Vanderbilt Journal of Transnational Law

Volume 54
Issue 3 *May 2021*

Article 5

2021

Preventing Foreign-Judgment Country Hopping with a New Transnational Recognition and Enforcement Standard

Ryan Everette
Vanderbilt School of Law

Preventing Foreign-Judgment Country Hopping with a New Transnational Recognition and Enforcement Standard

Ryan Everette

ABSTRACT

Since the 1990s, a group of plaintiffs from Ecuador has been involved in litigation with what is presently the Chevron Corporation. During the lawsuit in Ecuador's courts, the plaintiffs' lawyers took part in deceptive activities that led to an unreliable judgment against Chevron and has resulted in civil liability for the lawyers and an inability to enforce the judgment against Chevron in the United States for the plaintiff class. Over the better part of the last decade, the plaintiffs' lawyers have sought and failed to enforce the judgment in several countries outside of the United States, leading to a prolonging of the case for all parties involved and no relief of any kind for the members of the plaintiff class.

These types of extended country-hopping recognition and enforcement issues can be avoided with transnational standards in assessing foreign judgments, including evidentiary standards for an initial enforcement attempt and a standard of review for subsequent attempts. Having these standards in place would serve to ensure that, in cases with problematically obtained foreign judgments, different jurisdictions would apply standards that could deter any temptation to interfere in proceedings leading to the judgment, especially in vulnerable judicial systems, and give plaintiffs and defendants certainty following an initial denial. In turn, this would serve to promote fairness in foreign judgement enforcement proceedings and lead to a more effective system that helps plaintiffs achieve the justice they deserve while also giving defendants a fair chance to avoid exploitation and abuse.

TABLE OF CONTENTS

I. INTRODUCTION

The current scheme of transnational judgment enforcement is rife with the potential for plaintiffs to obtain unmeritorious judgments from remote forums and then drag out the enforcement process in

multiple other forums, leaving defendants in limbo for years.[1] A prominent example is a multi-billion-dollar judgment that a group of plaintiffs received in Ecuador that they have tried and, in every instance, failed to earn recognition of and enforce against the Chevron Corporation in multiple international jurisdictions since 2011.[2] The ability of these plaintiffs to obtain repeated opportunities to recognize and enforce the judgment in different jurisdictions comes in large part from the disparate and disunified standards that presently govern transnational foreign judgment recognition and enforcement.[3]

Currently, there is no uniform transnational standard for courts to follow when considering these judgments, leaving multinational defendants exposed to the risk of ambitious plaintiffs' lawyers jurisdiction hopping to seek enforcement of questionable judgments.[4] This, in turn, can leave defendants in uncertainty over substantial amounts of damages and liability for years on end, with little to do but continue to contest the recognizability and enforceability of those judgments.[5] Consequently, affected plaintiffs in need of relief are left empty-handed as a result of the actions of their own attorneys.[6]

This type of situation is exemplified in a well-known case, which has been ongoing since the 1990s involving an Ecuadorian group of plaintiffs bringing environmental harm claims against the Chevron Corporation (formerly Texaco, Inc.).[7] The lawyers in the case sued Chevron in Ecuador and, through opportunistic actions and manipulation of the litigation process and Ecuadorian judicial system, received a multibillion-dollar damages judgment against Chevron after

---

1. *See, e.g.*, PAUL M. BARRETT, LAW OF THE JUNGLE (2014) (relaying and discussing the details of litigation against Chevron Corp. that has been ongoing since the 1990s).

2. *See generally id.*; *Ecuador Lawsuit*, CHEVRON, https://www.chevron.com/ecuador/#b4 [https://perma.cc/Q4J6-NNHD] (archived Feb. 20, 2021) (containing several articles about the aforementioned plaintiffs' attempts at enforcement in multiple jurisdictions).

3. *See infra* Part III.A–C.

4. *See, e.g.*, *infra* Part II.A (discussing an example of jurisdiction-hopping between US and Ecuadorian courts when a lawyer attempted to gain advantage through unfair evidentiary and political tactics in a suit against an international oil and gas corporation).

5. *See, e.g.*, *infra* Part II.A; *Ecuador Lawsuit*, *supra* note 2 (providing summaries of the events of the case and the various attempts at enforcing that judgment that have been ongoing for nearly a decade).

6. *See, e.g.*, *Ecuador Lawsuit*, *supra* note 2 (noting that the plaintiffs have yet to be able to enforce the judgment they received in Ecuador). In some of these cases, while the attorneys may have reasonable and even noble motivations—e.g., a desire to help individuals vindicate the harm they have experienced and receive compensation for it—they can become susceptible to the temptation to game the system in their favor when the opportunity to manipulate a lawsuit presents itself. *See generally* Part II.A.

7. *See* BARRETT, *supra* note 1, at 39–48 (stating the events that led to the original filing of Aguinda v. Texaco, Inc., 303 F.3d 470 (2nd Cir. 2002)).

a prolonged litigation process.[8] The plaintiffs then returned to enforce the judgment against Texaco in the United States; however, Chevron argued it did not receive a fair trial in the foreign country, presenting evidence of the plaintiffs' wrongdoing.[9] The reviewing court agreed and enjoined the plaintiffs from attempting to enforce the judgment in the United States.[10] The plaintiffs have subsequently moved around different foreign countries where Chevron has assets to try to enforce the judgment by seizing and selling those assets, going to new locations upon each country's denial of enforcement.[11] In this case, known as *Aguinda v. Texaco/Chevron*, the plaintiffs' efforts to enforce the judgment around the world have been ongoing over the last two and a half decades and continue to this day.[12]

These "country-hopping" cases, where a plaintiff moves from forum to forum seeking to enforce a sham judgment, are what this Note seeks to address. Part II delves into the details and background of *Aguinda* as a framework for the issue, as it is perhaps the most famous example of this type of case. Part III analyzes the development of foreign-judgment enforcement standards, details current standards across various jurisdictions, and assesses relevant scholarly approaches to the issue. Finally, Part IV will advocate for the adoption of a proposed convention from the Hague Conference on Private International Law, with the addition of two standards of review for countries who would ultimately be parties to the convention. These standards are: (1) an *ex ante* presumption in favor of competence for the court issuing the judgment with the burden of proving a defect in the proceedings leading to the judgment on the defendant,[13] which the first convention party court to review the foreign judgment would apply, and (2) an *ex post* clearly erroneous standard of review for a subsequent reviewing court following any Convention party court's

---

8. *See id.* at 147–64, 181–96, 206–11 (detailing some of the *Aguinda* plaintiffs' lawyers' tactics and the judgment that resulted from the Ecuador litigation).

9. *See generally* Chevron Corp. v. Donziger, 974 F. Supp. 2d 362 (S.D.N.Y. 2014), aff'd, 833 F.3d 74 (2d Cir. 2016) (seeking in part to enjoin the plaintiffs from enforcing the Ecuadorian judgment in the United States).

10. *See id.* (enjoining the plaintiffs from seeking to enforce the judgment in American courts).

11. *See Ecuador Lawsuit*, *supra* note 2 (containing several articles about the *Aguinda* plaintiffs' attempts at enforcement in multiple foreign jurisdictions).

12. *See id.* (reporting ongoing developments in the *Aguinda* case); BARRETT, *supra* note 1, at 31 (noting the plaintiffs filed the original class action in 1993).

13. This presumption is similar to the presumption of regularity, which assumes that an appointed official undertakes his or her actions in that capacity properly. *See, e.g.*, R v. Gordon, (1789) 1 Leach 515, (1789) 1 East PC 315. Placing the burden of proof on the defendant is similar to that the requirements for when a defendant in an American civil case raises an affirmative defense. *See, e.g.*, Anthony v. Hobbie, 155 P.2d 826, 829 (Cal. 1945) (stating that the burden of proof is on the defendant for a defense of contributory negligence).

denial of recognition or enforcement of a foreign judgment.[14] Applying these standards seeks to streamline the procedural process, deter any wrongdoing or manipulation of vulnerable judicial systems, and encourage both parties to monitor the proceedings while preserving a sense of international comity by giving the later reviewing courts enough leeway to make their own determinations.

II. AN OVERVIEW OF THE COUNTRY-HOPPING PROBLEM

This Part will illustrate the circumstances that can lead to the country-hopping situation as outlined above. It will first assess the paradigmatic *Aguinda* case discussed above, where a group of plaintiffs from Ecuador won their case against the Chevron Corporation.[15] The case is likely the most thoroughly documented, lengthy, and complex of the kind this Note addresses.[16] As a result, it is an apt illustration of the type of situation this Note's proposed solution seeks to prevent, and a summary of it shall provide ample background to understand the extent of the country-hopping threat.

