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Down in Flames: Three U.S. Courts Decline Recognition to Judgments from Mexico, Citing Corruption

TIMOTHY G. NELSON*

Abstract

Within the United States, various laws and procedures allow for the potential enforcement and recognition of judgments rendered in foreign countries. Approximately two-thirds of U.S. states have enacted uniform laws specifically providing for the recognition and enforcement of foreign country judgments. Recognition of judgments is also potentially available under common law principles of comity. In either case, a number of important exceptions to recognition exist, including the so-called "fraud" exception–under which a foreign judgment will not be recognized if it was the product of bribery or other corrupt conduct.

Although U.S. courts will not lightly infer that a foreign judgment was the product of fraud, they will nonetheless take fraud allegations seriously and will not hesitate to decline recognition if fraud allegations are properly made out. This article examines three recent cases, each involving judgments rendered by the courts of Mexico, where the United States courts declined recognition of such judgments on the grounds that they were tainted by bribery and/or other judicial misconduct.

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I. Introduction

U.S. courts frequently afford recognition to judgments emanating from the courts of foreign countries. In most states, uniform legislation regulates the enforcement of foreign country money judgments; in other states, common law allows recognition under the doctrine of "comity." These rules seek to ensure that the decisions of foreign courts are respected, and to prevent disputes resolved in those courts from being re-litigated in the United States.

The preparedness of U.S. courts to recognize foreign judgments, even those of its closest neighbors such as Mexico, is not unbounded. Exceptions exist, including the rule that a judgment that has been obtained by "fraud," including bribery or corruption, will not be recognized.

Alleging "fraud" can be a daunting prospect for a litigant. U.S. judges are understandably reluctant to cast aspersions on their foreign counterparts, particularly those of neighboring countries. The party raising fraud also risks "burning its bridges" with the original court. Nevertheless, where evidence of fraud exists, U.S. courts have been prepared to act, as three recent cases involving Mexico have illustrated. This article explores those cases in the general framework of U.S. uniform legislation on judgment enforcement.

II. Rules Relating to the Recognition of Foreign Judgments in the United States

The modern system of recognizing foreign money judgments in the United States derives from the landmark case of *Hilton v. Guyot*, in which the U.S. Supreme Court held that "comity" could serve as a basis to "allow . . . full effect" to judgments made by foreign "court[s] of competent jurisdiction."[1] Although enforcement of foreign judgments remains a question of state law,[2] *Hilton v. Guyot* is binding federal common law in cases

1. Hilton v. Guyot, 159 U.S. 113, 202-03 (1895) ("[W]e are satisfied that where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not . . . be tried afresh . . . upon the mere assertion . . . that the judgment was erroneous in law or in fact."). Although this article deals primarily with the rules concerning recognition leading to enforcement of judgments, it should be noted that, beyond the enforcement context, federal and state law also contains a body of rules concerning claims and issue preclusion (res judicata and issue estoppel) potentially applicable to foreign judgments. *See* Cedric C. Chao & Christine S. Neuhoff, *Enforcement and Recognition of Foreign Judgments in United States Courts: A Practical Perspective*, 29 PEPP. L. REV. 147, 159-60 (2001); *see generally* Robert C. Casad, *Issue Preclusion and Foreign Country Judgments: Whose Law?*, 70 IOWA L. REV. 53 (1984) (discussing issue preclusion and foreign judgments).

2. *See* Phillips USA, Inc. v. Allflex USA, Inc., 77 F.3d 354, 359 (10th Cir. 1996) ("Unless and until some federal statute or treaty declares otherwise, it is state, not federal, law that governs the effect to be given foreign judgments.") (quoting Casad, *supra* note 1, at 78 (citing, *inter alia*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 cmt. c (1989)).

involving a "federal question,"[3] and has proven highly persuasive in the development of state law.

In 1962, in an effort to encourage recognition of foreign judgments by U.S. courts, and to induce foreign courts to give similar treatment to U.S. judgments, a uniform recognition statute—the Uniform Foreign Money-Judgments Recognition Act—was published by the National Conference of Commissioners on Uniform State Laws.[4] This legislation was adopted in approximately two-thirds of U.S. states, plus the District of Columbia and the U.S. Virgin Islands.[5] A 2005 revised statute, the Uniform Foreign-Country Money Judgments Recognition Act, intended to update and supersede the 1962 statute, is now also gaining acceptance.[6]

Both of the uniform recognition statutes provide for recognition and enforcement of final money judgments from "courts of competent jurisdiction" in foreign countries.[7] Once recognized, these judgments have the same effect as a U.S. domestic court judgment. Thus, using Mexico as an example, states that adopted the 1962 or 2005 Uniform Acts extend recognition to decisions of the various courts of Mexico, provided all statutory prerequisites have been met and no exceptions apply.[8]

In states that have not enacted the uniform legislation, recognition of foreign judgments may be available at common law, including as stated in *Hilton v. Guyot*.[9] Using Mexico again as an example, an Arizona court granted common law recognition to a judgment

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3. "In federal-question cases . . . federal courts apply a federal standard to recognition of foreign judgments." Russell J. Weintraub, *How Substantial is Our Need for a Judgments-Recognition Convention and What Should We Bargain Away to Get It?*, 24 BROOKLYN J. INT'L L. 167, 177 (1998); *see also id.* at 173-74 n.40 (collecting authorities).

4. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT 13 Part I U.L.A. 36 (1962) (Supp. 2002) (hereinafter 1962 UNIF. ACT).

5. Nat'l Conf. of Comm'rs on Unif. State Laws, A Few Facts About the . . . Uniform Foreign Money Judgments Recognition Act, http://www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-ufmjra.asp (last visited Nov. 30, 2009).

6. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT 13 Part I U.L.A. 7 (2005) (Supp. 2009) (hereinafter 2005 UNIF. ACT). The 2005 Uniform Act has been adopted by 12 states, almost all of which had previously enacted the 1962 Uniform Act. *See* Nat'l Conf. of Comm'rs on Unif. State Laws, A Few Facts About the . . . Uniform Foreign-Country Money Judgments Recognition Act, http://www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-ufcmjra.asp (last visited Nov. 30, 2009). By its terms, the 2005 Uniform Act repeals and supersedes the 1962 Uniform Act for all actions commenced after its enactment. 2005 UNIF. ACT. A rival statute, drafted by the American Law Institute, is devised as a federal statute that would pre-empt state law (including the 1962 and 2005 Uniform Acts). See FOREIGN JUDGMENTS RECOGNITION AND ENFORCEMENT ACT (Proposed Official Draft 2006), *reprinted in* AM. LAW INST., RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED FEDERAL STATUTE (2006) (hereinafter ALI DRAFT FEDERAL STAT.); *see also* Vishali Singal, *Preserving Power Without Sacrificing Justice: Creating an Effective Reciprocity Regime for the Recognition and Enforcement of Foreign Judgments*, 59 HASTINGS L.J. 943 (2008) (analyzing ALI Draft Federal Statute). At the present date, however, the ALI draft has not been adopted.

