

"Do You Recognize This?" Domestication of Foreign-Country Money Judgments in California

By Neil A.F. Popović*

I. INTRODUCTION

In some cases, obtaining a judgment signals the end of litigation. In other cases, a judgment can be just the beginning. Falling in the second category are cases where the judgment is for money and it comes from a court in a foreign country. Turning a foreign country money judgment into actual relief involves at least two procedural steps: (i) recognition; and (ii) enforcement. This article focuses on recognition.

Recognition in California is governed by statute: the Uniform Foreign-Country Money Judgments Recognition Act ("UFCMJRA" or "revised Act") for recognition actions filed on or after January 1, 2008; and the Uniform Foreign Money-Judgments Recognition Act ("UFMJRA" or "original Act") for actions filed before January 1, 2008. Once recognized, a foreign-country judgment is treated like a domestic judgment, and thus becomes

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enforceable under California's generally applicable Enforcement of Judgments Law.¹

For the unfamiliar, the road to recognition can be tricky to navigate. Two recent developments—one statutory and the other judicial—help clarify some areas of lingering uncertainty: (a) California's adoption in 2007 of the revised Act;² and (b) the Supreme Court of California's 2008 decision in *Manco Contracting Co. v. Bezdikian*.³

The main issues affected by passage of the UFCMJRA are: (1) clarification of which judgments the Uniform Act applies to; (2) allocation of the burden of proof for recognition; (3) establishment of a uniform procedure for recognition; (4) specification of the effect of recognition; and (5) establishment of a statute of limitations for recognition actions. The main issues affected by *Manco* are: (1) which law applies (California or the foreign jurisdiction) to determine whether the foreign judgment is sufficiently "final" for recognition in California; and (2) establishment of a statute of limitations.

II.

THE UNIFORM ACTS

A. *The Uniform Foreign Money-Judgments Recognition Act (1962/1967)*

In 1962, in an effort to encourage states to codify their rules on recognition of money judgments rendered in foreign courts, the National Conference of Commissioners on Uniform State Laws ("NCCUSL") approved and recommended the UFMJRA. The NCCUSL noted that in many civil law countries, courts required reciprocity as a prerequisite for recognition of foreign (e.g., U.S.) judgments, and that recognition had been denied where foreign courts could not confirm the existence of reciprocity.⁴ The idea

¹ CAL. CODE CIV. PROC. §§ 1713.3 (original Act), 1719(b) (revised Act). The Enforcement of Judgments Law is codified at CAL. CODE CIV. PROC. §§ 680.010-724.260.

² CAL. CODE CIV. PROC. §§ 1713-1724.

³ 45 Cal. 4th 192 (2008).

⁴ See Unif. Foreign Money-Judgments Recognition Act, Pref. Note at 1 (1962). Examples of countries that require reciprocity, i.e., mutual recognition

was to codify the standards and procedure for recognition, so that reciprocity could be certified quickly and without controversy.⁵

Although the Commissioners aimed to reassure foreign jurisdictions (many of which required reciprocity as a condition of enforcing foreign judgments in their courts) that their judgments would be recognized in courts in the United States, the Commissioners did not include reciprocity as a condition for recognition of a foreign judgment in the United States. Some commentators felt that requiring reciprocity "would induce foreign nations to increase their recognition of U.S. judgments."⁶ Others believed such a requirement "would induce retaliation rather than cooperation."⁷ The latter view prevailed in the Uniform Act, although some States (not including California) nonetheless added a reciprocity requirement when they adopted the UFMJRA.

California adopted the UFMJRA in 1967. A total of 30 states plus the District of Columbia and the U.S. Virgin Islands eventually adopted the Act in one form or another.⁸ The California version, codified in sections 1713-1713.8 of the Code of Civil Procedure, tracks the Uniform Act almost word-for-word. Thus, it begins with definitions of "foreign state" (a governmental unit other than the United States) and "foreign judgment" (a money

of another country's judgments, include Mexico, England, Canada, China, Japan, Spain and Germany. *See* Comm. on Foreign and Comp. Law, Ass'n of the Bar of the City of N.Y., *Survey on Foreign Recognition of U.S. Money Judgments* 18-20 (2001).

⁵ Unif. Foreign Money-Judgments Recognition Act, Pref. Note at 1 ("Codification by a state of its rules on the recognition of money-judgments rendered in a foreign court will make it more likely that judgments rendered in the state will be recognized.").

⁶ Melinda Luthin, *U.S. Enforcement of Foreign Money Judgments and the Need for Reform*, 14 U.C. DAVIS J. INT'L L. & POL'Y 111, 117 (2007).

⁷ *Id.*

⁸ Those states are: Alaska, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia and Washington. *See* Uniform Law Commissioners, *A Few Facts About the Uniform Money Judgments Recognition Act*, available at http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ufmjra.asp (last visited Jan. 7, 2009).

judgment of a foreign state other than for taxes, a fine or a penalty, or for family support).⁹

Pursuant to California Code of Civil Procedure section 1713.2, the Act applies to "any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal."¹⁰ The Act further provides, in section 1713.6 (with minor variation from the language in the Uniform Act), that a court *may* stay recognition proceedings if the underlying foreign judgment is on appeal or an appeal is authorized and planned.¹¹ Together, sections 1713.2 and 1713.6 indicate that the pendency of an appeal does not *necessarily* preclude recognition, but if there is an appeal pending, even where a judgment is "final and conclusive and enforceable," the court in a recognition action has authority to stay the recognition proceedings.¹²

A qualifying foreign judgment is deemed "conclusive between the parties," and is enforceable in the same manner as a sister-state judgment, except that a foreign country judgment may not be domesticated using the simplified registration process available for sister-state judgments.¹³ Instead, although the proper procedure is not specified in the UFMJRA (an omission that was remedied in the UFCMJRA), enforcement of a foreign judgment must be preceded by a formal recognition action—i.e., a lawsuit for recognition of the foreign judgment. The prevailing party may pursue enforcement in the same action in which it seeks recognition, but it may not obtain enforcement unless it has first obtained recognition.