This Part will then turn to a current case that is budding in the European Union.[17] This case involves claims of Nicaraguan males who became sterile after working around a pesticide and are suing many of the involved companies such as Dow Chemical, Shell Oil, and several major fruit producers for which the plaintiffs worked.[18] As Part II.B will demonstrate, the plaintiffs won a verdict in Nicaragua but were unable to enforce it in the United States for similar reasons to the Ecuadorian judgment from the Chevron case.[19] However, the plaintiffs

---

14. The clearly erroneous standard of review is standard in American appellate cases for questions of fact and would apply in these circumstances because the review of lower proceedings would mostly look at facts surrounding the fairness and propriety of the proceedings. *See, e.g.*, Anderson v. Bessemer City, 470 U.S. 564, 573 (1985).

15. *See generally* Chevron Corp. v. Donziger, 974 F. Supp. 2d 362 (S.D.N.Y. 2014), aff'd, 833 F.3d 74 (2d Cir. 2016) (discussing the background of the case at length and in great detail); BARRETT, *supra* note 1 (giving a more journalistic telling of the case).

16. *See generally* BARRETT, *supra* note 1 (reporting the details of the case from the beginning of Texaco's activity in Ecuador until the issuing of the nationwide injunction against the plaintiffs in 2014); *Ecuador Lawsuit*, *supra* note 2 (cataloguing the subsequent international proceedings in the case). As an example of this case's complexity, in *Donziger*, 974 F. Supp. 2d at 386–542, U.S. District Judge Lewis Kaplan issued a 344-page opinion of the judgment in Chevron's civil RICO case against the lead *Aguinda* plaintiffs' lawyer for his conduct during the litigation in Ecuador. Out of those 344 pages, 156 are solely devoted to factual findings regarding what happened in Ecuador. *Id.* at 386–542.

17. *See generally* Liz Alderman, *Sterilized Workers Seek to Collect Damages Against Dow Chemical in France*, N.Y. TIMES (Sept. 19, 2019), https://www.nytimes.com/2019/09/19/business/energy-environment/dow-chemical-pesticide-banana-workers.html [https://perma.cc/CYJ4-UCP8] (archived March 1, 2021).

18. *See id.*

19. *See id.*; *see also* Steve Stecklow, *Fraud by Trial Lawyers Taints Wave of Pesticide Lawsuits*, WALL ST. J. (Aug. 19, 2009, 11:59 PM),

have sought recognition and enforcement of the judgment in France, where the result of a trial on the matter is pending.[20] This Part will show that if the court finds for the plaintiffs, they could subsequently enforce the judgment against any of the defendants' assets in all European Union (EU) member countries,[21] opening up the possibility for massive liability for those defendants, but also creating the potential for country hopping to other EU countries if the plaintiffs do not prevail in France.

A. Aguinda v. Texaco *and Its Fallout: A Case Study*

In vulnerable judicial systems, plaintiffs' attorneys may be willing to use unscrupulous means to secure a favorable decision for their clients.[22] As mentioned above, this subpart will recount the major events—though not the full extent of the details—of the case in Ecuador involving Chevron and the subsequent worldwide litigation that has stemmed from it. It will present how the events originated and transpired to give a clear picture of how the problem developed along with illustrations of the broader issues that could arise under similar circumstances.

A brief recounting of the background of the case is helpful for context. In 1964, Texaco made a deal with the ruling military faction in Ecuador that gave them control of 7.5 million acres of land in a region known as the Orienté, a jungle that lays to the east of the Andes Mountain range.[23] This land, which previous oil prospectors considered barren, turned out to have vast reserves of oil underneath it.[24] These reserves yielded a handsome level of production, which in turn made Ecuador a major player in the global oil market.[25]

---

https://www.wsj.com/articles/SB125061508138340501 [https://perma.cc/DLM8-ERXX] (ARCHIVED MARCH 1, 2021).

20. *See* Alderman, *supra* note 17; *see also Banana Workers Made Sterile from Pesticide Sue Dow in France*, BEYOND PESTICIDES (Oct. 7, 2019), https://beyondpesticides.org/dailynewsblog/2019/10/banana-workers-made-sterile-from-pesticide-sue-dow-in-france/ [hereinafter *Banana Workers Made Sterile*] [https://perma.cc/28JC-NT2N] (archived March 1, 2021).

21. *See generally* Council Regulation 1215/2012, 2012 O.J. (L 351/1); Council Regulation 44/2001, 2001 O.J. (L 12).

22. *See generally* Chevron Corp. v. Donziger, 974 F. Supp. 2d 362 (S.D.N.Y. 2014), aff'd, 833 F.3d 74 (2d Cir. 2016) (discussing, in part, the *Chevron* case in Ecuador); *see also* BARRETT, *supra* note 1, at 93–101.

23. *See* BARRETT, *supra* note 1, at 14–16 (describing Texaco's dealings and transactions with the Quito military junta to acquire its land).

24. *See id.* at 16–18 (describing Texaco first striking oil in the Orienté, as well as the output from that striking).

25. *See id.* at 16–18, 23–26 (explaining the economic impact the oil industry in Ecuador had on both Ecuador's economy and Texaco's profits).

The riches of oil did not produce entirely positive effects for the Ecuadorians living near the Orienté, however.[26] To initially even begin exploring for oil, Texaco needed to subdue the local indigenous peoples, which it reportedly did in part by flying airplanes over areas it sought to claim full control over, even going so far as to drop sticks of dynamite from the planes to scare away the native communities.[27] Once the operations actually started, the community experienced widespread pollution.[28] This included pollution of waterways, deforestation, and haphazard spills on public roads.[29] The consequences of this pollution were devastating to the local population as signs of water contamination appeared: oil residue was visible in the water and on those objects in contact with the water, caught fish were uncharacteristically smelly,[30] children fell ill and some died after getting covered in oil,[31] and people experienced abnormal health complications.[32] These effects continued to harm the community for decades—exacerbated by PetroEcuador's continued oil operations—and even continue today.[33]

Eventually, the Ecuadorian government chose not to extend Texaco's control over the oil drilling operation, and thus forced Texaco to relinquish its share of the oil fields and leave the country in 1992.[34] As a condition of its departure, Texaco entered into an agreement with the Ecuadorian government outlining the measures Texaco would have to take in order to clean up the contamination from its operations in exchange for immunity from liability for subsequent environmental harm claims that could arise.[35] During the earlier part of Texaco's tenure in the country, the Ecuadorian government suggested that the

---

26. *See id.* at 9–13, 20, 26–30, 212–22 (describing the issues Texaco's activities caused for the Orienté's environment and inhabitants).

27. *See id.* at 16 (recounting an Ecuadorian geologist's account of Texaco's tactics to remove indigenous groups from disputed areas of the Orienté).

28. *See id.* at 9–13, 20, 26–30, 212–22 (noting the extent of some of the damage Texaco's operations caused).

29. *See id.* at 9–13, 20, 26–27 (describing some specific types and instances of pollution Texaco committed).

30. *See id.* at 10–11 (detailing the changes to the water the locals used for drinking, fishing, and bathing as a result of Texaco's drilling).

31. *See id.* at 11–12, 20 (noting the oil pollution's effect on local children).

32. *See id.* at 11–12 (reporting some of the afflictions of the local indigenous population, including increased incidences of issues with childbirth).

33. *See id.* at 212–22 (recounting the author's observations on a trip to the Orienté in 2011).

34. *See* Chevron Corp. v. Donziger, 974 F. Supp. 2d 362, 386 (S.D.N.Y. 2014), aff'd, 833 F.3d 74 (2d Cir. 2016) (detailing the timing of the expiration of Texaco's consortium in Ecuador); BARRETT, *supra* note 1, at 54–55 (outlining the circumstances surrounding Texaco's departure from Ecuador).

35. *Donziger*, 974 F. Supp. 2d at 386; *see* BARRETT, *supra* note 1, at 55–57 (explaining the circumstances around the agreement and some of its terms).

company attempt to limit its environmental contamination.[36] During this time, Texaco similarly considered undertaking such efforts, but decided against doing so,[37] and even told employees to not report environmental accidents.[38] However, the agreement the parties reached only required Texaco to clean up a little over one third of the sites it was responsible for,[39] and even then Texaco did not take action at some of those sites.[40] Texaco also agreed to only correct the contamination to a level five hundred times higher than, for example, what the United States has mandated in the past for cleaning up an oil spill.[41] Ultimately, in 1998, the Ecuadorian government signed off on Texaco's effort and released them from liability for any claims by it or PetroEcuador.[42]

Around the time Texaco was wrapping up its activity in Ecuador, individuals in the United States became aware of the damage it had caused.[43] A team of attorneys decided to take on a case based on the pollution.[44] This team included a recent Harvard Law School graduate, Stephen Donziger.[45] Stephen Donziger had spent the previous two years as a juvenile public defender before his recruitment for the case against Texaco.[46] Before attending law school he worked as a journalist in Nicaragua and became fluent in Spanish as a result of that experience.[47] Donziger had a history of civil rights and public interest pursuits and happened to be looking for an opportunity in Latin

---

36. *See* BARRETT, *supra* note 1, at 27–28 (summarizing the Ecuadorian government's requests to Texaco regarding environmental pollution).

