contest, that should constitute a waiver of such a clause.
6. **§5(b)(ii) - Race to Judgment.** This matter was considered extensively in the ABA Model Conflicts of Jurisdictions Act.³ You didn't seem to address the

¹ Connecticut General Statutes §52-598.

² *Bergeron v. Mackler*, 225 Conn. 391 (1993).

³ Codified in Connecticut at Connecticut General Statutes §50a-200.

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issues in depth.

7. **§9(a) - Provisional measures.** This area is not codified for domestic matters. Therefore, it may become easier to obtain provisional matters in international matters than it is in domestic matters. Do you really want to do that?
8. **§9(b) - Provisional measures procedures.** To avoid federal state problems, federal courts use local procedures for executing on judgments and for prejudgment remedies (see Federal Rules of Civil Procedure 64 and 69). This essentially means the procedure can vary from district to district. I am not sure what your proposed language adds, other than a source for confusion.
9. **§11 - Registration.** Most states do not have procedures to register foreign judgments from sister states (except to the extent the Uniform Enforcement of Foreign Judgments Act is enacted). In Connecticut, we must sue on default appearance judgments from other states. Given the success of 28 USC §1963 (which is rather vague but still seems to work), I would suggest simply deleting the sentence that starts with "A judgment so filed...".

The larger question is whether or not a reciprocity requirement should be imposed. While I understand such a requirement may offer negotiating leverage when dealing with other countries, I am personally opposed to it.

There is some question in my mind about what the American Law Institute will do with this finished product. There is no doubt the Institute has a scholarly reputation and produces the highest quality work. In the rough and tumble world of politics, that is often not enough to have legislation enacted.

Simply transmitting a proposed statute to the Congress will not automatically result in the a proposed bill, much less enactment. The Institute must adopt a plan for having its proposal enacted. This may need to include a paid lobbyist and the active involvement of many members.

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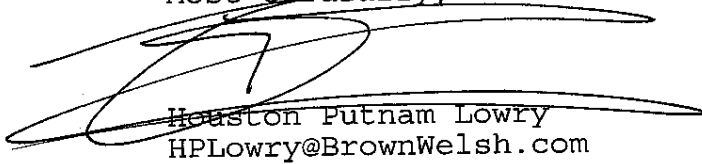
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Please do not hesitate to contact me immediately if you have any questions.

Most cordially,



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cc: Professor Robert E. Lutz, II
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