The original Act does not specify a statute of limitations for recognition actions.

The Act has no bearing one way or the other on non-money judgments or other foreign judgments "in situations not covered by" the Act.¹⁴ Some such judgments, e.g., judgments for family

⁹ CAL. CODE CIV. PROC. § 1713.1.

¹⁰ CAL. CODE CIV. PROC. § 1713.2.

¹¹ CAL. CODE CIV. PROC. § 1713.6 (emphasis added).

¹² *See id.*

¹³ *See id.*

¹⁴ CAL. CODE CIV. PROC. § 1713.7.

support, are governed by other statutory schemes.¹⁵ In other situations not covered by the Act, such as declaratory judgments, courts in California follow general principles of comity, as a matter of California common law.¹⁶ The precise contours of those principles can be elusive and difficult to apply in particular cases, and California courts look for guidance to the Restatement (Third) of the Foreign Relations Law of the United States.¹⁷ The Restatement—promulgated after the original Act, but prior to the revised Act—incorporates many of the same rules codified in the Act.

The Act (in section 1713.4) specifies three conditions that render a foreign judgment "not conclusive," and thus not subject to recognition:

- (1) the foreign judicial system does not provide impartial tribunals or lacks procedural due process;
- (2) the foreign court did not have personal jurisdiction over the defendant; or
- (3) the foreign court did not have subject matter jurisdiction.¹⁸

These conditions speak to the fundamental fairness of the foreign proceedings. They are well-established considerations under principles of comity, going back at least to the landmark case of *Hilton v. Guyot*, decided by the Supreme Court in 1895.¹⁹

¹⁵ See Unif. Interstate Fam. Support Act, CAL. FAM. CODE §§ 4900, *et seq.* Section 4901(u)(2) provides for application of the Act to foreign countries in specified circumstances.

¹⁶ See *Yahoo! Inc. v. La Ligue Contre le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1213 (9th Cir. 2006). "In diversity cases, enforceability of judgments of courts of other countries is generally governed by the law of the state in which enforcement is sought." *Id.* at 1212. The same is true for recognition of foreign judgments. Restatement (Third) Foreign Relations Law of the United States ("Restatement") § 481, cmt. a (1987).

¹⁷ *Id.*

¹⁸ CAL. CODE CIV. PROC. § 1713.4(a)(1)-(3).

¹⁹ 159 U.S. 113, 205 (1895). Lack of subject matter jurisdiction is a mandatory ground under the Act, but only a discretionary ground under the Restatement. The Restatement, citing *Hilton*, sets forth two mandatory grounds to deny recognition:

- (a) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law; or

In addition, under the UFMJRA, a court in California "need not" recognize a foreign judgment if:

- (1) the defendant did not receive notice of the foreign proceedings in sufficient time to defend;
- (2) there was extrinsic fraud (conduct by the prevailing party that deprived the losing party of an adequate opportunity to present its case);
- (3) the cause of action or defense upon which the judgment rests "is repugnant to the public policy of this state";
- (4) the judgment conflicts with another final and conclusive judgment;
- (5) the foreign proceeding was contrary to an agreement between the parties about how or where to settle their dispute; or
- (6) jurisdiction was based only on personal service, the forum was "seriously inconvenient" for the defendant.²⁰

Again, the Restatement is similar.²¹

(b) the court that rendered the judgment did not have jurisdiction over the defendant in accordance with the law of the rendering state and with the rules set forth in § 421 [regarding personal jurisdiction].

Restatement (Third), Foreign Relations Law of the United States § 482(a) (1987).

²⁰ CAL. CODE CIV. PROC. § 1713.4(b)(1)-(6).

²¹ The discretionary grounds under the Restatement are:

- (a) the court that rendered the judgment did not have jurisdiction of the subject matter of the action;
- (b) the defendant did not receive notice of the proceedings in sufficient time to enable him [or her] to defend;
- (c) the judgment was obtained by fraud;
- (d) the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy of the United States or of the State where recognition is sought;
- (e) the judgment conflicts with another final judgment that is entitled to recognition; or
- (f) the proceeding in the foreign court was contrary to an agreement between the parties to submit the controversy on which the judgment is based to another forum.

Restatement § 482(b).

The Act precludes challenges to recognition based on lack of personal jurisdiction if—

- (1) The defendant was personally served in the foreign state;
- (2) The defendant voluntarily appeared in the proceedings other than to protect seized property or contest jurisdiction;
- (3) The defendant had previously agreed to submit to the jurisdiction of the foreign court;
- (4) The defendant was domiciled (for an individual) or had its principle place of business or was incorporated (for a corporate entity) in the foreign state;
- (5) The defendant had a business office in the foreign state and the case involved a cause of action arising out of business done through that office; or
- (6) The defendant operated a motor vehicle or airplane in the foreign state and the case involved a cause of action arising out of that operation.²²

The Act also includes a catchall provision that California courts "may recognize other bases of jurisdiction."²³ In other words, although a party may oppose recognition by claiming lack of personal jurisdiction in circumstances that do not come within the six enumerated categories, the Act expressly authorizes recognition of foreign judgments where personal jurisdiction was grounded on some other jurisdictional theory accepted by courts in California.

The substantive grounds upon which a court in California may—and in some situations must—deny recognition all relate to the manner in which the underlying case was conducted in the foreign jurisdiction. Thus the ultimate fate of a foreign judgment offered up for recognition in California may be determined by circumstances that occurred long ago and far away in the underlying action.