37. *See id.* at 28–29 (outlining Texaco's discussion of whether to line their waste pits).

38. *See id.* at 29–30 (discussing the "Shields memo," a memorandum from a senior Texaco executive telling employees the policy for reporting environmental accidents, which was limited to only "major events" that would attract attention from the media or government).

39. *See id.* at 56–58 (giving a brief summary of Ecuador's requirements for Texaco to leave the country).

40. *See id.* at 56 (explaining that Texaco did not take action on sites where it found a "lack of contamination" or that PetroEcuador had taken over working on).

41. *See id.* at 57–59 (describing that Texaco only agreed to clean up sites to 5000 total petroleum hydrocarbons (TPH) in the affected area, which was the metric the parties used to measure contamination; for comparison, the United States has instituted a standard of 100 TPH for oil spill cleanup efforts).

42. *See* Chevron Corp. v. Donziger, 974 F. Supp. 2d 362, 386–87 (S.D.N.Y. 2014), aff'd, 833 F.3d 74 (2d Cir. 2016) (describing the end of Texaco's cleanup effort). There is some debate about whether or not Texaco actually met the terms of the agreement. *See id.* at 58–59 (recounting the controversy surrounding Texaco's cleanup efforts).

43. *See Donziger*, 974 F. Supp. 2d at 387 (giving a short description of how the plaintiffs' team came to be in the United States); BARRETT, *supra* note 1, at 39–48.

44. *See Donziger*, 974 F. Supp. 2d at 387.

45. *See id.* (explaining Donziger's background).

46. BARRETT, *supra* note 1, at 45.

47. *Donziger*, 974 F. Supp. 2d at 388.

America around the time he joined the case.[48] The plaintiffs' team took a trip to Ecuador in 1993 to try to meet potential plaintiffs and determine the viability of their idea for a class action related to Texaco's pollution.[49] From there, the team formed a strategy for how to proceed with the litigation.[50]

1. Difficulties Litigating in a Defendant's Domiciliary Jurisdiction

In certain situations, litigating these types of cases involving harm in a foreign jurisdiction is difficult to do in the defendant's home jurisdiction.[51] For instance, in *Aguinda*, the case involving Texaco, the plaintiffs filed their suit in United States federal court in late 1993.[52] Texaco met the suit with heavy opposition, filing motions to dismiss on several grounds; the most notable of these was a motion to dismiss on the basis of *forum non conveniens*.[53] The case subsequently took several twists and turns, including an extension of time for limited discovery,[54] encouragement of the parties to seek settlement,[55] and the death of the original presiding judge in 1995.[56] Ultimately, the court granted Texaco's motion to dismiss, leaning heavily on *forum non conveniens* as its reasoning, among other things.[57]

The Second Circuit subsequently reversed *Aguinda*'s dismissal upon appeal and remanded the case for further proceedings.[58]

---

48. *See* BARRETT, *supra* note 1, at 32–39, 44–45 (describing Donziger's background and motivations).

49. *See Donziger*, 974 F. Supp. 2d at 387–88 (describing briefly the details of the trip Bonifaz and Donziger took to Ecuador); BARRETT, *supra* note 1, at 45–48 (describing the events of the Ecuador trip).

50. *See* BARRETT, *supra* note 1, at 45–48 (describing the lawyers' interactions with affected Ecuadorians and their observations of the conditions in the region).

51. *See* Aguinda v. Texaco, Inc., 945 F. Supp. 625, 627 (S.D.N.Y. 1996) (dismissing the plaintiffs' case on the grounds of *forum non conveniens*).

52. *See* BARRETT, *supra* note 1, at 31–32 (describing the events around the filing of the suit).

53. *See Donziger*, 974 F. Supp. 2d at 389 (explaining the procedural posture of the case).

54. Aguinda v. Texaco, Inc., 93 Civ 7527 (VLB), 1994 U.S. Dist. LEXIS 4718 at *2–*4 (S.D.N.Y. Apr. 11, 1994) (reserving judgment on the defendant's motions and narrowing the scope of subsequent discovery).

55. *Id.* at *31 ("This dispute is not necessarily best resolved by further litigation.").

56. BARRETT, *supra* note 1, at 61.

57. Aguinda v. Texaco, Inc., 945 F. Supp. 625, 627 (S.D.N.Y. 1996). The court also denied the plaintiffs' motion for reconsideration. *See generally* Aguinda v. Texaco, Inc., 175 F.R.D. 50 (S.D.N.Y. 1997) (denying the plaintiffs' motion for reconsideration after they had convinced the Ecuadorian government and Ecuadorian oil company to move to intervene, saying the plaintiffs had not made necessary showings to warrant reconsideration).

58. Jota v. Texaco Inc., 157 F.3d 153, 159 (2d Cir. 1998).

Regarding the *forum non conveniens* issue, the appellate court held that dismissal for *forum non conveniens* was inappropriate unless Texaco agreed to consent to jurisdiction in the courts of Ecuador.[59] Texaco heeded this instruction on remand: it renewed its motion to dismiss, stating that it would submit to suit in Ecuador as an alternative to litigating in the United States.[60] The district court found this, among other considerations, to conclude that Ecuador was an appropriate alternative forum—and thus was satisfactory to meet the requirements for granting a *forum non conveniens* motion—and consequently dismissed the case.[61] The Second Circuit upheld this dismissal on appeal, leaving the plaintiffs with little choice but to take their cause to Ecuador's courts.[62]

2. Litigation in Vulnerable Jurisdictions

Not all jurisdictions are created alike; some countries grapple with high levels of political[63] and judicial susceptibility to manipulation.[64] This can lead to situations where opportunistic plaintiffs can take advantage of this susceptibility to further their case.[65] For example, in preparing for the possibility of dismissal, the plaintiffs in the Ecuador case took preliminary measures in Ecuador to ensure there was an avenue for them to effectively bring an action against Texaco—now a part of Chevron—in Ecuadorian courts.[66] The plaintiffs' lawyers worked with the Ecuadorian legislature to draft the Environmental

---

59. *See id.* ("[D]ismissal for forum non conveniens is not appropriate, at least absent a commitment by Texaco to submit to the jurisdiction of the Ecuadoran courts for purposes of this action.")

60. *See* Aguinda v. Texaco, Inc., 142 F. Supp. 2d 538 (S.D.N.Y. 2001) (stating that the defendant had indicated its willingness to submit to the Ecuadorian courts' jurisdiction).

61. *See id.* at 554 (finding the conditions for granting a *forum non conveniens* motion were met).

62. *See* Chevron Corp. v. Donziger, 974 F. Supp. 2d 362, 391 (S.D.N.Y. 2014), aff'd, 833 F.3d 74 (2d Cir. 2016) (mentioning the timing of the plaintiffs' filing in Ecuador).

63. *See generally Corruption Perceptions Index*, TRANSPARENCY INTERNATIONAL, https://www.transparency.org/en/cpi/2019/index/ven (last visited Jan. 29, 2021) (denoting rankings of countries based on the perception of corruption within the countries, and additionally providing a link to its methodology) [https://perma.cc/JZZ8-EXJS] (archived on March 1, 2021).

64. *See generally* TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION REPORT 2007: CORRUPTION IN JUDICIAL SYSTEMS (2007), https://images.transparencycdn.org/images/2007_GCR_EN.pdf (last visited Jan. 29, 2021) (reporting on instances of judicial corruptions from several different jurisdictions) [https://perma.cc/M3P9-ED2M] (archived on March 1, 2021).

65. *See, e.g.*, *infra* notes 66–75.

66. Chevron acquired Texaco in 2001. *See Donziger*, 974 F. Supp. 2d at 391 (noting the acquisition); BARRETT, *supra* note 1, at 71.