7. 2005 UNIF. ACT §§ 3-4; 1962 UNIF. ACT §§ 2-4.

8. *See, e.g.*, Southwest Livestock & Trucking Co. v. Ramon, 169 F.3d 317, 323 (5th Cir. 1999) (holding that a Mexican judgment was entitled to recognition under the Texas version of the 1962 Uniform Act); Tenorio Plata v. Darbun Enters., Inc., No. 09cv44-IEG(CAB), 2009 U.S. Dist. LEXIS 30626, at *15 (S.D. Cal. Apr. 9, 2009) (declining to dismiss an application under California's version of the 2005 Uniform Act for enforcement of a judgment by a Tijuana labor tribunal). On reciprocity requirements, *see infra* 107-09, nn. 12-19.

9. *See, e.g.*, *Phillips USA*, 77 F.3d at 359 (recognizing Australian judgment on grounds of comity because "[n]othing in Kansas statute or case law suggests that it would not follow the principles set out in *Hilton v.*

from the courts of Cuidad Obregon, even though Arizona had not adopted the 1962 Uniform Act.[10] In this regard, some have gone further and argued that the 1962 Uniform Act represents a codification of contemporary state common law, given the similarities between it and the *Restatement (Third) of Foreign Relations Law of the United States*.[11] One court has gone so far as to state that "[a]lthough not all jurisdictions have independently codified the [1962 Uniform Act], [it] may be looked on as the 'state of law' throughout the United States."[12]

Significantly, several states that adopted the 1962 Uniform Act did so with an important modification requirement, "reciprocity" of treatment.[13] In such states, judgments from a foreign country will not qualify for recognition under the statute unless it is shown that that country itself would give similar treatment to U.S. judgments.[14] This restriction met with strong opposition both from the drafters of the 1962 and 2005 Uniform Acts, who "consciously rejected" it.[15] Some courts have also declined to recognize this doctrine as being part of state common law,[16] and others have recognized that it has "practical lim-

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Guyot"); Spann v. Compania Mexicana Radiodifusora Fronteriza, S.A., 131 F.2d 609, 611 (5th Cir. 1942) (recognizing a Mexican award of litigation costs).

10. Feuchter A. v. Bozurto, 528 P.2d 178, 180 (Ariz. Ct. App. 1974) (affording recognition to Mexican judgment on grounds of comity). On Arizona's lack of a legislative regime for foreign judgment enforcement, *see* Multibanco Comermex, S.A. v. Gonzalez H., 630 P.2d 1053, 1053 (Ariz. Ct. App. 1981) (holding that Arizona's confusingly-worded "foreign judgments" statute only applied to domestic "sister state" judgments). The confusing name of Arizona's "foreign judgments" statute reflects the problem created by a 1948 uniform law known as the "Uniform Foreign Judgments Act," which regulates the grant of "full faith and credit" to domestic sister-state judgments. *See* UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT § 1(a), 13 Part II U.L.A. 246, 248 (1948). In an effort to reduce this confusion, the 2005 Uniform Act refers to "Foreign Countr[ies]" in its title. *See generally* James O. Ehinger, *Enforcement of Foreign Country Judgments in Arizona*, 33 ARIZ. ATT'Y, Mar. 1997, at 20 (discussing Arizona case and statutory law and the uniform laws).

11. *See, e.g.*, Van den Biggelaar v. Wagner, 978 F. Supp. 848, 853, 860-61 nn.14-15 (N.D. Ind. 1997) (utilizing 1962 Uniform Act to inform the content of Indiana law on the enforcement of Dutch judgment, even though Indiana had not enacted the 1962 Uniform Act). *See also* RESTATEMENT (THIRD) ON FOREIGN REL. LAW OF THE UNITED STATES §§ 481-84 (1987) (restating common law grounds for recognition or nonrecognition of foreign judgments); Ronald A. Brand, *Enforcement of Foreign Money-Judgments in the United States: In Search of Uniformity and International Acceptance*, 67 NOTRE DAME L. REV. 253, 266-67 (1991) (comparing judgment-recognition provisions of the Restatement (Third) with 1962 Uniform Act).

12. *Van den Biggelaar*, 978 F. Supp. at 860 n.14 (utilizing 1962 Uniform Act as indicating the content of Indiana law on the enforcement of Dutch judgment, even though Indiana had not enacted the 1962 Uniform Act).

13. The states that imposed a reciprocity requirement include Florida, Georgia, Massachusetts, Texas, Idaho, and Ohio. *See id.* at 860 n.15. Colorado law required reciprocity until recently. *See infra* note 72.

14. *See, e.g.*, Banque Libanaise Pour Le Commerce v. Khreich, 915 F.2d 1000, 1005-06 (5th Cir. 1990) (affirming the denial of recognition to a judgment from Abu Dhabi, United Arab Emirates, based on the Texas reciprocity proviso to the 1962 Uniform Act, citing an affidavit by a U.S. attorney practicing in Abu Dhabi, stating that he and other members of his firm were "unaware of any Abu Dhabi courts enforcing United States' judgments"); *see also* Singal, *supra* note 6, at 944-45 (analyzing *Banque Libanaise*).

15. *Van den Biggelaar*, 978 F. Supp. at 859 n.12; *see also* 2005 UNIF. ACT, Prefatory Note ("While recognition of U.S. judgments continues to be problematic in a number of foreign countries, there was insufficient evidence to establish that a reciprocity requirement would have a greater effect on encouraging foreign recognition of U.S. judgments than does the approach taken by the Act.").

16. *See, e.g.*, Somportex Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435, 440 n.8 (3d Cir. 1972) (holding reciprocity not required under Pennsylvania law; permitting English judgment to be enforced); Tahan v. Hodgson, 662 F.2d 862, 867-68 (D.C. Cir. 1981) (reciprocity not required to enforce Israeli judgment); Johnston v. Compagnie Generale Transatlantique, 152 N.E. 121, 122-24 (N.Y. 1926) (holding that reciprocity is not required by New York law).

its."[17] Yet, in some states at least, there remains some basis for arguing that a reciprocity requirement exists at common law,[18] and the ALI proposed law would seek to revive the doctrine in its proposed federal statute (which would preempt state law, including the 1962 and 2005 Uniform Acts).[19] Unless, and until, a widespread international judgment recognition comes into existence (and none exists yet),[20] the doctrine will remain a potentially significant roadblock to recognition in some parts of the United States.