²² CAL. CODE CIV. PROC. § 1713.5(a)(1)-(6).

²³ CAL. CODE CIV. PROC. § 1713.5(b).

B. The Uniform Foreign-Country Money Judgments Recognition Act (2005/2007)

According to the NCCUSL, the original Act was "in large part successful in carrying out its purpose of establishing uniform and clear standards under which state courts will enforce the foreign-country judgments that come within its scope," which in turn helped satisfy the reciprocity concerns of foreign courts.²⁴ Notwithstanding the Act's perceived success, however, it was not universally adopted, or uniformly adopted, and even identical statutory language was interpreted differently by courts in different States.²⁵ Although generally satisfied with the Act, the Commissioners nonetheless identified several "significant" issues that had arisen under the Act, and they proposed the revised Act to address those issues. The Commissioners specified six target areas for revision:

- (1) The need to update and clarify the definitions section of the Act.
- (2) The need to reorganize and clarify the scope of the Act and allocate the burden of proof for recognition.
- (3) The need to set out the procedure for obtaining recognition.
- (4) The need to clarify (and expand) grounds for denying recognition.
- (5) The need to allocate the burden of proof for establishing grounds to deny recognition.
- (6) The need to establish a statute of limitations for recognition actions.²⁶

The Commissioners completed the revised Act in 2005, and the NCCUSL approved and recommended it for enactment at its annual conference that year. California adopted the revised Act in 2007, and it became effective in California January 1, 2008, applying to all recognition actions filed on or after that date. In

²⁴ Unif. Foreign-Country Money Judgments Recognition Act, Pref. Note at 1 (2005).

²⁵ See Luthin, *U.S. Enforcement*, *supra*, 14 U.C. DAVIS J. INT'L L. & POL'Y, at 118-23.

²⁶ *Id.*

addition to California, Colorado, Idaho, Michigan and Nevada have also adopted the revised Act, and Nebraska introduced it.²⁷

1. Definitions

The original Act concerned "foreign states" and "foreign judgments." This terminology apparently led to confusion in some state courts, because the quoted terms are "terms of art generally used in connection with recognition and enforcement of sister-state judgments," with "foreign" meaning other U.S. states.²⁸ The replacement terms "foreign country" and "foreign-country judgment" make clear that the revised Act applies only to money judgments from foreign countries, not judgments from sister states. Under the California version of the revised Act, "foreign country judgment" expressly includes a judgment by a recognized Indian tribe.²⁹

The Commissioners noted in their comments that the revised Act applies only to a "judgment of a court" of a foreign country, as distinguished from an arbitration award, or any other non-judicial decree.³⁰ The original Act defines "foreign judgment" as "any judgment of a foreign *state*," which does not specify whether the judgment has to be issued by a court.³¹ It does; and the Commissioners eliminated the ambiguity by including the word "court" in the definition of "foreign country judgment" in the revised Act. Foreign arbitral awards remain subject to the U.S. Arbitration Act, which implements the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards³²

²⁷ See Uniform Law Commissioners, *A Few Facts About the Uniform Money Judgments Recognition Act (2005)*, available at http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ufcmjra.asp (last visited Jun. 18, 2009); Official Site of the Nebraska Legislature, *LB832 - Adopt the Uniform Foreign-Country Money Judgments Recognition Act*, available at http://uniweb.legislature.ne.gov/bills/view_bill.php?DocumentID=3682 (last visited Jun. 18, 2009).

²⁸ *Id.*, § 2, cmt.

²⁹ CAL. CODE CIV. PROC. § 1714(b).

³⁰ Unif. Foreign-Country Money Judgments Recognition Act, § 2, cmt. 3.

³¹ *Id.*, § 1(2).

³² United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), codified at 9 U.S.C. §§ 201-208.

and the Inter-American Convention on International Commercial Arbitration.³³ However, as with the original Act, a judgment of a foreign *court* confirming or setting aside an arbitral award is covered by the revised Act.³⁴

2. *Scope and Initial Burden*

The revised Act adds a separate section on applicability, codified in California as section 1715 of the Code of Civil Procedure. Section 1715 specifies that the revised Act applies to foreign country judgments that grant or deny recovery of a sum of money, except judgments for taxes, a fine or other penalty, or family support. Section 1715 also provides that the revised Act applies to any foreign judgment that, "under the law of the foreign country where rendered, is final, conclusive, and enforceable."³⁵ The revised Act omits the so-called appellate caveat, which provides that the Act applies to an otherwise qualifying foreign judgment, "even though an appeal therefrom is pending or it is subject to appeal."³⁶ Like the original Act, the revised Act provides that a court "may stay any proceedings with regard to the foreign-country judgment" if an appeal is pending or authorized and planned in the foreign country.³⁷

Neither the comments of the NCCUSL nor the legislative history of California's adoption of the revised Act directly addresses the omission of the appellate caveat. However, the Commissioners' comments to the revised Act explain that "if the effect of an appeal under the law of the foreign country in which the judgment was rendered is to prevent it from being conclusive or enforceable between the parties, the existence of a pending appeal in the foreign country would prevent application of this Act."³⁸ By extension, that should mean if an appeal would *not* prevent the judgment from being conclusive or enforceable, it should not prevent application of the revised Act.

According to the Commissioners:

³³ Inter-American Convention on International Commercial Arbitration (Panama, 30 Jan. 1975), codified at 9 U.S.C. §§ 301-307.

³⁴ Unif. Foreign-Country Money Judgments Recognition Act, § 2, cmt. 3.

³⁵ CAL. CODE CIV. PROC. § 1715.