Management Act, which allowed lawsuits for damages based on generalized environmental harm (as opposed to individualized injury to one's person or property).[67] This allowed the plaintiffs to bring a lawsuit to seek damages for the Orienté's pollution, a mechanism that previously was unavailable in the Ecuadorian judicial system and avoided the difficulties that can arise from trying to bring a class action.[68] The plaintiffs subsequently filed in a court in Lago Agrio, Ecuador, a city within the area Texaco formerly held.[69]

The case's relocation to Ecuador presented an opportunity to court public favor for the case and secure powerful interests on the plaintiffs' side.[70] While working on the trial phase of the case in Ecuador, Donziger set out to secure maximum publicity for the case.[71] His efforts included going so far as to devise a scheme to use various actors to aid the case, such as celebrities, nongovernmental organizations, and even the Ecuadorian government itself.[72] This strategy was seemingly based on, as a United States federal court later found, Donziger's view that the courts in Ecuador were "corrupt, weak and responsive to pressure," a viewpoint espoused in Donziger's own behind-the-scenes statements,[73] and thus Donziger sought to win the public over.[74] He also hired a film crew to document the case, a decision that would come back to haunt him in the future when outtake footage would come to serve as evidence of his missteps.[75] This was just the beginning of several events that created issues that marred the validity of the case's outcome.[76]

---

67. *See Donziger*, 974 F. Supp. 2d at 391 (describing the circumstances around the creation of the EMA and its effect); BARRETT, *supra* note 1, at 73–74.

68. *See* BARRETT, *supra* note 1, at 73–74 (discussing the effects of the EMA).

69. *See id.* (detailing the location of the Ecuador suit's filing).

70. *See infra* notes 71–76 and accompanying text.

71. *See Donziger*, 974 F. Supp. 2d at 402–03 (describing Donziger's strategy to get attention for the case).

72. As Judge Kaplan later noted, Donziger told his team in Ecuador "that the team would initiate and/or utilize celebrities; non-governmental organization 'pressure;' the 'Ecuador government — executive, and Congress;' national, international, and Ecuadorian press; a 'divestment campaign' in which the team would seek to convince institutional investors to sell Chevron stock, and even a criminal case in Ecuador in its effort to obtain money from Chevron. *See id.* at 402 (recounting the details of a memorandum Donziger wrote for the rest of the legal team early in the Ecuadorian litigation).

73. *See id.* at 393 (listing some of Donziger's own statements he made during the course of the litigation, some of which a documentary film crew captured on camera).

74. *See id.* at 402–03 (illustrating the importance of winning the public over to Donziger's strategy).

75. *See id.* at 403 (describing Donziger's hiring of the film crew and the eventual evidence Chevron procured from the outtakes of the filming).

76. *See infra* Part II.A.2.a–d.

a. Evidentiary Interference

In judicial systems vulnerable to manipulation, the courts may actually hinder the evidentiary process rather than serve as a facilitator.[77] Some jurisdictions have law on the books to regulate the procurement and presentation of evidence in lawsuits.[78] Other jurisdictions may allow litigants to have more sway in how the process plays out.[79] The latter type of situation can lead to opportunistic parties asserting undue influence on the evidentiary process in a given case; the case against Chevron in Ecuador serves as a good illustration of this principle.[80]

The litigation in Ecuador began in 2003 and had a complex procedural posture from the start. The trial was a bench trial that began with opening statements but then shifted to six days of the parties presenting evidence through documents and witnesses whom the judge had the ability to interrogate.[81] The next phase consisted of the judge and the parties going on 122 visits to "well sites" and "separation stations" where the lawyers and the court brought technical experts to assess and give opinions on the sites and collect water and soil samples for testing.[82] The bulk of the evidentiary phase of the trial involved these site visits, which moved quite slowly.[83] The parties ultimately did not fully complete all 122 site visits.[84] After these visits, the court appointed experts to analyze the parties' reports, and at that point the judge received all of the information to decide the case.[85]

---

77. *See infra* Part II.A.2.a.

78. *See e.g.*, FED. R. CIV. P. 26–37 (dictating the procedures for the civil discovery process and consequences for noncompliance in U.S. federal court); FED. R. EVID. 1 *et seq*. (regulating the presentation of evidence in United States federal courts); Canada Evidence Act, R.S.C. 1985, c. C-5 (covering evidentiary standards in Canadian civil cases); MINJI SOSHŌHŌ [MINSOHŌ] [C. CIV. PRO.] 1996 (Japan) (controlling standards for civil cases in Japan, including gathering and presenting evidence); Civil Evidence Act 1995, c. 38 (UK) (governing evidence in United Kingdom civil lawsuits).

79. *See, e.g.*, *Donziger*, 974 F. Supp. 2d at 392–448 (recounting the myriad issues that the plaintiffs' lawyers created in the Ecuador lawsuit's evidentiary process).

80. *See infra* Part II.A.2.a.

81. BARRETT, *supra* note 1, at 76.

82. *See id.* (explaining the site visit stage of the proceedings; the court brought a third set of experts to resolve disputes between the parties' experts' opinions).

83. *See* Chevron Corp. v. Donziger, 974 F. Supp. 2d 362, 411–12 (S.D.N.Y. 2014), aff'd, 833 F.3d 74 (2d Cir. 2016) (describing the inspection process).

84. *See id.* at 412, 421–22 (stating how the plaintiffs eventually got a later judge to release them from many of their inspections in 2006).

85. BARRETT, *supra* note 1, at 76–77 (stating the procedures that would lead to the final ruling).

Before this process even started, however, the plaintiffs had begun to skew the evidence.[86] Donziger hired an environmental engineer named David Russell to give a damages estimate.[87] Russell's estimate came about in concerning fashion, as he only visited some of the sites, failed to run environmental tests the sites he did visit, and only observed some sites by simply driving past them.[88] Donziger also made clear that he wanted Russell to make the estimate with specific considerations in mind, like Chevron being liable for the full extent of the oil pollution in the region despite some of it being attributable to another entity.[89] Finally, as Russell later admitted at Chevron's civil Racketeer Influence and Corrupt Organizations (RICO) trial against Donziger, the estimate was no more than "best guesses" and not based on any scientific data, even acknowledging its likely unreliability.[90] The damages estimate Russell landed upon was $6 billion.[91]

The deceptive tactics did not stop once the judicial site inspections began.[92] The plaintiffs first brought on Dr. Charles Calmbacher, an industrial hygienist, as an expert.[93] The plaintiffs hired Dr. Calmbacher to write reports on the first four sites the team visited; however, after Dr. Calmbacher fell ill and missed deadlines to finish his reports, Donziger fired him.[94] Dr. Calmbacher insisted he would finish his reports despite being fired, but the plaintiffs' team tricked him, ultimately getting him to initial blank sheets of paper[95] on which they printed their own "reports," which they subsequently filed in the

---

86. *See Donziger*, 974 F. Supp. 2d at 406 (discussing some of the plaintiffs' efforts to interfere in the Ecuadorian suit).

87. *See id.* (describing the use of David Russell to give the court an inflated estimate of damages).

88. *See id.*

89. *See id.*

90. *See id.*

91. As would later become clear, the number Russell arrived at came from less-than-scientific means; he admitted that he dealt with many unknowns about the full scope of the pollution, mostly gave his "'best guesses,'" and even told the plaintiffs to avoid relying too heavily on his "'guesstimate'" in forming a conclusion about the pollution. *Id.* at 406–07. Russell would later leave the plaintiffs' team because they refused to pay him and sent Donziger cease-and-desist emails to attempt to prevent him from using the report. *Id.* at 409.

92. *See id.* at 406 (describing the plaintiffs' tactic to fabricate reports under Dr. Charles Calmbacher's name).

93. *Id.* at 412.

94. *Id.* at 412–13.

95. The plaintiffs claimed they were going to simply print Dr. Calmbacher's report on the paper, and that the initials were just a requirement to file. *See id.* at 413 (describing how the plaintiffs tricked Dr. Calmbacher into sending initialed blank sheets of paper down to Ecuador).

court instead of Dr. Calmbacher's reports.[96] Their reports showed much more favorable data than Dr. Calmbacher's findings.[97]

This was just the beginning of the plaintiffs' deceptive actions in the site inspection phase.[98] As Russell would later testify, the defendants engaged in many more deceptive tactics, such as ceasing their soil and water sample testing after realizing the data pointed more towards the contamination being PetroEcuador's fault rather than Texaco's.[99] Donziger also attempted to hire two individuals to infiltrate and "monitor" the court-appointed experts that served to resolve discrepancies between the parties' experts, with the intention that they would influence those experts' report on one site that Texaco alone had been responsible for remediating.[100] This effort failed, however, when the court-appointed experts issued a report that was damaging for the plaintiffs.[101]

Donziger's final gambit was to try to convince Judge Germán Yánez, the judge who had come to oversee the case, to cancel the rest of the judicial site inspections in favor of bringing in a "global expert," who would be "court-appointed" and "impartial," to conduct the rest of the inspection rather than having the judge do so.[102] The method he and the plaintiffs' legal team chose to pursue, however, was blackmailing the judge with a threat to file a complaint alleging misconduct unless he "adhere[d] to the law and what the [plaintiffs] needed."[103] The judge had received allegations of misconduct not long before this incident and subsequently granted the plaintiffs' motion without resistance.[104] Based on statements the judge made afterwards to an associate of the plaintiffs' legal team, it seems this strategy also made Judge Yánez very wary of the plaintiffs, and thus more willing

---

96. *Id.* at 413–14.