III. Rules Relating to Corruption in Foreign Courts

A. The "Fraud" Exception

Even where a foreign money judgment is proven to be final, binding, and made by a court of competent jurisdiction, there are a number of exceptions to recognition; among the most important and well-established is that "[a] foreign judgment need not be recognized if . . . the judgment was obtained by fraud."[21] Other grounds for non-recognition include lack of jurisdiction, public policy, denial of due process (*e.g.*, the defendant received insufficient time to respond), breach of forum selection agreement, and forum non conveniens.[22]

The 1962 Uniform Act did not contain a definition of "fraud," thus allowing courts to develop its meaning. A distinction has come to be recognized between two types of "fraud":

- **"Extrinsic fraud,"** *e.g.*, bribery or corruption of court officials that induces the court to grant a judgment in favor of the prevailing party; and
- **"Intrinsic fraud,"** *e.g.*, the use of perjured testimony or forged documents to obtain judgment.

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17. *See* Wilson v. Marchington, 127 F.3d 805, 812 (9th Cir. 1997) (commenting obiter dictum on the "practical limits" of a reciprocity rule in the recognition of foreign judgments: "[i]f a litigant sought recognition of a Djibouti judgment in Montana, for example, it is unlikely that Djibouti would have had the prior opportunity to consider recognition of a Montana judgment").

18. *See Van den Biggelaar*, 978 F. Supp. at 859 n.12. Some, however, argue in favor of retaining the reciprocity requirement. *E.g.*, Richard H. M. Maloy & Desamparados M. Nisi, *A Message to the Supreme Court: The Next Time You Get a Chance, Please Look at* Hilton v. Guyot; *We Think it Needs Repairing*, 5 J. Int'l Legal Stud. 1, 39-42 (1999) (forcefully arguing for retention of common law reciprocity requirement, albeit in a modified form).

19. *See* ALI Draft Federal Stat. § 7.

20. In 2005, the Hague Conference on Private International Law promulgated a Convention on Choice of Court Agreements, which would require recognition and enforcement of judgments in cases where the parties had entered into a binding and valid choice of court agreement. *See* Hague Conference on Private International Law, Convention on Choice of Court Agreements arts. 8-9, June 30, 2005, 44 I.L.M.1294, *available at* http://www.hcch.net/index_en.php?act=conventions.text&cid=98. Should the United States proceed to ratify this convention, it will create a limited reciprocal agreement between the contracting parties, applicable in cases where a forum selection clause exists. At the moment, however, "[t]he United States is not a party to any convention or bilateral agreement on the recognition and enforcement of foreign judgments." Efforts were made to conclude such a treaty with the United Kingdom in 1977, "but it was ultimately blocked by the U.K. insurance industry, which was nervous about the enforcement of U.S. tort judgments against them in U.K. courts." Sean D. Murphy, *Negotiation of Convention on Jurisdiction and Enforcement of Judgments*, 95 Am. J. Int'l. L. 418, 419 (2001).

21. 1962 Unif. Act § 4(b)(2); *see also Hilton*, 159 U.S. at 202-03 (noting that "fraud in procuring the judgment" may be a ground for denying comity at common law).

22. *See* 1962 Unif. Act §§ 4(a), (b).

Over time, many commentators concluded that the "fraud" exception was aimed primarily at protecting against extrinsic fraud, because a court whose procedures are tainted by bribery or corruption is not capable of providing a fair hearing, nor is such a court necessarily capable of redressing the consequences of its own corrupt activity.[23] By contrast, a court that is not corrupt is arguably capable of addressing, for instance, belated revelations that a key witness had lied under oath; therefore, intrinsic fraud can be redressed in the court that rendered the original judgment (on the basis that that court is not tainted by fraud).

The drafters embraced this distinction in the 2005 Uniform Act, which now only permits non-recognition for extrinsic fraud, *i.e.*, *"fraud that deprived the losing party of an adequate opportunity to present its case."*[24] As the National Conference explained, "intrinsic fraud" should not be raised before U.S. courts, but instead "should be raised and dealt with in the rendering court."[25] Despite this refinement of the "fraud" exception, the 2005 revisions leave little doubt that actual bribery of foreign court officials, or similarly blatant forms of corruption, would continue to qualify as a form of extrinsic "fraud" that could lead to non-recognition of a foreign judgment, not least because it is sometimes difficult to obtain effective redress from the same court that had engaged in bribery.

B. The Exception for Countries Whose Justice Systems Are Fundamentally Impaired

Both the 1962 and 2005 Uniform Acts provide for non-recognition of judgments emanating from countries where fair justice is essentially unavailable, *i.e.*, if "[t]he judgment was rendered under a system which [sic] does not provide impartial tribunals or procedures compatible with the requirements of due process of law."[26] This exception was also noted in the court's discussion in *Hilton v. Guyot* of the grounds for refusing common law recognition of judgments.[27] Under this exception, "'mere difference[s]'" between the foreign procedure and the U.S. procedure is not enough, "'[a] case of serious injustice must be involved'" sufficient to question "the basic fairness of the foreign-country procedure."[28] A classic example of a country whose judgments were denied recognition on this ground was post-revolutionary Iran, whose courts were considered to possess an entrenched bias against the former royal family.[29]

It is also possible that this exception might be employed in the context of bribery and corruption. Indeed, in its commentary to the 2005 Uniform Act, the National Conference stated that this exception would apply if it were proven "that *corruption and bribery is*

23. *See* Restatement (Third) of Foreign Rel. Laws of the United States § 482 cmt. e (1987) (stating that "fraud" exception should mean extrinsic fraud, *i.e.*, "fraudulent action by the prevailing party that deprived the losing party of adequate opportunity to present its case to the court").

24. 2005 Unif. Act § 4(c)(2) (emphasis added).

25. *Id.* cmt. 7.

26. 1962 Unif. Act § 4(a)(1); *accord* 2005 Unif. Act § 4(b)(1).

27. *See Hilton*, 159 U.S. at 204-05.

28. 2005 Unif. Act § 4 cmt. 5 (quoting 1962 Unif. Act § 4 cmt.).

29. Bank Melli Iran v. Pahlavi, 58 F.3d 1406, 1413 (9th Cir. 1995) (concluding that post-revolutionary Iranian judicial system did not afford protections compatible with due process).

[sic] *so prevalent throughout the judicial system of the foreign country as to make that entire judicial system one that does not provide impartial tribunals.*"[30]

Historically, U.S. courts have been reluctant to make across-the-board findings that an entire sovereign-country's courts are endemically corrupt or prone to bribery.[31] But one court found, in a case involving 1990s Liberia, that a party successfully resisted recognition of Liberian judgments based on State Department reports that the country was so plagued with civil war and corruption that its courts could not be relied upon.[32] A similar finding was once made in connection with Paraguay, in a forum non conveniens context.[33] More recently, a judge of the U.S. District Court for the Southern District of Florida refused to enforce a Nicaraguan judgment on a variety of grounds, including that the Nicaraguan judicial system was such that the judgment was "'rendered under a system which does not provide impartial tribunals'"—a finding that was based on "persuasive evidence that direct political interference and judicial corruption in Nicaragua is widespread."[34]

In the case of present-day Mexico, no U.S. court has suggested that corruption is so pervasive or endemic that its courts are generally unreliable; on the contrary, U.S. courts

30. 2005 UNIF. ACT § 4 cmt. 11 (emphasis added).