³⁶ CAL. CODE CIV. PROC. § 1713.2.

³⁷ CAL. CODE CIV. PROC. § 1720.

³⁸ Unif. Foreign-Country Money Judgments Recognition Act, § 8, cmt. ¶ 1.

A judgment is *final* when it is not subject to additional proceedings in the rendering court other than execution. A judgment is *conclusive* when it is given effect between the parties as a determination of their legal rights and obligations. A judgment is *enforceable* when the legal procedures of the state to ensure that the judgment debtor complies with the judgment are available to the judgment creditor to assist in collection of the judgment.³⁹

The Commissioners thus provided definitions for “final,” “conclusive” and “enforceable,” but like the original Act, the revised Act provides for determination of finality, conclusiveness and enforceability “under the law of the foreign country where rendered.”⁴⁰

The revised Act places the burden of proof for establishing applicability of the Act on the proponent of recognition: “A party seeking recognition of a foreign-country money judgment has the burden of establishing that the foreign-country judgment is entitled to recognition under this chapter.”⁴¹ This is no different from other claims or causes of action, where the plaintiff typically bears the burden of proof. Although the original Act did not allocate the initial burden of proof, most courts applying the Act placed the burden on the party seeking recognition.⁴²

3. Procedure

The original Act, including its California iteration, did not address the proper procedure for seeking recognition of a foreign judgment. The revised Act provides that a party may seek recognition by filing a separate recognition action or, if a proceeding is already pending, raising the issue by “counterclaim, cross-claim, or affirmative defense.”⁴³ Once recognized, a foreign country judgment is:

³⁹ Unif. Foreign-Country Money Judgments Recognition Act, § 3, cmt. ¶ 3 (bold italics added).

⁴⁰ *Id.*

⁴¹ CAL. CODE CIV. PROC. § 1715(c).

⁴² See Unif. Foreign-Country Money Judgments Recognition Act § 3, cmt. ¶ 6.

⁴³ CAL CODE CIV. PROC. § 1718.

(a) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive.

(b) Enforceable in the same manner and to the same extent as a judgment rendered in this state.⁴⁴

The foregoing modifies the original Act in two respects. *First*, the original Act provided that a qualifying foreign judgment was conclusive "to the extent that it grants or denies recovery of a sum of money," whereas the revised Act makes a foreign judgment (already defined as a judgment for money) conclusive to the same extent as a sister-state judgment, explicitly invoking the constitutional principle of full faith and credit. *Second*, the original Act provided for enforcement "in the same manner" as a *sister-state* judgment, whereas the revised Act provides for enforcement "in the same manner and to the same extent" as a *domestic* judgment rendered by a court in California. Addition of the phrase "to the same extent" incorporates defenses to enforcement of domestic judgments. And the change from sister state to domestic means that when a foreign judgment has been recognized, it becomes a domestic judgment, subject to the same enforcement remedies and defenses as any other domestic judgment.

4. *Grounds for Denying Recognition*

With minor changes in wording, the revised Act maintains the same mandatory grounds for denying recognition as the original Act. Thus, a court must deny recognition if—

- (1) The judgment was rendered under a *judicial* system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) The foreign court did not have personal jurisdiction over the defendant; or
- (3) The foreign court did not have jurisdiction over the subject matter.⁴⁵

⁴⁴ CAL. CODE CIV. PROC. § 1719. The original Act specifies that a foreign judgment "may not be enforced pursuant to the provisions of Chapter 1 (commencing with Section 1710.10) of this title," which provides a streamlined "application" procedure for recognition of sister-state judgments. Section 1718 of the revised Act makes clear that recognition must be done by filing a separate action or by counterclaim, cross-claim or affirmative defense.

The first ground for non-recognition clarifies that the impartiality and due process analyses apply to the "judicial system," as distinguished from the (undefined) "system."⁴⁶ The latter two grounds are identical to the original Act.

Under the revised Act, a court may deny recognition if—

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by *fraud that deprived the losing party of an adequate opportunity to present its case.*

(3) *The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States.*

(4) The judgment conflicts with another final and conclusive judgment.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) *The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.*

(8) *The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.*⁴⁷

Although largely the same as the original Act, the revised Act includes several clarifications and two substantive additions. The original Act (California version) allowed non-recognition for

⁴⁵ CAL. CODE CIV. PROC. § 1716(a) (italics added to highlight differences from original Act, CAL. CODE CIV. PROC. § 1713.4(a)).

⁴⁶ Compare CAL. CODE CIV. PROC. § 1716(b)(1) ("judicial system"), with CAL. CODE CIV. PROC. § 1713.4(a)(1) ("system").

⁴⁷ CAL. CODE CIV. PROC. § 1716(c) (italics added to highlight substantive changes from original Act, CAL. CODE CIV. PROC. § 1713.4(b)).

"extrinsic fraud" (the Uniform Act just says "fraud"). The revised Act specifies that the fraud must have prevented the losing party from presenting its case—which, the Commissioners explain, is the meaning of extrinsic fraud. The revised Act thus explicitly brings the Uniform Act into alignment with the California version. The substantive import of the provision is unchanged. Examples of extrinsic fraud include deliberately giving the defendant incorrect information about the proceedings, or presenting a forged confession of judgment.⁴⁸

The public policy exception, subsection (3), has been changed to clarify that the public policy test applies not just to the "cause of action," but also to the judgment as a whole. The revised Act also clarifies that the public policy exception looks to the public policy of the United States as well as the forum state—as courts tended to do already under the original Act.⁴⁹ The substantive standard for repugnancy to public policy remains stringent: it is limited to situations where recognition "would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine 'that sense of security for individual rights, whether personal liberty or of private property, which any citizen ought to feel.'"⁵⁰ A mere difference in the law between the rendering jurisdiction and California will not suffice.