97. *See id.* (summarizing the findings in the filed reports, and recounting a later deposition where Calmbacher disavows having written the filed reports).

98. *See id.* at 406 (noting further attempts from the plaintiffs to deceive the court and inflate their damages claim).

99. *See id.* at 415 (detailing Russell's testimony that the plaintiffs stopped testing once they realized the data, which showed that quickly-degrading contaminants were more prominent in the area than they would be if just from Texaco's activities, undermined their case).

100. *See id.* at 416–19 (explaining the events of Donziger's scheme to interfere in the suit).

101. *See id.* at 418 (stating the report's findings, which were that Texaco had fully remediated the particular site inspected).

102. *See id.* at 420–22 (describing Donziger's strategy that led to Judge Yánez dismissing the remainder of the scheduled site inspections).

103. *See id.* at 421, n. 295 (quoting an entry from Donziger's personal notebook around the time of the request to cancel the remaining inspections); *see also* BARRETT, *supra* note 1, at 112–13 (2014) (giving an account of the same threat).

104. *See Donziger*, 974 F. Supp. 2d 362, 421–22 (S.D.N.Y. 2014) (describing the result of the threat to file a complaint).

to be deferential to their desires.[105] This would give Donziger the leverage he needed to allow him to be the actual selector of the global expert rather than the court.[106]

Donziger prepared behind the scenes to select his preferred global expert to complete the damages analysis of the sites in lieu of judicial inspections.[107] The court was limited to selecting the global expert from the experts it had already appointed in the judicial inspections,[108] and from those Donziger honed in on Richard Cabrera.[109] The plaintiffs' team had previously met with Cabrera to discuss what they intended his role in the case to be, and he agreed to cooperate with their strategy.[110] The team then went to Judge Yánez and suggested he appoint Cabrera to be the global expert, which he did.[111]

The results of the global expert inspections, however, were far from "impartial."[112] The plaintiffs' team met beforehand to strategize about how the report would come out.[113] Subsequently, they paid Cabrera to keep him on their side[114] and took actions to dictate what inspections he would do in the field.[115] At the same time, the plaintiffs hired an American consulting firm called Stratus to, in Donziger's words, "significantly [beef] up" the "spotty" field testing for presenting the damages claim to the court.[116] What this came to mean in practice was that the firm ended up drafting much of the global expert report, with the ultimate intent that Cabrera could file that report directly to

---

105. *See id.* at 422 (quoting Donziger's personal notebook, describing the remarks the judge made to Donziger's associate).

106. *See id.* (noting that Donziger used his power over the judge to select the global expert).

107. *See id.* (describing how Donziger came to be able to exert almost full influence over the selection of the global expert).

108. *See id.* at 423 (recounting Judge Yánez being bound by an agreement between the plaintiffs' counsel and Chevron's local counsel).

109. *Id.* at 424; BARRETT, *supra* note 1, at 147.

110. *See Donziger*, 974 F. Supp. 2d at 424 (explaining the plaintiffs' team's meeting with Cabrera through the lens of Donziger's contemporaneous journal entries).

111. *Id.*

112. *See id.* at 425 (describing the meetings the plaintiffs' legal team had before Cabrera was even formally appointed to plan out how the global expert report should be written).

113. *See id.*

114. *See id.* at 431–35 (explaining how and why the plaintiffs made payments to Cabrera during his tenure as global expert).

115. *See id.* at 435–37 (detailing how the plaintiffs sowed distrust of Chevron through Cabrera lodging a complaint about the company allegedly attempting to interfere in his work actions, and their steps to exert influence over his work as the global expert); *see also* BARRETT, *supra* note 1, at 148–49.

116. *See Donziger*, 974 F. Supp. 2d at 439 (explaining Donziger's vision for the role Stratus would play in the global expert report).

the court.[117] And, as the United States District Court for the Southern District of New York later found, "Donziger had the final word on . . . every piece of the report – even in arriving at the actual damages figures."[118] Cabrera proceeded to file the report, which included a recommendation of over $16 billion in damages,[119] while indicating that it was his work alone.[120]

To further bolster the illusion of independence for Cabrera, the firm the plaintiffs hired proceeded to draft objections on behalf of the plaintiffs to findings in the report.[121] Cabrera pointed to these objections, as well as others from Chevron's counsel, as evidence that the report itself was impartial.[122] Cabrera then proceeded to revise his report based on the plaintiffs' "objections," returning with a new recommendation of $27.3 billion.[123]

b. Political Cajoling

As mentioned above, sometimes the political systems in a particular jurisdiction are open to political manipulation in addition to judicial manipulation.[124]

While Donziger managed the progression of the case, he also spent his time establishing important political ties.[125] Rafael Correa, whom Ecuador elected president in 2006, was of a similar philosophical mindset as Donziger.[126] Donziger saw his election as an opportunity to garner support for their case from the Ecuadorian government.[127] He moved to personally meet with two of Correa's intended selections for his cabinet, who lent a sympathetic ear to Donziger's case.[128] Donziger's team kept close contact with President Correa in the early

---

117. *See id.* at 440–43 (stating the plaintiffs' strategy for Stratus' involvement in the case and Stratus's ultimate role in the global expert report).

118. *Id.* at 440.

119. BARRETT, *supra* note 1, at 153.

120. *Donziger*, 974 F. Supp. 2d at 440–46.

121. *See id.* at 444–46 (describing the steps Stratus took and the motivations behind them).

122. *See id.* at 445 (quoting Cabrera's statements to the Ecuadorian court).

123. BARRETT, *supra* note 1, at 154.

124. *See supra* notes 63–64 and accompanying text.

125. *See* BARRETT, *supra* note 1, at 114 (describing Donziger's political ties to the incoming Ecuadorian political regime beginning in 2006).

126. *See id.* at 115 (drawing comparisons between Donziger and Correa).

127. *See id.* at 115–16 (stating the perceived political advantage the plaintiffs could gain from this new administration, including Donziger's own thoughts on the matter).

128. *See id.* at 116 (giving details as to the contents of Donziger's conversations with the Correa cabinet members and their opinions of Donziger and the case).

stages of his tenure, and Correa began a feverish support of the case.[129] A member of the plaintiffs' team even joined Correa on a trip to some of the contaminated areas he took with a group, including some journalists, to see them firsthand.[130] During the trip, Correa took the opportunity to denounce Texaco; the presence of journalists themselves also further publicized the case to the people of Ecuador.[131]

c. Judicial Malfeasance and Manipulation

In the case of a vulnerable judicial system, there may be opportunities for parties to assert improper levels of influence over judges.[132] This can lead to distortion of the outcome of a given case, and thus higher exposure for losing parties than they would experience under normal circumstances.[133] The Ecuadorian case against Chevron illustrates this potential to a hyperbolic level.[134]

The Ecuadorian decision came out in February 2011 via a nearly 200-page opinion.[135] The court leveled $8.646 billion in damages against Chevron, with a condition that those damages would double if Chevron did not release a public apology, which it did not.[136] The circumstances leading to the ruling were curious; a new judge named Nicolás Zambrano had taken over the case in October 2010 after a series of different judges had overseen the case in a rotation, a common practice in that court.[137] However, Judge Zambrano's contribution to the opinion he issued was limited.[138]

First, Judge Zambrano had arranged to receive help in writing his civil case decisions from Alberto Guerra, a former judge who had presided over the case until he rotated off in 2004, and who was no longer on the bench by 2008.[139] This arrangement came about because Zambrano's experience prior to his judicial service was as a prosecutor, and thus he was not used to civil cases.[140] Zambrano paid Guerra to

---

129. *See id.* at 125 (outlining Correa's use of the case as a political tool and his impassioned condemnation of Texaco and the results of its operations in Ecuador).

130. *See id.* at 125–26 (describing the above-mentioned trip).

131. *See id.* (detailing the events of the trip and its effects).

132. *See supra* note 65; *infra* Part II.A.2.c.