31. *See, e.g., In re* Arbitration between Monegasque de Reassurances S.A.M. v. Nak Naftogaz of Ukraine, 311 F.3d 488, 499 (2d Cir. 2002) (rejecting, in a forum non conveniens application, the claim that the courts of the Ukraine are corrupt); Universal Trading & Inv. Co. v. Kiritchenko, No. C-99-3073 MMC, 2007 U.S. Dist. LEXIS 66317, at *49-50 (N.D. Cal. Sept. 7, 2007) ("[T]he Court finds UTI has not demonstrated that the Ukrainian courts are so lacking in impartiality, due process, or procedural fairness that the United States courts should disregard all Ukrainian court decisions as a matter of course, or the particular decisions at issue herein.").

32. *See* Bridgeway Corp. v. Citibank, 201 F.3d 134, 138 (2d Cir. 2000) (refusing to enforce Liberian judgment based on U.S. State Department reports indicating that "Liberia's judicial system was in a state of disarray and the provisions of the Constitution concerning the judiciary were no longer followed").

33. In one case, a plaintiff persuaded a New York federal judge that Paraguay's justice system as it existed in 2000 precluded any chance of a fair trial. *See* HSBC USA, Inc. v. Prosegur Paraguay, S.A., 03 Civ. 0336, 2004 U.S. Dist. LEXIS 19750, at *10-12 (S.D.N.Y. Sept. 30, 2004) (crediting evidence that "Paraguay was ranked the fourth most corrupt country in the world" and that "[a] State Department report issued in February 2000 noted that denials of fair trials are common in Paraguay and the courts are often pressured by politicians and other persons whose interests are at stake").

34. Sanchez Osorio v. Dole Food Co., No. 07-22693-CIV-HUCK, 2009 U.S. Dist. LEXIS 99981, at *125 (S.D. Fla. Oct. 20, 2009) (citing FLA. STAT. ANN. § 55.605(1)(a)). The *Sanchez Osorio* case is part of a series of long-running claims by Nicaraguan agricultural workers against U.S. companies allegedly responsible for making or using an agricultural pesticide, dibromochloropropane (DBCP). After the plaintiffs' attempts to bring suit against the U.S. companies in the courts of Texas were dismissed on forum non conveniens grounds, the Nicaraguan legislature enacted a special law providing for such actions to be brought in Nicaragua, and further providing a number of unorthodox features that "deliberately tilt[ed] the scales of justice in the plaintiffs' favor." *Id.* at *43. In 2005, a Nicaraguan court rendered a judgment awarding certain plaintiffs a total of $97 million against two U.S. defendants. In its 2009 opinion refusing to recognize the judgment, the U.S. District Court for the Southern District of Florida held, as noted above, that the Nicaraguan judicial system was not impartial, and also identified numerous other bases for denying recognition under Florida's version of the 1962 Uniform Act, namely, that: (1) the Nicaraguan courts lacked personal or subject-matter jurisdiction over the defendants, *see id.* at *47-49; (2) the Nicaraguan judgment (and the special law under which it was rendered) offended international due process, *see id.* at *51, 56-63, 76-77, 84-93; and (3) the Nicaraguan judgment was "repugnant to Florida public policy" for purposes of the 1962 Uniform Act, *id.* at *113-114 (citing FLA. STAT. ANN. § 55.605(2)(c)). The defendants had also alleged that the judgment was procured by fraud, but the determination of this claim was rendered unnecessary by the court's other holdings. *See id.* at *6 n.3. At the time of writing, the plaintiffs have moved for reconsideration of this decision.

have granted forum non conveniens dismissals based on an explicit finding that Mexico is an adequate alternative forum.[35] In several of those cases, the U.S. courts have pointedly refused to give credit to generalized assertions of corruption in the Mexican courts.[36] If these cases are any guide, a judgment debtor seeking to resist enforcement of Mexican judgments will need to rely upon much more than general claims of corruption, but will instead need to present case-specific evidence of fraud, bribery, or corruption—as was done in the three cases discussed below.

C. A New Ground of Review: Judgments of Doubtful Integrity

Section 4(c)(7) of the 2005 Uniform Act has introduced a new exception to recognition that supplements the "fraud" exception:

"A court of this state need not recognize a foreign-country judgment if . . .

(7) the judgment was *rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.*"[37]

The "questionable circumstances" exception does not require across-the-board proof that an entire country's justice system is endemically corrupt. Instead, as the National Conference of Commissioners explained, section 4(c)(7) demands *case-specific proof* in the form of "a showing of corruption in the particular case that had an impact on the judgment that was rendered" or "a lack of impartiality and fairness of the tribunal in the individual proceeding leading to the foreign-country judgment."[38] This contrasts with section 4(b)(1), discussed above, which permits denial of recognition where it is shown that "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,"[39] and thus "focuses

35. *See, e.g.*, Langsam v. Vallarta Gardens, No. 08 Civ. 2222, 2009 U.S. Dist. LEXIS 52597, at *37 (S.D.N.Y. June 15, 2009) (dismissing on forum non conveniens grounds a business dispute concerning a property venture in Punta Mita, Mexico); Zions First Nat'l Bank v. Moto Diesel Mexicana, S.A. de C.V., No. 08-10528, 2009 U.S. Dist. LEXIS 30538, at *7 (E.D. Mich. Apr. 1, 2009) (dismissing on forum non conveniens grounds a claim by a U.S. bank that held certain checks drawn by a company based in Aguascalientes, Mexico in favor of another Mexican company); Wozniak v. Wyndham Hotels & Resorts, LLC, No. 08 CV 1361, 2009 U.S. Dist. LEXIS 26952, at *26 (N.D. Ill. Mar. 31, 2009) (dismissing on forum non conveniens grounds a personal injury claim relating to an accident at a hotel in Cozumel, Mexico); Dtex, LLC v. BBVA Bancomer, S.A., 512 F. Supp. 2d 1012, 1022, 1029 (S.D. Tex. 2007) (dismissing on forum non conveniens grounds a claim against a Mexican bank for tortious interference with contract; noting that numerous courts "have held that Mexico is an adequate forum for litigation, despite differences in Mexican and American substantive and procedural law"), *aff'd* 508 F.3d 785 (5th Cir. 2007); *see also In re* Ford Motor Co., 580 F.3d 308, 314 (5th Cir. 2009) (noting that Fifth Circuit case law has "create[d] a nearly airtight presumption that Mexico is an available forum" in tort cases).