Subsection (4), regarding conflict with another final and conclusive judgment, is unchanged. The language in subsection (5), regarding an agreement between the parties, was modified slightly, but the substance is unchanged: A court may deny recognition if the foreign judgment was issued by a court in a forum other than the forum agreed upon by the parties. The personal service/forum non conveniens exception, subsection (6), is unchanged.

Subsections (7) and (8) are new. Subsection (7) allows a court to deny recognition if it finds there was corruption in the specific proceedings leading to the foreign judgment, even if the

⁴⁸ See Unif. Foreign Money-Judgments Recognition Act § 4(b)(2); Cal. Code Civ. Proc. § 1713.4(b)(2); Unif. Foreign-Country Money Judgments Recognition Act § 4, cmt. ¶ 6.

⁴⁹ Unif. Foreign-Country Money Judgments Recognition Act § 4, cmt. ¶ 8.

⁵⁰ *Id.* (quoting *Hunt v. BP Exploration Co. (Libya) Ltd.*, 492 F. Supp. 885, 901 (N.D. Tex. 1980)).

proceedings occurred in a judicial system that is generally free of corruption.⁵¹ Similarly, subsection (8) allows the forum court to deny recognition where the proceedings in the foreign court were not compatible with due process, even if the foreign country's judicial system as a whole generally complies with due process.⁵² The original Act allows courts to look only at systemic corruption and systemic shortcomings in procedural due process.⁵³

As with the original Act, substantive grounds for denying recognition derive mainly from flaws in the underlying foreign proceedings. Accordingly, counsel who envision the possibility of eventual enforcement of a foreign judgment in California should take particular care to make sure the underlying proceedings are conducted fairly and appropriately, with reference to the grounds for non-recognition set forth in the revised Act.

5. *Burden of Proof on Grounds for Denying Recognition*

The revised Act places the burden of proof for establishing grounds to deny recognition on the party resisting recognition.⁵⁴ The original Act, including the California version, did not address this burden, and courts applying the original Act took differing positions on the issue.⁵⁵ In proposing the revised Act, the NCCUSL commented that "[b]ecause the grounds for nonrecognition . . . are in the nature of defenses to recognition, the burden of proof is most appropriately allocated to the party opposing recognition of the foreign-country judgment."⁵⁶

6. *Statute of Limitations*

The original Act did not specify a statute of limitations. In the course of its application, courts applied different limitation periods—sometimes a state's general statute of limitations, sometimes no statute of limitations at all, and sometimes the limitations period applicable to enforcement (as distinguished from

⁵¹ Unif. Foreign-Country Money Judgments Recognition Act § 4, cmt. ¶ 8.

⁵² *Id.*

⁵³ CAL. CODE CIV. PROC. § 1713.4(a)(1).

⁵⁴ CAL. CODE CIV. PROC. § 1716(d).

⁵⁵ Unif. Foreign-Country Money Judgments Recognition Act § 4, cmt. ¶ 13.

⁵⁶ Unif. Foreign-Country Money Judgments Recognition Act § 4, cmt. ¶ 13; *see also Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1409 (9th Cir. 1995) (discussing cases).

recognition) of a domestic or sister-state judgment. In California, prior to *Manco*, the Supreme Court of California had not addressed the statute of limitations for an action on a foreign judgment since it decided *Dore v. Thornburgh*, in 1891, more than 75 years before the 1967 adoption of the original Act.⁵⁷ In *Dore*, the court observed that an action on a foreign judgment was "not specifically provided for by any other section of the statute of limitations," and the court determined on that basis that the claim was governed by the catchall limitations period of four years for actions not otherwise provided for.⁵⁸

The revised Act, as proposed by the NCCUSL, specifies that a recognition action "must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country."⁵⁹ The California version, codified in section 1721 of the Code of Civil Procedure, shortens the period to ten years.⁶⁰ An action to enforce a domestic judgment in California must be brought within ten years of the date of entry of judgment,⁶¹ and the legislature decided that an action to recognize a foreign-country judgment should not have a longer statute of limitations.⁶²

7. *Important Areas Left Unchanged*

The revised Act left substantively intact the provisions relating to challenges to recognition based on lack of personal jurisdiction. There are some technical changes, such as the substitution of "foreign country" in place of "foreign state," but the revised Act carries forward the restrictions on grounds for opposing recognition based on lack of personal jurisdiction.⁶³ The revised Act also carries forward—again with only minor technical changes—the provision that allows recognition of judgments not specifically covered by the revised Act. A foreign judgment that

⁵⁷ 90 Cal. 64 (1891).

⁵⁸ *See Id.* at 67.

⁵⁹ Unif. Foreign-Country Money Judgments Recognition Act § 9.

⁶⁰ CAL. CODE CIV. PROC. § 1721.

⁶¹ CAL. CODE CIV. PROC. § 683.010, *et seq.*

⁶² *See Legislative History for SB 639*, § 4.b., at p. 16.

⁶³ *Compare* CAL. CODE CIV. PROC. § 1713.5, *with* CAL. CODE CIV. PROC. § 1717.

does not come within the scope of the revised Act may be subject to recognition "under principles of comity or otherwise,"⁶⁴ just as it would be at common law. Perhaps the biggest difference between recognition under the Act (original or Revised) and recognition based on comity, is the degree of discretion allowed the court. The substantive standards are essentially the same.

III.

MANCO CONTRACTING CO. V. BEZDIKIAN

The 2007 adoption of the revised Act in California should help clarify many issues regarding recognition of foreign-country money judgments in California. It does not, however, clear up everything, and it does not apply directly to recognition actions filed before January 1, 2008. The decision in *Manco Contracting Co. v. Bezdikian*⁶⁵ fills in at least two important gaps, and it does so in ways that narrow the differences between recognition under the original Act and recognition under the revised Act.