133. *See infra* Part II.A.2.c.

134. *See id.*

135. *See* BARRETT, *supra* note 1, at 206 (discussing the circumstances surrounding the release of the decision).

136. *See Donziger*, 974 F. Supp. 2d at 481 (summarizing the judgment's contents).

137. *See id.* at 394–95 (detailing the complex succession of judges in the case).

138. *See id.* at 484–92 (making several findings showing that Zambrano did not write the Ecuadorian opinion).

139. *See id.* at 502 (recounting briefly Guerra's background).

140. *See id.* at 503 (explaining the formation of Zambrano and Guerra's arrangement).

ghostwrite his civil decisions.[141] Guerra, however, would serve a different role in *Aguinda* as a middleman for the plaintiffs' deal that would allow them to draft the case's decision.[142]

While Guerra was in charge of writing Zambrano's civil decisions at this point, he never claimed, nor was there any evidence of, any more involvement in the *Aguinda* opinion than some edits.[143] Instead, he brokered a deal between Zambrano and the plaintiffs where Zambrano would allow them to submit a draft of the decision to him for a payment of $500,000.[144] Following the plaintiffs' submission of this draft, Zambrano apparently signed and submitted it.[145] The evidence of this arrangement came in the form of numerous similarities in language between documents the plaintiffs had in their possession and the language in the opinion itself;[146] proof of a previous arrangement where Guerra was writing orders for Zambrano in the *Aguinda* case, for which the plaintiffs paid him $1000 a month;[147] and admissions of a meeting in 2010 between a member of the plaintiffs' team and Guerra where Guerra proposed the arrangement,[148] among other things.[149]

The case went up on appeal in Ecuador. The intermediate appellate court affirmed the ruling below, deciding not to look too deeply into Chevron's arguments accusing the plaintiffs of fraudulent actions.[150] Ecuador's National Court of Justice, a court that only decides questions of law in a case without looking into the case's facts,[151] also affirmed most of the lower court's ruling, only removing the part of the decision that doubled Chevron's damages for not publicly apologizing, reducing the damages amount to $8.464 billion.[152] Around this time in the United States, however, events were taking

---

141. *Id.*; BARRETT, *supra* note 1, at 207.

142. *See Donziger*, 974 F. Supp. 2d at 503 (describing how Guerra was involved in *Aguinda*).

143. *See id.* at 503 (noting Guerra made "minor editorial changes" to the decision); BARRETT, *supra* note 1, at 207–08 (describing Guerra's role in the case).

144. *See Donziger*, 974 F. Supp. 2d at 503 (describing the plaintiffs' deal with Zambrano).

145. *Id.*

146. *See id.* at 526–27 (noting that passages in the opinion came from some of the plaintiffs' documents that went unfiled).

147. *See id.* at 503 (describing this arrangement).

148. *Id.* at 526.

149. *See id.* at 503 (describing the court's factors for finding that the arrangement occurred).

150. *See id.* at 537–38 (outlining the appellate court's decision).

151. *See id.* at 539 (explaining the National Court of Justice's role in Ecuador's legal system).

152. *See id.* at 540 (stating that the Ecuadorian National Court of Justice found that Ecuadorian law did not allow for punitive damages and an award could not be based on a party's lack of public apology).

place that would make it difficult for the plaintiffs to ever recover this award.

3. Initial Recognition and Enforcement Issues

Even if an opportunistic plaintiffs' lawyer uses the tactics in a vulnerable jurisdiction described above, the enforcement stage of the case may present issues in actually collecting the judgment.[153] If the plaintiffs' tactics come to light, the judiciary of the jurisdiction where the plaintiffs seek enforcement may bar recognition and enforcement of the judgment, which imposes a limit on the sources of recovery for the plaintiffs as a result.[154] This leaves the plaintiffs with little recourse but to turn to other jurisdictions for recognition and enforcement of their judgment.[155]

To illustrate, starting in 2009, Chevron began to investigate the circumstances surrounding the case in Ecuador through the mechanisms of discovery in the United States.[156] Chevron began its inquiry by seeking documents related to the Ecuadorian litigation from Stratus—the consulting firm that had a significant hand in drafting Cabrera's global expert report—in United States federal court.[157] The goal of this move was to confirm the suspicion that Stratus created the global expert report, and Chevron argued that there were enough similarities between documents from Stratus and the report to warrant discovery from Stratus.[158] Despite opposition from Donziger,[159] the court granted Chevron discovery from Stratus[160] and denied the plaintiffs' motion for a protective order.[161]

---

153. *See generally id.* (assessing the enforceability of the Ecuadorian judgment).

154. *See, e.g.*, *id.* at 641–42 (enjoining the plaintiffs from enforcing their judgment in the United States).

155. *See generally Ecuador Lawsuit*, *supra* note 2 (detailing the *Chevron* plaintiffs' international attempts at judgment recognition and enforcement).

156. *See id.* at 540 (discussing the beginnings of Chevron's discovery efforts); *see also* BARRETT, *supra* note 1, at 175–78.

157. *See* 28 U.S.C. § 1782 (2018); *Donziger*, 974 F. Supp. 2d at 455 (discussing the § 1782 proceedings against Stratus).

158. *See Donziger*, 974 F. Supp. 2d at 455 (explaining Chevron's motivations).

159. *See id.* at 455–64 (explaining Donziger's efforts in the Colorado discovery proceedings). One of the attorneys Donziger retained ended up withdrawing from representation after learning of the full scope of the plaintiffs' activity in Ecuador. *Id.* at 457–59 (stating why Donziger's counsel withdrew over ethical concerns about representing him in the matter).

160. *Chevron Corp. v. Stratus Consulting, Inc.*, Civil Action No. 10-cv-00047-MSK-MEH, 2010 U.S. Dist. LEXIS 55049, at *18 (D. Colo. May 25, 2010).

161. *Chevron Corp. v. Stratus Consulting, Inc.*, Civil Action No. 10-cv-00047-MSK-MEH, 2010 U.S. Dist. LEXIS 55049, at *18 (D. Colo. May 25, 2010).

This was not the only discovery Chevron sought in the United States, however.[162] In 2005, Donziger hired a filmmaker to come to Ecuador to film and produce a documentary about Donziger's lawsuit.[163] The film premiered in early 2009, entitled *Crude*.[164] This film, along with Donziger himself, were Chevron's next discovery targets.[165] Chevron filed a petition seeking outtakes from the film, which the court granted,[166] and the United States Court of Appeals for the Second Circuit affirmed.[167] The outtakes revealed footage of the plaintiffs' team meeting with Cabrera,[168] the team meeting the judges *ex parte*,[169] and some of Donziger's own words regarding his views of the manipulability of the Ecuadorian legal system.[170] These outtakes played a significant role in the later civil RICO case against Donziger.[171] Chevron also won a petition against Donziger[172] that required Donziger to produce emails and documents connected with the Ecuadorian lawsuit and give a deposition.[173]

In Chevron's civil RICO case, many of these events came to light.[174] Chevron filed the case on February 1, 2011, naming Donziger and other parties from the Ecuadorian lawsuit as defendants.[175] The

---

162. *See* BARRETT, *supra* note 1, at 178–84 (describing the discovery Chevron sought in New York and its ramifications).

163. *Donziger*, 974 F. Supp. 2d at 453.

164. *Id.*

165. *See id.* at 540 (discussing Chevron's actions to receive the *Crude* outtakes as well as documents from Donziger).

166. *See In re* Chevron Corp., 709 F. Supp. 2d 283, 299 (S.D.N.Y. 2010) (granting Chevron's discovery request against *Crude*'s filmmaker, Joseph Berlinger, after finding that Chevron had overcome the qualified journalist's privilege by showing that scenes in the documentary itself showed the outtakes were likely to be relevant to the case in Ecuador).

167. *See* Chevron Corp. v. Berlinger, 629 F.3d 297 (2d Cir. 2011) (finding that Berlinger was not acting as an independent reporter when filming *Crude*, and thus affirming the district court's ruling).

168. *Donziger*, 974 F. Supp. 2d at 465.

169. *Id.*

170. *See id.* (describing several of Donziger's stated opinions regarding the Ecuadorian justice system).

171. *See id.* (the opinion from Chevron's civil RICO case against Donziger, which includes references to scenes from the *Crude* outtakes throughout).

172. *See generally In re* Chevron Corp., 709 F. Supp. 2d 283 (S.D.N.Y. 2010) (denying motions to quash and granting discovery); *see also In re* Chevron Corp., 749 F. Supp. 2d 135 (S.D.N.Y. 2010). The Second Circuit affirmed. *See* Lago Agrio Plaintiffs v. Chevron Corp., 409 F. App'x 393 (2d Cir. 2010) (affirming the district court's denial of the motions to quash).