36. *See, e.g.*, *Langsam*, 2009 U.S. Dist. LEXIS 52597, at *22 (refusing to credit generalized claims that the Mexican court system was "corrupt" and that its administrators accepted "gratuities"; noting that "the Second Circuit is 'reluctant to find foreign courts corrupt or biased,' unless presented with some particularized showing of wrongdoing," and holding that "plaintiffs ha[d] shown no particularized indications of wrongdoing by any officers of Mexican courts") (quoting *Monegasque De Reassurances*, 311 F.3d at 499); *Zions First Nat'l Bank*, 2009 U.S. Dist. LEXIS 30538, at *6 (rejecting generalized claims of "corruption" in Mexico; refusing to "extrapolate" from the *Firestone/Bridgestone* case the proposition that Mexico was "a clearly inadequate forum" and noting that "a number of courts have held that Mexico is an adequate forum, with no indication that it is inherently corrupt or otherwise inadequate").

37. 2005 Unif. Act § 4(c)(7) (emphasis added).

38. *Id.* § 4 cmt. 11.

39. *Id.* § 4(b)(1).

on the judicial system of the foreign country *as a whole*, rather than on whether the particular judicial proceeding leading to the foreign-country judgment was impartial and fair."[40]

Thus, where allegations of corruption are involved, section 4(c)(7) would permit nonrecognition if "bribery of the judge in the proceeding that resulted in the particular foreign-country judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question."[41] Conceivably, it could apply in other circumstances where the inference of corruption exists.

IV. Three Cases Involving Mexico and the "Fraud" Exception

A. PEGASO

The dispute between Transporter Aerosos Pegaso S.A. de C.V. (Pegaso) and Bell Helicopter Textron Inc. (Bell) began with a foiled bid by Pegaso to win an aviation services contract with Pemex, Mexico's state-owned oil company.[42] In 2000, Pemex invited bids for the provision of regional air transportation services. In preparation for its bid, Pegaso made arrangements for Bell to supply it with four helicopters, should it be awarded a contract with Pemex. Shortly thereafter, however, Bell indicated that the delivery dates for the helicopters needed to be postponed. Although Bell claimed that Pegaso received this notification well ahead of the bid date, Pegaso claimed that it only found out later–after it had submitted its bid based on the initial (earlier) delivery dates. In all events, when Pemex independently learned that Pegaso's bid was based on incorrect delivery dates, it disqualified Pegaso from the bid and awarded the aviation services contract to a rival company.

In March 2001, Pegaso brought a lawsuit against Bell, in Mexico City Civil Court alleging breach of contract and further claiming that Bell had improperly communicated with Pemex during the bid process, thereby "disparag[ing]" Pegaso's reputation in Mexico's air transportation service industry."[43] In February 2002, the Mexico Civil Court found in favor of Pegaso, holding that Bell was liable to pay compensatory damages for breach of contract equal to Pegaso's "lost profits on the Pemex Contract."[44]

The Mexican Civil Court then proceeded to hear evidence on quantification. The two parties submitted reports from damages experts that were $10 million apart, partly due to Pegaso's expert's refusal to allow for "depreciation of the helicopters over time."[45] Confronted with this disparity, the Mexican Civil Court decided to appoint an "independent expert."[46]

40. *Id.* § 4 cmt. 11 (emphasis added).

41. *Id.*

42. Transportes Aereos Pegaso, S.A. de C.V. v. Bell Helicopter Textron, Inc., 623 F. Supp. 2d 518, 521-23 (D. Del. 2009).

43. *Id.* at 523.

44. *Id.* at 523-24, n.5. The Mexican Civil Court also awarded "as much as double the compensatory damages in 'moral damages' for Bell's purportedly outrageous conduct"–"moral damages" being available under Mexican law "for damages to a party's reputation and honor." *Id.* The "moral damages" award was vacated on appeal. *Id.* at 524 (describing appeals to "Civil Court of Appeals" and then to the "Ampero Collegiate Court").

45. *Id.* at 524-25.

46. *Id.* at 525.

It is at this point in the quantification process that irregularities apparently crept into the proceedings. "Immediately after his appointment," according to Bell, the court-appointed damages expert "solicited a bribe" from Bell.[47] As Bell described it,

> [O]ne of Bell's [Mexican] attorneys . . . contacted [the court-appointed expert] to meet with him and to present Bell's side of the case, as is common in Mexican civil practice. Bell asserts that at the meeting, [the expert] made it clear that he would sway his opinion for Bell in return for a monetary payment. Specifically, Bell claims that [the expert] told [Bell's Mexican attorney] that if Bell wanted a favorable opinion from him, it would have to pay him and that "everything has a cost."[48]

When Bell refused outright to pay any such bribe, it received unwelcome news:

> [The expert] told [Bell's Mexican attorney] that he was relieved that Bell would not pay him because he had met with [the Mexican judge] in the interim, and the judge had asked him for help with the case, as a personal favor, because he had a "personal interest" in the case. Bell further claims that [the expert] stated that as a result of his conversation with [the Mexican judge], there was no way he could issue an opinion favorable to Bell. Bell argues that it was clear to [Bell's attorney] that [the expert] would be writing an opinion favorable to Pegaso.[49]

On further investigation, it emerged that the manner of this expert's appointment was irregular. Although "Mexican law requires an independent expert to be appointed automatically, with no role for judicial discretion," and that independent experts are appointed "sequentially from a list maintained alphabetically" by last name, the facts showed that the statutory procedure was not observed in Bell's case, meaning that the Mexican judge had selected [the expert] out of the "legally required order."[50]

In July 2003, the expert rendered a damages report that "not only agreed with Pegaso's expert, but found an even greater amount of damages, in excess of sixteen million dollars."[51] The judge accepted the inflated damages figure, eventually resulting in Pegaso winning a judgment in the sum of $16,599,924.70 and 6,293,198.22 pesos.[52] Meanwhile, Bell's criminal complaints against the Mexican judge were inconclusive or unsuccessful.[53]

In December 2008, Pegaso filed a lawsuit in the U.S. District Court for the District of Delaware, seeking recognition and enforcement of the Mexico Civil Court judgment pursuant to Delaware's version of the 1962 Uniform Act.[54] Bell cross-moved for summary judgment based on the fraud exception, claiming that the Mexico Civil Court Judgment was tainted by corruption.[55] Bell submitted evidence from its Mexican counsel, attesting both to the solicitation of a bribe by the expert, as well as expert Mexican law evidence

47. *Id.*
48. *Id.*
49. *Id.* at 525-26.
50. *Id.* at 526.
51. *Id.*
52. *Id.* at 527-28.
53. *Id.* at 526-27.
54. *Id.* at 528.
55. DEL. CODE ANN. tit. 10 §§ 4801-08 (Delaware equivalent of 1962 UNIF. ACT § 4(b)(2)); *Transportes Aereos Pegaso*, 623 F. Supp. 2d at 528.