The Supreme Court of California granted review in *Manco* on August 22, 2007, barely six weeks after the California Assembly passed the bill to enact the revised Act (July 12, 2007), and less than a week before the State Senate passed the bill (August 27, 2007).⁶⁶ The Court in *Manco* addressed two main issues: (1) when a foreign judgment is "final" for purposes of recognition; and (2) what statute of limitations applies to an action for recognition. The key question on finality was: "When a foreign judgment is appealed, and the foreign nation's law provides that a judgment on appeal is not final, does section 1713.2 permit a California court to recognize the judgment?"⁶⁷ The answer, according to the court, is no, because the most reasonable interpretation of section 1713.2 ("This chapter applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal

⁶⁴ CAL. CODE CIV. PROC. § 1723; *see also* CAL. CODE CIV. PROC. § 1713.7 ("This chapter does not prevent the recognition or nonrecognition of a foreign judgment in situations not covered by this chapter.").

⁶⁵ 45 Cal. 45th 192.

⁶⁶ *See* California Electronic Docket, available at http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=479057&doc_no=S154076 (last visited June 18, 2009).

⁶⁷ *Manco*, 45 Cal. 4th at 195.

therefrom is pending or it is subject to appeal"), "is that the law of the nation *where the judgment was rendered* determines whether the judgment is sufficiently final, conclusive, and enforceable to be subject to recognition in California."⁶⁸ And on the statute of limitations, the Court applied the ten-year limitations period that applies to actions to enforce a sister-state judgment, because the UFMJRA provides that a "foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit."⁶⁹ The cumulative impact of these two holdings is to make both accrual and the statute of limitations in California recognition actions the same under the original Act as they are under the revised Act.

A. *Background*

The *Manco* case arose out of a controversy between a Qatari company, Manco Contracting Co., and an individual, Krikor Bezdikian. Manco obtained a money judgment against Bezdikian in Qatar. Bezdikian appealed the judgment in Qatar, and the appellate court amended the judgment, reducing the monetary award from more than \$4.2 million to approximately \$3.76 million. Bezdikian moved to California and Manco filed a recognition action in California under the UFMJRA. Manco filed the recognition more than six years after the original Qatari judgment, but less than four years after the amended judgment. Both parties believed that California's four-year catchall statute of limitations applied to the recognition action, so from their perspectives the sole issue was when the cause of action for recognition accrued.⁷⁰

The California trial court granted summary judgment in favor of Bezdikian on the grounds that the statute of limitations had expired, because the recognition action was filed more than four years after the original Qatari judgment. The trial court relied on *Korea Water Resources Corp. v. Lee*,⁷¹ a 2004 case in which the court of appeal had interpreted section 1713.2 to provide that the UFMJRA permits recognition of a foreign judgment regardless of

⁶⁸ *Id.* at 195-96 (italics in original).

⁶⁹ *Id.* at 196.

⁷⁰ *Id.* at 196-97. *See* Cal. Code Civ. Proc. § 343 ("An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued.").

⁷¹ 115 Cal. App. 4th 389 (2004).

whether the foreign judgment is on appeal.⁷² Under that interpretation, Manco's claim for recognition accrued at the time of the original judgment, and it was time-barred under the four-year statute of limitations.

The Court of Appeal disagreed, holding that a foreign judgment is not subject to recognition "unless and until it is final, conclusive, and enforceable under the law where the judgment was rendered."⁷³ The appellate court found there was a triable issue of fact as to whether the original Qatari judgment was final, conclusive and enforceable under Qatari law, and thus summary judgment should have been denied.⁷⁴ The Supreme Court granted review to address when the cause of action for recognition accrued (i.e., when the Qatari judgment was final) and the statute of limitations for such an action.⁷⁵

B. Finality and the Role of Foreign Law

The original Act applies to "any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal."⁷⁶ Prior to *Manco*, the leading California case on the interpretation of section 1713.2 was *Korea Water*, in which the court had said on the one hand that "it is the status of the foreign judgment *in the foreign country* that determines whether the judgment is ripe for recognition in California," but on the other hand, "the fact that a foreign judgment is still vulnerable to change on appeal in the foreign country is not *alone* enough to preclude recognition of a foreign judgment which is otherwise final, conclusive and enforceable in the foreign country."⁷⁷ The combined effect of those statements, and the result in *Korea Water*, was to require the court

⁷² *Manco*, 45 Cal. 4th at 197.

⁷³ *Id.*

⁷⁴ *Id.* It is not clear why the court of appeal considered the issue of whether the original judgment was final and conclusive under Qatari law to be a question of fact. Although formerly considered a question of fact, foreign law is now a question of law under California and federal law. *See* Cal. Evid. Code § 310(b); Fed. R. Civ. P. 44.1.

⁷⁵ *Manco*, 45 Cal. 4th at 198.

⁷⁶ Cal. Code Civ. Proc. § 1713.2.