173. *See Donziger*, 974 F. Supp. 2d at 465 (describing the scope of the discovery order). Much of this discovery would also play a large role in the aforementioned civil RICO case. *See id.* (noting that much of the evidence produced came in during the RICO case).

174. *See generally id.*

175. *Id.* at 544.

case proceeded to a bench trial in autumn 2013,[176] and Judge Kaplan subsequently issued an opinion on March 4, 2014.[177] In his 344-page opinion, Judge Kaplan meticulously details the events leading up to and throughout the RICO case, ultimately deciding in favor of Chevron.[178] Most significantly, the opinion concludes by awarding Chevron relief in the form of, among other things, a nationwide injunction to prevent the plaintiffs from enforcing the Ecuadorian judgment against Chevron in the United States.[179] This did not conclude the case, however, as the parties have continued post-judgment litigation into 2019.[180]

4. Worldwide Enforcement Attempts

As mentioned previously, when an initial enforcement attempt fails and bars a recovery-seeking plaintiff from recognizing and enforcing its foreign judgment in a jurisdiction, it must look to other countries for its opportunity to do so.[181] However, when the plaintiffs have procured the judgment via unscrupulous means, it will likely be a rare jurisdiction that finds enforcement appropriate.[182] This is precisely what has occurred with the Ecuadorian judgment from the lawsuit that forms the case study for this Note, as the plaintiffs have not found a jurisdiction willing to enforce it after multiple attempts.[183]

Before Judge Kaplan even had an opportunity to issue his nationwide injunction in the United States, the plaintiffs were attempting enforcement in four different countries:[184] Argentina, where the plaintiffs attempted to enforce the judgment against a Chevron subsidiary, but the Supreme Court of Justice of Argentina determined the plaintiffs were unable to pierce the corporate veil to

---

176. *See id.* at 546–47 (describing the timing and events of the trial).

177. *See id.* at 644 (concluding the opinion and dating it).

178. *See id.* at 465 (announcing the opinion of the court).

179. *See id.* at 641–44 (describing the injunction and making findings relative to its legitimacy). The Second Circuit later affirmed the awarding of this nationwide injunction. *See* Chevron Corp. v. Donziger, 833 F.3d 74, 74 (2d Cir. 2016). Interestingly, Judge Kaplan had previously tried to order a preliminary injunction that would have prevented the plaintiffs from seeking enforcement of the judgement anywhere besides Ecuador, but the Second Circuit struck it down. *See* Chevron Corp. v. Camacho Naranjo, 667 F.3d 232 (2d Cir. 2012) (vacating the district court's preliminary injunction, among other things).

180. *See generally* Chevron Corp. v. Donziger, No. 11-cv-0691 (LAK), 2019 U.S. Dist. LEXIS 84565 (S.D.N.Y. May 13, 2019) (ordering post-judgment discovery).

181. *See supra* notes 154–56 and accompanying text.

182. *See Ecuador Lawsuit*, *supra* note 2.

183. *See id.*

184. *See Donziger*, 974 F. Supp. 2d at 641–44 (acknowledging the pendant international enforcement proceedings).

reach the subsidiary's assets;[185] Brazil, where the deputy attorney general questioned the methods used to obtain the judgment and the Superior Court of Justice, the court of last resort, barred enforcement of the judgment, basing its ruling on a lack of jurisdiction;[186] Canada, where the Court of Appeal for Ontario determined that the judgment was unenforceable against a Canadian subsidiary of Chevron, a ruling that the Supreme Court of Canada declined to review;[187] and Ecuador, even though Chevron has never had operations in the country nor owned any subsidiaries there, though a court in Ecuador did order attachment of Chevron's worldwide assets, along with some of its assets in Ecuador.[188] The nationwide injunction in the United States still remains in effect after the Second Circuit upheld it in 2016,[189] a decision the Supreme Court of the United States declined to review.[190]

Significantly, in 2009, Chevron took matters into its own hands, filing for international arbitration against Ecuador's government.[191] The case proceeded in the Permanent Court of Arbitration in the Hague, and the reviewing tribunal ruled in favor of Chevron, placing an obligation on Ecuador to prevent enforcement of the plaintiffs' judgment worldwide, among other relief.[192] Ecuador appealed this

---

185. *See id.* at 541 n.1189 (describing the proceedings in Argentina).

186. *See Brazil's High Court Rejects Attempt to Enforce Fraudulent Ecuadorian Judgment Against Chevron*, CHEVRON (Nov. 30, 2017), https://www.chevron.com/stories/brazils-high-court-rejects-attempt-to-enforce-fraudulent-ecuadorian-judgment-against-chevron [https://perma.cc/296D-ZCX2] (archived Feb. 21, 2021) (describing the Brazilian enforcement decision).

187. *See Fraudulent Ecuadorian Judgment Is Unenforceable Against Chevron's Canadian Subsidiary*, CHEVRON (Apr. 4, 2019), https://chevroncorp.gcs-web.com/news-releases/news-release-details/fraudulent-ecuadorian-judgment-unenforceable-against-chevrons [https://perma.cc/3Q2Y-VHMG] (archived Feb. 21, 2021) (discussing the Supreme Court of Canada's decision to not review the appellate ruling below denying enforcement).

188. *See Donziger*, 667 F.3d 232 541–42 (describing how an Ecuadorian court attached Chevron's intellectual property rights in Ecuador, money going to and from Ecuador to Chevron, and an arbitration award against Ecuador in pursuit of enforcing the judgment).

189. *See* Chevron Corp. v. Donziger, 833 F.3d 74, 150–51 (affirming the district court's choice of relief for Chevron).

190. Donziger v. Chevron Corp., 137 S. Ct. 2268 (2017).

191. *See Chevron Files International Arbitration Against the Government of Ecuador Over Violations of the United States-Ecuador Bilateral Investment Treaty*, CHEVRON (Sept. 23, 2009), https://www.chevron.com/stories/chevron-files-international-arbitration-againstthe-governmentof-ecuador-over-violationsofthe-united-states-ecuador-bilateral-investment-treaty [https://perma.cc/968P-PYFY] (archived Feb. 21, 2021) (discussing Chevron's initial filing of the arbitration case).

192. *See Chevron Awarded $96 Million in Arbitration Claim Against the Government of Ecuador*, CHEVRON (Aug. 31, 2011), https://www.chevron.com/stories/chevron-awarded-96-million-in-arbitration-claim-against-the-government-of-ecuador [https://perma.cc/8KKJ-28XH] (archived Feb. 21, 2021) (reporting the tribunal's decision). Chevron received several more awards from the tribunals between 2011 and 2013, including one that found that Texaco's agreement with

ruling, but the District Court for the Hague affirmed it, rejecting arguments from Ecuador that the award was against public policy.[193] The Supreme Court of the Netherlands subsequently affirmed this ruling, thus leaving the arbitral award in place.[194]

In the end, this litigation has spanned more than two decades, involving proceedings in several countries.[195] While Texaco, now Chevron, is certainly not blameless in this dispute,[196] the plaintiffs' legal team's actions were not a correct course of action for seeking justice.[197] And now, as a result of those actions, the plaintiffs in this case have yet to see, and may never see, the level of recovery they would have gotten in an otherwise fair proceeding.[198] This is the risk any other parties willing to employ the same methods as these plaintiffs would run in future cases.

B. *A Still-Developing Situation: The Nicaraguan Fruit Farmer Sterilization Judgment*

While the *Chevron* case is perhaps the most widely known example of the problem this Note aims to address, there is another case that is reaching a critical stage to determine whether it will present a similar country-hopping issue that merits a brief discussion.[199] This case involves a large class of banana farmers from Nicaragua who used

---

Ecuador made when Texaco left the country allowed Chevron's subsidiary TexPet to be released from liability for collective environmental claims. *See Chevron Corp. Statement on Dutch Court Decision on Arbitral Awards*, CHEVRON (Jan. 22, 2016), https://www.chevron.com/stories/chevron-corp-statement-on-dutch-court-decision-on-arbitral-awards [https://perma.cc/5D7P-NW4B] (archived Feb. 21, 2021) (listing the several awards Chevron received following the initial decision).

193. *See Chevron Corp. Statement on Dutch Court Decision on Arbitral Awards*, CHEVRON (Jan. 22, 2016), https://www.chevron.com/stories/chevron-corp-statement-on-dutch-court-decision-on-arbitral-awards [https://perma.cc/5D7P-NW4B] (archived Feb. 21, 2021) (reporting the court's reasoning behind its decision).