concerning the judge's apparent deviation from strict statutory procedures in appointing this particular expert. Over Pegaso's strenuous evidentiary objections, most of Bell's evidence was accepted as competent and admissible by the Court.[56]

Despite this evidence, Pegaso claimed that Bell had not met its evidentiary burden for purposes of the 1962 Uniform Act's "fraud" exception. Pegaso argued that Bell had the "burden" of affirmatively proving by "clear and convincing" evidence that fraud had actually occurred, but had merely succeeded in raising suspicion.[57] The court rejected this argument, holding that, under the 1962 Uniform Act as interpreted by Delaware courts, a party resisting judgment only needed to present enough evidence such that the court was not "'satisfied'" that the judgment "'was not obtained by fraud.'"[58] Noting that Bell had presented evidence that a bribe was solicited, that the expert's appointment was irregular and that the judge had a "personal interest" in the case, "coupled with the fact that a criminal investigation" of the Mexican judge was "currently underway in Mexico," the court held that it "[could not] say that it is satisfied that the Mexican judgment was not obtained by fraud."[59] Accordingly, it declined Pegaso's request to recognize the Mexican judgment.[60]

Significantly, one of the most hotly-contested issues in *Pegaso* concerned burdens of proof, with the court eventually declining to impose on Bell the full evidentiary burden of proving "fraud" and instead adopting a less stringent test, refusing recognition on the basis of evidence that left it unsatisfied that fraud had *not* occurred. As discussed below, the 2005 Uniform Act changed these standards, placing an affirmative burden on the party resisting recognition of proving that the adverse judgment was a product of fraud, and also introducing additional grounds for non-recognition.[61] Because Delaware, however, had not yet adopted the 2005 Uniform Act at the time of *Pegaso*, and indeed still has not adopted it, this point did not arise in that case.[62]

B. THE *BAJA CANTINA* CASE

The *Baja Cantina* case is the outgrowth of a business dispute between two U.S. citizens "with history stretching back 17 years" relating to a business venture in Cabo San Lucas, Mexico, the Baja Cantina.[63] According to the bankruptcy judge, the case was made particularly complex not only by the "passage of about 15 years" since the parties' original dispute case, but also the "palpable animosity" between the two former owners of the Baja

56. DEL. CODE ANN. tit.10 § 4804(b)(2); *Transportes Aereos Pegaso*, 623 F. Supp. 2d at 537-38.

57. *Id.*

58. *Id.* at 537 (quoting Abd Alwakhad v. Amin, No. L-21-479, 2005 Del. Super. LEXIS 320, at *3 (Del. Super. Ct. Sept. 14, 2005)).

59. *Id.* at 538 (citing *Abd Alwakhad*, 2005 Del. Super. LEXIS 320, at *3).

60. *Id.* A subsequent motion for reconsideration was denied. Transportes Aeros Pegaso, S.A. de C.V. v. Bell., 2009 U.S. Dist. LEXIS 59006 (D. Del. July 10, 2009).

61. *See* 2005 UNIF. ACT §§ 4(b)-(d); *infra* § 4.

62. Uniform Law Commissioners, A Few Facts About the Uniform Foreign-Country Money Judgments Recognition Act (2005), http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ufcmjra.asp (last visited Mar. 20, 2010).

63. Hoffman v. Greene (*In re* Burke), 374 B.R. 781, 783 (Bankr. D. Colo. 2007), *aff'd*, 2008 U.S. Dist. LEXIS 75586 (D. Colo. Sept. 29, 2008).

Cantina, John Burke and Richard Greene, as well as (in the court's words) their "lack of credibility."[64]

The business relationship between the Baja Cantina owners began in 1991 and seems to have collapsed in 1993, when Mr. Greene filed criminal complaints with the Cabo San Lucas police against Mr. Burke, alleging fraud. In November 1994, Mr. Greene commenced civil proceedings against Mr. Burke in a Mexican court, alleging that the Baja Cantina's assets had been misappropriated.[65] In January 1995, a meeting of the parties took place before the Mexican judge, which led to a "settlement agreement" and "judgment" purportedly against Mr. Burke for $990,000.[66]

In 1998, Mr. Greene came to state court in Denver, Colorado, seeking to have the Mexican judgment recognized and enforced. In his Answer, Mr. Burke responded, *inter alia*, by challenging the judgment as tainted by fraud.[67] But before this allegation could be heard, Mr. Burke filed for bankruptcy, meaning that the validity of the Mexican judgment eventually became an issue to be determined by a bankruptcy judge in Colorado.

In August 2007, the U.S. Bankruptcy Court for the District of Colorado ruled on the validity of the Mexican judgment, and therefore finally addressed the fraud issue. By now, evidence had emerged not only of the procedural irregularities associated with the settlement, but also of stark corruption within the local Mexican court. Direct first-hand testimony was presented that "the judge presiding over the Mexican lawsuit was given a cash bribe and later became an attorney for Mr. Greene."[68]

It also emerged that judgment was obtained in unusual circumstances. The judgment was based on a "Settlement Agreement" that had been negotiated and executed "after hours" in the court. At the time of execution only a Spanish version of the agreement existed. Prior to execution, the contents of the Spanish version were supposedly read to Mr. Burke (who apparently did not speak Spanish) by an employee of Mr. Greene. Mr. Burke was later supplied with an English version, translated from Spanish only *after* the Spanish version had been executed.[69] Critically, however, the English version bore several material differences from the Spanish original. And it was not even clear whether the "990,000" figure in the judgment was supposed to be denominated in dollars or pesos.[70]

Before dealing with claims of fraud, the Colorado bankruptcy court addressed the governing legal standard. The court noted that Colorado's version of the 1962 Uniform Act[71] did not, by its terms, apply to the dispute because it only applied to judgments from a "foreign state" that had entered into a "reciprocal agreement" with the United States,[72]

64. *Id.* at 784.

65. *See id.* at 784-88.

66. *Id.* at 789.

67. Before Mr. Burke filed his answer, Mr. Greene obtained a default judgment, but this was later set aside after Mr. Burke established that his answer had in fact been timely. *Id.* at 791-92.

68. *Id.* at 796.

69. *Id.* at 796-97.

70. *Id.* at 790.