⁷⁷ *Korea Water Resources Corp. v. Lee*, 115 Cal. App. 4th 389, 398 (2004) (italics in original), *overruled in Manco*, *supra*, 45 Cal. 4th 192).

in a recognition action to look to foreign law to decide whether a judgment is final, conclusive and enforceable, "but if, under foreign law, the judgment is not final because of a pending or a potential appeal, we ignore foreign law and recognize the judgment anyway."⁷⁸

The court in *Manco* reviewed the history and purpose of the UFMJRA, including the goal of satisfying reciprocity concerns of foreign nations and encouraging them to recognize judgments of the United States.⁷⁹ With those concerns in mind, the court rejected the holding in *Korea Water* and held that "California courts must recognize a foreign judgment, regardless of whether it has been appealed or is subject to appeal, so long as the judgment is final, conclusive, and enforceable in the country where it was rendered."⁸⁰ The court read the appellate caveat to mean that the foreign rules regarding finality control, even if they might differ from the California approach. If the foreign judgment is considered final *in the foreign country*, it is subject to recognition, even though an analogous judgment in California might not be considered final.⁸¹

The court in *Manco* found only one decision from another jurisdiction, an appellate court in the state of Washington, that addressed the issue of "whether the uniform act permits recognition of a foreign judgment that is *not final* under the law of the foreign jurisdiction where judgment was entered."⁸² The court in the Washington case held that it could not recognize a Japanese judgment that was on appeal because, although preliminarily enforceable, the Japanese judgment was not final and conclusive under Japanese law.⁸³ Along the same lines, courts in Michigan and New York have held that foreign judgments could be recognized under the UFMJRA, despite the fact that they were on

⁷⁸ *Manco*, 45 Cal. 4th at 199.

⁷⁹ *Id.* at 201.

⁸⁰ *Id.*

⁸¹ Rules on finality may differ. For example, as the court in *Manco* pointed out, in California, a trial court judgment is not final and conclusive when it is on appeal, whereas in the federal system a trial court judgment is considered final. See *Nathanson v. Hecker*, 99 Cal. App. 4th 1158, 1163 n.1 (2002) (explaining difference between California and federal law on finality).

⁸² *Manco*, 45 Cal. 4th at 203 (italics in original) (citing *Mayekawa Manufacturing Co. v. Sasaki*, 76 Wash. App. 791 (1995)).

⁸³ *Mayekawa*, 76 Wash. App. at 187-88.

appeal or subject to modification, "because they were final under the laws of the countries where they were rendered."⁸⁴ Joining together these holdings, the court in *Manco* held, "[w]hen foreign law holds that a judgment is not final if it is interlocutory *or* if it is subject to appeal, section 1713.2 requires a California court to honor this procedural rule."⁸⁵

Justice Kennard filed a separate opinion, in which she disagreed with the majority's reasoning on finality. In Justice Kennard's opinion, the term "final" has a fixed meaning under California law—it means "not requiring further action other than enforcement in the rendering court (that is, ordinarily, the trial court)."⁸⁶ According to Justice Kennard, the court in a recognition action should only consult foreign law to determine whether, "applying that [California law] definition of finality, the foreign judgment is final while on appeal."⁸⁷ By way of contrast, Justice Kennard's opinion helps clarify the majority's opinion about the role of foreign law: that a California court in a recognition action must look to foreign law in the first instance to determine whether a foreign judgment is final, conclusive and enforceable.⁸⁸

C. Statute of Limitations

As noted above, the original Act does not specify a statute of limitations for actions to recognize a foreign money judgment. The revised Act (California version) specifies a ten-year statute of limitations, unless the time limit for enforcement is shorter in the foreign jurisdiction that issued the judgment. Because the complaint in *Manco* was filed before January 1, 2008 (the effective date of the revised Act), the court could not rely on the revised Act.

The court noted that although the original Act does not include a statute of limitations, it provides that a "foreign judgment is

⁸⁴ *Manco*, 45 Cal. 4th at 202 (citing *Dart v. Dart*, 224 Mich. App. 146, 568 N.W.2d 353, 357 (1997) (English judgment); *S.C. Chimexim S.A. v. Velco Enterprises Ltd.*, 36 F. Supp. 2d 206, 213 (S.D.N.Y. 1999) (Romanian judgment)).

⁸⁵ *Manco*, 45 Cal. 4th at 203 (italics in original).

⁸⁶ *Id.* at [PIN CITE] (Kennard, J., dissenting).

⁸⁷ *Id.*

⁸⁸ *See id.*

enforceable in the same manner as the judgment of a sister state."⁸⁹ The court further explained that there is "an analytical difference between *recognition* of a foreign judgment and *enforcement* of a foreign judgment."⁹⁰ *Recognition* means turning a foreign judgment into a domestic judgment; and *enforcement* means turning the judgment into money. Enforcement may be the most common objective for a party seeking recognition of a foreign judgment, but recognition may also be relevant for purposes of *res judicata* or collateral estoppel.⁹¹

The court in *Manco* noted that "a foreign judgment will not be recognized in California if it is unenforceable under the statute of limitations, or on any other basis, in the country where it was rendered."⁹² Accordingly, if enforcement would be time-barred in the foreign country, it does not matter what the limitations period is in California. In other cases, however, the California statute of limitations, whatever it may be, would apply.

As the Court of Appeal noted in *Guimares v. Northrop Grumman Corp.*,⁹³ a companion case to *Manco* at the supreme court, there are three possible limitations periods that might apply:

- (1) The four-year catchall period applicable to actions not otherwise provided for, as the Supreme Court of California held in 1891, in the pre-Act case of *Dore v. Thornburgh*.
- (2) The ten-year period for sister-state judgments, based on the provision that foreign judgments are "enforceable in the same manner as the judgment of a sister state."
- (3) There is no limitations period under California law, as long as the judgment is enforceable in the country where rendered.⁹⁴

The court in *Manco* noted that all civil actions in California, "without exception," must be filed within a prescribed limitations period, thus eliminating the possibility that there is *no* California statute of limitations for recognition actions.⁹⁵ On that basis, the

⁸⁹ CAL. CODE CIV. PROC. § 1713.3.

⁹⁰ *Manco*, 45 Cal. 4th at 205 (italics in original).

⁹¹ *Id.* at 205-06.

⁹² *Id.* at 206.

