

Enforcing U.S. Judgments in NAFTA Jurisdictions: Comparing Procedures and Strategies

Akron Foreign
Credit Group

April 11, 2006
Akron, Ohio



Disclaimer



The information provided is believed to be accurate as of the date of the presentation, but is subject to change without notice.

This presentation is designed for informational purposes only and is not intended to be, nor should be, deemed specific legal advice. If such advice is required, please consult with an attorney.

Objectives

- Familiarize or refresh companies with judgment enforcement procedures in NAFTA jurisdictions
- Provide information to consider collection strategies

Sales Terms Assumptions



Net 30 terms

USD – finance/interest; attorney fee provision

No sales contract – pro forma/P.O.

No retention of title provision

No forum selection or choice of law clauses

No international arbitration provision

No assets in U.S.

Hypothetical Sale and Non-Payment



USD 150,000 sale to Canadian and Mexican sister companies

Shipped from Akron; to be paid in Akron

Unpaid for 180 days; broken promises

STRATEGIES?

Hypothetical Lawsuits



File suits in Summit County CP or U.S.
District Court

Customers default; judgment entered
against each

USD 150,000 plus interest from payment
default date at 18% per annum, and USD
20,000 attorneys fees

Demand payment; not received
after 90 days

Enforcing U.S. Judgment: Mexico



Multi-step approach – must be recognized as valid **MEXICAN** judgment

Not automatic recognition

Treaties or Laws?

Homologacion – verifying meet criteria to enforce foreign judgment

Enforcing U.S. Judgment: Mexico



Question 1 – Subject matter?

In rem – not recognized

Question 2 – Final judgment?

No other action pending

Question 3 - Contrary to public policy?

Enforcing U.S. Judgment: Mexico



Question 4 – U.S. court have valid jurisdiction?

Question 5 – **PROPER SERVICE**

Inter-American Convention
on Letters Rogatory

Misnomer – use Convention form

Enforcing U.S. Judgment: Mexico



Summary proceeding

KEY ISSUE: Personally served on entity at main office – meets **due process** principle

9 days after receipt – submit defense arguments

District court has limited review power

If evidence challenges judgment authenticity – hearing involving prosecutor

Enforcing U.S. Judgment: Mexico



Specific Issues

Rendering court had proper jurisdiction

Forum selection clause – generally valid

If no forum selection –

place designated by defendant for court notice to discharge obligations;

place to fulfill obligation agreed to; and

defendant's place of residence

Enforcing U.S. Judgment: Mexico



Specific Issues (cont'd)

Final judgment – any pending motions or appeals

No other case pending in Mexico

Not contrary to public policy – e.g., punitive damages; lack of due process

Authentication – certification and *apostille* (Sec. of State – binding effect or “legalize”)

Currency exchange – only execute in pesos; rate at time of payment

Enforcing U.S. Judgment: Canada



“Full faith and Credit”

Not in Canadian Constitution

Since 1990, judicially imposed

Not automatic enforcement

Enforcing U.S. Judgment: Canada



Enforceability Factors/Test

1. Proper exercise of jurisdiction

Present in jurisdiction or defended -
assume proper

If not present/did not defend:

Enforcing U.S. Judgment: Canada



“Real and Substantial Connection”

Between jurisdiction and defendant

Examples:

- contract formed in jurisdiction
- forum selection clause
- goods sold/services rendered in jurisdiction
- damages suffered in jurisdiction
- underlying events occurred in jurisdiction

Enforcing U.S. Judgment: Canada



2. Due Process – U.S. court's legal *procedure* was fair

3. Final judgment – can be appealable; trial court cannot further vary/modify

Enforcing U.S. Judgment: Canada



Potential Defences

1. Judgment by fraud – newly discovered evidence; fraud as to jurisdiction
2. Judgment contrary to “natural justice” – unfair trial

Enforcing U.S. Judgment: Canada



Potential Defences (cont'd)

3. Contrary to public policy – rare
4. Lack of notice/not a party

Very narrow and limited defences

Enforcing U.S. Judgment: Canada



Procedural Steps

File writ with statement of claim –
full judgment amount

Motion for summary judgment

Interest, legal fees and court costs – same as
Canadian judgment in province

Enforcing U.S. Judgments

Strategies to consider?

Contact

Jon P. Yormick

Managing Attorney

Yormick & Associates Co., L.P.A.

Key Tower – 52nd Floor

Cleveland, Ohio 44114 USA

T: 1.216.928.3474

F: 1.216.566.0857

Mobile: 1.216.269.5138

Email: jon@yormicklaw.com