71. COLO. REV. STAT. §§ 13-62-101 to 13-62-112.

72. *See Hoffman*, 374 B.R. at 798 (quoting COLO. REV. STAT. § 13-62-102(1) (defining "foreign state" whose judgment would be entitled to recognition as a "governmental unit [that] has entered into a reciprocal agreement with the United States recognizing any judgment of a court of record of the United States")); *Id.* at 799, n. 77 (quoting Milhoux v. Linder, 902 P.2d 856, 860 (Colo. App. 1995) ("[T]he unambiguous language of [Colorado's] Recognition Act requires a reciprocity agreement before a foreign judgment will be recog-

which was not the case with Mexico, or "apparently any other country."[73] Nevertheless, the court held that Colorado courts were also empowered to "recognize a foreign judgment" under "common law" principles of "comity," as set forth in the U.S. Supreme Court case of *Hilton v. Guyot* and applicable in Colorado.[74] The court further held that the Colorado common law grounds for "nonrecognition" of a judgment were "similar" to those stated in the 1962 Uniform Act, and thus included a fraud exception.[75]

The court held that recognition was not appropriate, concluding that:

> [T]he Mexican judgment is so flawed and so tainted with procedural and substantive irregularities it cannot stand. The Mexican Judgment and the attendant Settlement Agreement are so questionable as to legitimacy, so suspect as to content, translation and meaning, and so much a product of evident fraud and related misconduct that it cannot be recognized by this Court.
>
> . . .
>
> The Court concludes, consistent with the [1962 Uniform Act], that the entry of the Colorado Judgment was not proper, not procedurally correct, and not in full compliance with principles of due process of law.[76]

Mr. Greene appealed the bankruptcy court's decision to the United States District Court for the District of Colorado. In September 2008, the district court affirmed the bankruptcy court's decision.[77]

C. *De Manez Lopez v. Ford*

In common with *Pegaso* and *Baja Cantina*, the case of *de Manez Lopez v. Ford*[78] featured evidence of improper conduct involving Mexican court officials, resulting in a tainted judgment. But unlike in those cases, the suspect judgment went *against* the Mexican plaintiffs. And, bizarrely, it was those same Mexican plaintiffs who were attempting to have the judgment recognized in the U.S. courts—all in an effort to keep the case in the United States.

The plaintiffs in *de Manez Lopez v. Ford* were the family of Jose Samuel Manez-Reyes, a well-known Mexican soccer player. In 2002, while driving his Ford Explorer in Veracruz, Mexico, Manez-Reyes was killed when his left-rear Firestone tire allegedly separated from the tireback, causing the vehicle to roll over.[79] His family then commenced litigation in

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nized and that this requirement does not necessarily render the Act meaningless.")). Moreover, although Colorado has enacted the 2005 Uniform Act (and, in so doing, has repealed the reciprocity requirement), this Act had not been implemented at the time of the Court's decision and in any event only applies "to all actions commenced after August 5, 2008." COLO. REV. STAT. § 13-62-112 (Colorado equivalent of 2005 UNIF. ACT § 12).

73. *Hoffman*, 374 B.R. at 799.

74. *Id.*

75. *Id.*

76. *Id.* at 797, 800.

77. Greene v. Burke (*In re* Burke), Civil Action No. 07-cv-01947-AP, 2008 U.S. Dist. LEXIS 75586 (Sept. 29, 2008).

78. de Manez Lopez v. Ford Motor Co. (*In re* Bridgestone/Firestone, Inc. Tires Prods. Liability Litig.), 470 F. Supp. 2d 917 (S.D. Ind. 2006).

79. Cisneros v. Bridgestone/Firestone, Inc. (*In re* Bridgestone/Firestone, Inc. Tires Prods. Liability Litig.), 305 F. Supp. 2d 927, 931 (S.D. Ind. 2004).

Texas against both Ford and Firestone in the United States, seeking damages for wrongful death. The action, along with numerous other wrongful death claims against these and other defendants, was transferred to the U.S. District Court for the Southern District of Indiana pursuant to the rules concerning multi-district litigation.[80]

In 2003, Ford and Firestone moved to dismiss the claim on forum non conveniens grounds, arguing that Mexico was a more appropriate forum to hear the claim. Granting the motion, the court held that: (1) Mexico was an "available forum"; (2) the Mexican courts offered an "avenue of redress"; and (3) all other public and private interest factors favored dismissing the claims in favor of adjudication in Mexico.[81]

Mr. Manez-Reyes's family then appealed the dismissal of their case to the U.S. Circuit Court for the Seventh Circuit. Normally, the Seventh Circuit noted, the case would be "an easy candidate for a straightforward affirmance," given the "reasonableness" of the district court's conclusions and the deferential appellate standard of review of forum non conveniens decisions; but the Seventh Circuit held there was a "wrinkle."[82]

During the pendency of the Seventh Circuit appeal, it emerged that the plaintiffs had brought proceedings against the defendants in the courts of Morelos, only to have those claims dismissed. As the Seventh Circuit explained:

> [W]hile this appeal was pending, the Manez-Reyes family sued Bridgestone/Firestone and Ford in the Fourth Court of First Instance for Civil Cases of the First Judicial District in Morelos, Mexico. That court determined that it did not have jurisdiction to hear the case, a ruling "confirmed" by the Auxiliary Chamber of the Supreme Court of Justice of the State of Morelos . . . . Essentially, the [Morelos] court found that it did not have personal jurisdiction over Ford and Bridgestone/Firestone. Thus, on the face of things, it appears that the very first forum non conveniens requirement–an available alternative forum–is no longer satisfied. Mexico, apparently, has refused to hear the case.[83]

Based on this new evidence, the Seventh Circuit vacated the forum non conveniens dismissal and remanded the case to the district court "so that the district court can thoroughly explore the circumstances surrounding the Morelos decisions."[84]

On remand to the district court, however, plaintiffs' case, and in particular their reliance on the Morelos judgment, completely unraveled. Indeed, it emerged that the Morelos court's decision was obtained through improper conduct and collusion, apparently in order to fraudulently manufacture a record that Mexico was *not* an adequate and available forum. In a scathing judgment, the district judge excoriated the plaintiffs' Mexican attorneys, who, it held, had "acted with the clear purpose of having the [Morelos] case dismissed; and, in seeking that result, manipulated the process to insure that the dismissal would be based on a particular reason that was calculated to improve the chances of the dismissal being sustained on appeal."[85] Among the court's findings:

80. *See id.* at 929.

81. *Id.* at 932-39.

82. *In re* Bridgestone/Firestone, Inc. Tires Prods. Liability Litig., 420 F.3d 702, 705 (7th Cir. 2005).

83. *Id.*

84. *Id.* at 706-07.

85. *de Manez Lopez*, 470 F. Supp. 2d at 920.