⁹³ *Guimares v. Northrop Grumman Corp.*, 156 Cal. App. 4th 644, 648 (2007), *review granted*, 176 P.3d 654 (2008).

⁹⁴ *See id.*, 156 Cal. App. 4th at 648.

⁹⁵ *Manco*, 45 Cal. 4th at 207 (quoting Cal. Code Civ. Proc. § 312).

court narrowed its task to determining "whether the Legislature intended that recognition actions be governed by a specific statute of limitations or fall under the catchall limitations period of section 343."⁹⁶ The court noted that under section 1717.3, an action for *enforcement* of a foreign judgment must be brought within ten years, because a foreign judgment "is enforceable in the same manner as a the judgment of a sister state." The court concluded that an action for *recognition* must also be brought within ten years, because in most cases, a judgment creditor will file a single action, by which the creditor seeks first to recognize and then to enforce a foreign judgment.⁹⁷

According to the court, subjecting actions for recognition to a different limitations period than applies to enforcement actions would be "cumbersome, expensive and potentially a trap for the unwary."⁹⁸ It would also undermine the reciprocity goal of the Act: "[u]sing the limitations periods that are generally applicable to the forum state's own judgments best assures reciprocity in the recognition and enforcement of our judgments abroad."⁹⁹ Finally, the court cited the legislature's prescription of a ten-year limitations period in the revised Act as evidence that the legislature desired a uniform limitations period for purposes of recognition and enforcement under the original Act as well.¹⁰⁰

Justice Kennard disagreed with her colleagues on the statute of limitations, as she did on the role of foreign law in determining finality. In Justice Kennard's view, the 1891 decision in *Dore v. Thornburgh* should have remained the controlling authority for recognition actions filed under the original Act.¹⁰¹ She argued that section 1713.3's reference to actions for "enforcement" means what it says, and does not apply to actions for recognition.¹⁰² She noted

⁹⁶ *Manco*, 45 Cal. 4th at 207.

⁹⁷ *Id.* at 208.

⁹⁸ *Id.*

⁹⁹ *Id.* at 209.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 215 (Kennard, J., dissenting).

¹⁰² *Id.* Justice Kennard is not alone in her focus on the distinction between recognition and enforcement. In *Nadd v. Le Credit Lyonnais, S.A.*, 804 So. 2d 1226, 1233, 26 Fla. L. Weekly S769 (2001), the Supreme Court of Florida held that "the only limitation applicable to the recognition of a foreign money judgment is that the judgment be enforceable where rendered." The court in *Nadd* also held that Florida's 20-year limitations period for enforcement of

that the legislature adopted the original Act many years after the decision in *Dore*, but it did not do anything to abrogate the four-year limitations period established by that case.

Justice Kennard did not, however, address the fact that prior to California's adoption of the original Act in 1967, foreign judgments were recognized (or not) on the basis of comity. There was no statutory provision, such as section 1713.3 ("foreign judgment is enforceable in the same manner as the judgment of a sister state") that the court in *Dore* could have used as a reference point. The legislature might not have added a statute of limitations per se under the original Act, but it did change the rules and procedure for recognition and thus, by implication, it arguably changed the reference point for determining the applicable statute of limitations.

IV. CONCLUSION

The decision in *Manco* and the California legislature's adoption of the revised Act do not resolve every outstanding issue relating to recognition of foreign country money judgments in California, but they provide meaningful guidance in at least two important areas: (i) the determination of finality (when an action for recognition accrues); and (ii) the statute of limitations. Moreover, although there are only a limited number of cases in California to which the original Act still applies (actions for recognition filed before January 1, 2008), the court's reasoning has continuing relevance for the many other states in which the original Act remains in effect.

Under *Manco*, a cause of action for recognition under the UFMJRA accrues at the point a foreign judgment becomes final, conclusive and enforceable under the law of the foreign country where the judgment was rendered. If an appeal affects finality *in the foreign country*, then it precludes recognition in California as

domestic judgments should apply to enforcement of a foreign judgment once it has been "domesticated through the registration and recognition phase of the UFMJRA." *Id.* However, as the majority pointed out in *Manco*, unlike Florida, California does not have an expedited "registration" process for foreign country judgments, but instead requires a separate recognition action, "with all the trappings" of normal litigation. *Manco*, 45 Cal. 4th at 206.

well. The revised Act omits the appellate caveat ("even though an appeal therefrom is pending or it is subject to appeal"), but the reference to finality, conclusiveness and enforceability *under the law of the foreign country where rendered* means a court in a recognition action under the revised Act, like the original Act, must look to foreign law to determine whether a cause of action for recognition of a foreign money judgment has accrued. With the overruling of *Korea Water*, there does not appear to be any published authority to the contrary, in California or any other jurisdiction that has adopted the UFMJRA or the UFCMJRA. The combined effect of *Manco* and the revised Act is therefore to establish a unified rule for accrual for all recognition actions in California.

Manco and the revised Act also yield a unified rule for the statute of limitations: "10 years from the date that the foreign-country judgment became effective in the foreign country." Under the revised Act, the statutory language is explicit. Under *Manco*, the limitations period is also ten years, because foreign judgments are "enforceable in the same manner as the judgment of a sister state." Unlike the rule on accrual, however, the California rule for the statute of limitations is not applicable in other states. Courts in other states that adopted the UFMJRA have taken different approaches, some finding there is no domestic law statute of limitations for recognition actions, and others applying a catchall limitations period for actions not otherwise provided for—theories the court in *Manco* considered and rejected. And other states adopting the revised Act have set the statute of limitations at 15 years, as proposed by the NCCUSL. Thus, clarity has improved, but the goal of uniformity has not been achieved with respect to the statute of limitations.