- When the plaintiffs' Mexican attorneys were hired to bring Mexican proceedings against the defendants, their retainer agreement expressly promised them ten percent of the total recovery in the United States "'if they [were] successful in having the case dismissed.'"[86] Thus, they "had an [e]conomic [i]ncentive to [g]et the [c]ase [d]ismissed."[87]
- The plaintiffs' Mexican attorneys deliberately chose to file the proceeding in Morelos court in order to take advantage of a "familial" relationship with a court official–namely, the fact that the court's *secretaria de acuerdos* ("secretary of orders"), the court-employed lawyer with exclusive responsibility for reading all motions, recommending judicial action and presenting "draft orders" to the judges, *was the sister of one of the plaintiffs' Mexican attorneys.*[88] In this respect, the Indiana federal court found, the sister's refusal to recuse herself was "not based in good faith and honest public service."[89]
- As evidenced by a "'smoking gun'" email, the Mexican attorneys engaged in unusual (and improper) *ex parte* communications with the court's judges and administrators.[90]
- The Mexican attorneys' "refusals to testify to rebut or explain the substantial evidence against them of bad faith" permitted further adverse inferences against them, including that they had "orchestrated" the Morelos court proceedings "to ensure a dismissal ruling in accordance with their plan and intentions."[91]

The district court held that its analysis of the Morelos order was governed by federal common law, including *Hilton v. Guyot*, in which the Supreme Court held that a judgment could be refused recognition based on "'fraud,'"[92] as well as the Seventh Circuit's earlier decision "'for purposes of U.S. law a forum may not become unavailable by way of fraud.'"[93] The court also noted that, to the extent the procedural law of Texas (the state in which plaintiffs had commenced the case) was relevant, the Texas version of the 1962 Uniform Act would also permit recognition to be refused based on "fraud."[94]

Applying these principles, the court had "no difficulty or hesitancy" in finding that the Morelos orders were not entitled to recognition. Based on "[t]he abundant circumstantial evidence that [they] were obtained by fraud, coupled with the adverse inferences compelled by the Mexican lawyers' refusal to testify," the court concluded that "the Morelos orders were, in fact, obtained by fraud and thus [were] not entitled to recognition by

86. *Id.* at 923 (citation omitted).

87. *Id.*

88. *Id.* at 924 (emphasis added).

89. *Id.* at 925.

90. *Id.* at 925-26 (citation omitted).

91. *Id.* at 928.

92. *Id.* at 929 (citing *Hilton*, 159 U.S. at 159-60).

93. *Id.* at 929 (quoting *In re Bridgestone/Firestone*, 420 F.3d at 707).

94. *Id.* at 929 n.24 (citing Texas version of 1962 UNIF. ACT § 4(b)(2), TEX. CIV. PRAC. & REM. CODE § 36.005(b)(2) (permitting non-recognition of foreign judgment where "the judgment was obtained by fraud").

courts in the United States."[95] Accordingly, the court "renewed" its original dismissal of the claim on forum non conveniens grounds.[96]

V. Potential Impact of the 2005 Legislation's Burden of Proof Provision

As seen from the *Pegaso* case, the 1962 Uniform Act did not explicitly address who bore the burden of proving "fraud." When revising the statute in 2005, the National Commissioners recognized this lacuna, noting that "[t]he 1962 [Uniform] Act was silent as to who had the burden of proof to establish a ground for nonrecognition and courts applying the [1962 Uniform] Act took different positions on the issue."[97] The National Conference has since tried to fill this gap by assigning explicit burdens:

- A party seeking recognition of a foreign judgment bears the initial evidentiary burden of proving that it is a conclusive and final money judgment, rendered by a court of competent jurisdiction;[98]
- Once these matters are proven, the evidentiary burden shifts to the defendant. Thus, a "party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition," such as fraud, "exists."[99]

It is worth considering how the above three cases might have been decided under the 2005 Uniform Act's evidentiary burdens. In *de Manez Lopez*, there was an affirmative finding that the defendants have proven fraud, coupled with adverse inferences against the plaintiffs' non-testifying attorneys. This suggests that the result in *de Manez Lopez* would not be different, had the 2005 Uniform Act applied. Likewise, the *Baja Cantina* court found that the factual record disclosed "evident fraud."[100]

In *Pegaso*, however, the Delaware federal court explicitly refused to place an affirmative evidentiary burden on Bell, thus indicating that the court's analysis might have proceeded along a different path, had the 2005 Uniform Act applied. This is not to say that the result would necessarily have been different, given the strong first-hand evidence that bribes were solicited, and that the proceedings had been conducted in an irregular manner–which arguably corroborated the direct evidence of bribery. Even so, the case might not have been thought suitable for summary judgment.

Moreover, all three of these cases could have been candidates for the new "doubtful integrity" limb of the 2005 Uniform Act, discussed above. For practical purposes, it may well be easier for a resisting party to raise "substantial doubt" about the "integrity" of a judgment than it would be to affirmatively prove "fraud." For example, in *Pegaso*, there was an abundance of evidence upon which the "integrity" of the final judgment could be questioned, over and above the evidence of bribery. The same can be said of *Baja Cantina* and *de Manez Lopez*: even setting aside the allegations of "fraud" or "corruption," the

95. *Id.* at 929.

96. *Id.* Certain related proceedings were transferred to the Western District of Texas, where the defendants likewise sought forum non conveniens dismissal. Although the district court declined to do so, the Fifth Circuit issued a writ of mandamus requiring forum non conveniens dismissal in favor of Mexican courts. *See Ford Motor Co.*, 580 F.3d at 317.

97. 2005 UNIF. ACT §§ 4, cmt. 13 (citations omitted).

98. *Id.* §§ 3(a), (c).

99. *Id.* § 4(d); *see also id.* § 4(c)(2).

100. *Hoffman*, 374 B.R. at 797, 800.

parties resisting recognition in those cases had still raised substantial doubts about the "integrity" of the foreign judgments.[101]

The mere fact that these three particular cases involved Mexico should not be viewed as a general trend against recognition of Mexican court decisions. As discussed above, U.S. courts have generally been willing to recognize Mexican judgments in the past and they should be expected to continue to do so. Moreover, U.S. courts will likely continue to reject generalized accusations of corruption in the Mexican justice system, made without firm proof in the particular case.

It is hoped that corruption within the Mexican courts is isolated, and that instances of improper conduct are on the wane. Nevertheless, each of the above cases presents an example of serious corruption. The evidence in *Pegaso* and *Baja Cantina* strongly suggested that an inflated judgment had been obtained by bribery–with obvious and immediate prejudice to the party that became subject to those judgments. The *de Manez Lopez* incident presents a case where collusive conduct *prevented* a final merits judgment from being obtained, with equally deleterious consequences to the system of justice both in the United States and Mexico. Each of these cases shows that U.S. courts will treat well-made allegations of foreign judicial corruption seriously, and will give them a thorough examination whenever necessary to redress the consequences of such corruption.

101. Likewise, the findings in the *Sanchez Osorio* case concerning the Nicaraguan courts lack of impartiality may also have satisfied the "doubtful integrity" test, had it applied in that case. *See Sanchez Osorio*, 2009 U.S. Dist. LEXIS 99981.