194. *See* Press Release, Chevron, Dutch Supreme Court Rules for Chevron in Ecuador Dispute (Apr. 15, 2019), https://www.chevron.com/stories/dutch-supreme-court-rules-for-chevron-in-ecuador-dispute [https://perma.cc/FZ3K-CSG5] (archived Feb. 20, 2021) (reporting the Supreme Court of the Netherlands's decision).

195. *See generally* Chevron Corp. v. Donziger, 974 F. Supp. 2d 362 (S.D.N.Y. 2014) (discussing in detail the temporal and geographical extent of the litigation and its consequences).

196. *See* BARRETT, *supra* note 1, at 14–30, 212–22 (describing the extent of the pollution from Texaco's operations in the Oriente region).

197. *See generally Donziger*, 974 F. Supp. 2d 362 (making extensive factual findings regarding the plaintiffs' team's activities in Ecuador).

198. *See id.* at 641–42 (barring enforcement against Chevron in the United States); *Ecuador Lawsuit - Press Releases*, CHEVRON, https://www.chevron.com/ecuador/press-releases (last visited Feb. 2, 2021) [https://perma.cc/W8J3-NS7F] (archived Feb. 20, 2021) (archiving several press releases documenting the plaintiffs' failed attempts to enforce the judgment against Chevron).

199. *See* Alderman, *supra* note 17; *Banana Workers Made Sterile*, *supra* note 20.

a pesticide known as Nemagon while working for American fruit producer companies in Nicaragua.[200] Nemagon contains an active ingredient called dibromochloropropane (DBCP), which the United States had banned in the 1970s after it sterilized males whose work at chemical plants exposed them to it.[201] U.S.-based fruit producers continued to use Nemagon, however, in other countries that had not banned it, such as Nicaragua.[202] This allegedly led to the sterilization of thousands of Nicaraguan males who worked for the fruit producers.[203]

The Nicaraguan DBCP litigation started out similarly to the *Chevron* case: the plaintiffs filed in the United States, and the federal courts dismissed the cases based on *forum non conveniens*.[204] Some of the plaintiffs then refiled and saw their cases through in Nicaragua in the early 2000s, eventually amassing billions in damages.[205] When the plaintiffs returned to the courts of the United States, they had issues getting the judgments recognized and enforced.[206] The reasons for the denials in the United States lie in apparent falsification of sterility tests for the plaintiffs in Nicaragua and questions of whether some of the putative plaintiffs worked for the defendant fruit producers that used Nemagon.[207]

---

200. *See Banana Workers Made Sterile*, *supra* note 20.

201. *See* Alderman, *supra* note 17.

202. *See id.*

203. *See* Sanchez Osorio v. Dole Food Co., 665 F. Supp. 2d 1307, 1311–12 (S.D. Fla. 2010), *aff'd sub nom.* Sanchez Osorio v. Dow Chem. Co., 635 F.3d 1277 (11th Cir. 2011) (per curiam) (summarizing the factual background of the case, including the number of plaintiffs that filed lawsuits); *see also* Alderman, *supra* note 17; *Banana Workers Made Sterile*, *supra* note 20.

204. *See, e.g.*, Delgado v. Shell Oil Co., 231 F.3d 165 (5th Cir. 2000) (affirming the dismissal of several cases from several federal district courts in Texas).

205. *See* Steve Gorman, *LA Judge Dumps $2.4 Million Judgment Against Dole*, REUTERS (July 15, 2010, 9:12 PM), https://www.reuters.com/article/us-dole-bananas/la-judge-dumps-2-4-million-judgment-against-dole-idUKTRE66F0CL20100716 [https://perma.cc/3T8F-WQWL] (archived Feb. 20, 2021) (noting that the plaintiffs had received over $2 billion in damages in Nicaraguan courts that they sought to enforce in the United States).

206. *See, e.g.*, *Sanchez Osorio*, 665 F. Supp. 2d at 1351–52 (summarizing the reasons for nonrecognition and nonenforcement of the Nicaraguan judgment); Shell Oil Co. v. Franco, No. CV 03-8846 (PJWx), 2005 U.S. Dist. LEXIS 47557 (C.D. Ca. Nov. 10, 2005) (granting Shell's motion for summary judgment on the nonenforceability of the Nicaraguan judgment in the United States); Franco v. Dow Chem. Co., No. CV 03-5094 (PJWx), 2003 U.S. Dist. LEXIS 26639 (C.D. Ca. Oct. 20, 2003) (granting Dow's motion to dismiss the Nicaraguan plaintiff's claims for judgment enforcement based on a myriad of procedural errors); *see also* Alderman, *supra* note 17 (noting the plaintiffs' issues with U.S. judgment recognition and enforcement); *Banana Workers Made Sterile*, *supra* note 20; Gorman, *supra* note 205 (reporting on a revocation of a judgment obtained in a lawsuit in California state court).

207. *See, e.g.*, *Sanchez Osorio*, 665 F. Supp. 2d at 1313–15, 1320 (discussing some of the evidentiary problems in the plaintiffs' case); Steve Stecklow, *Fraud by Trial Lawyers Taints Wave of Pesticide Lawsuits*, WALL ST. J. (Aug. 19, 2009, 11:59 PM),

These denials were not the death of the case, however; the plaintiffs have since taken a different strategic approach.[208] The plaintiffs are seeking recognition and enforcement in France, where they gained the right to a trial beginning in January 2020.[209] If the plaintiffs gain recognition and enforcement, it could make for massive liability for the defendant corporations, as European Union regulations make it possible to easily gain recognition and enforcement of judgments in its member states once one member state does so.[210] Indeed, a German court has already frozen Dow Chemical's assets in the country, following suit of a French injunction doing the same, in order to ensure those assets are preserved for the potential forthcoming recognized judgment.[211] If the French trial does not come out in the plaintiffs' favor,[212] however, it is entirely possible the plaintiffs could travel outside of the European Union to seek enforcement,[213] just as the plaintiffs in the *Chevron* case did with their judgment.[214] Thus, the country hopping has the potential to continue through a variety of other jurisdictions and for an unknown number of years into the future.[215]

III. A COMPARATIVE ANALYSIS OF EXISTING RECOGNITION AND ENFORCEMENT STANDARDS

Different jurisdictions have their own laws and regulations that cover the enforcement of judgments from foreign jurisdictions, but one standard exists as a universal reason for refusing to enforce a foreign judgment: fraud.[216] This next Part will survey various standards,

---

https://www.wsj.com/articles/SB125061508138340501 [https://perma.cc/HSQ8-7PY5] (archived Feb. 20, 2021) (noting that there were findings of falsified sperm tests and proffering of plaintiffs who had not worked for the defendant fruit companies that led to denial of judgment enforcement in California).

208. *See generally* Alderman, *supra* note 17.

209. *See id.*; *see also Banana Workers Made Sterile*, *supra* note 20.

210. *See generally* Council Regulation 1215/2012, *supra* note 21; Council Regulation 44/2001, *supra* note 21.

211. *See* Press Release, Brylski Company, *German Ruling Gives Further Support to Plantation Workers Poisoned by Sperm-Killer Pesticide* (Oct. 9, 2019), http://www.brylskicompany.com/press-releases/german-ruling-gives-further-support-to-plantation-workers-poisoned-by-sperm-killer-pesticide [https://perma.cc/UK9E-V4AE[(archived Feb. 21, 2021).

212. As of this writing, it does not appear that a ruling has come forth from the trial.

213. *See, e.g.*, *Country Sites*, DOW, https://corporate.dow.com/en-us/locations.html (last visited Oct. 28, 2020) [https://perma.cc/2C4Q-FDMZ] (archived Feb. 21, 2021) (providing lists of Dow's worldwide operations locations, including locations in the Middle East and Asia outside of its European and United States operations).

214. *See supra* Part II.A.4.

215. *See, e.g.*, *supra* Part II.A.4.

216. *See, e.g.*, UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 4(C)(2) (UNIF. LAW COMM'N 2005) [hereinafter UFCMJRA] (model law advocating for

focused on the United States and European Union, noting relevant similarities and differences between multiple jurisdictions in judgment enforcement. These standards will ultimately form the basis for this Note's proposed solution to the country-hopping issue described in Part II.[217]

A. *Enforcement Standards in the United States*

This subpart will assess several standards for foreign judgment enforcement in the United States, both currently in law and proposed, namely the rule of reciprocity, the Uniform Foreign-Country Money Judgments Recognition Act, and the ALI Proposed Federal Statute on Recognition and Enforcement of Foreign Judgments. Particularly, it will draw on the case law foundation for the common law rule for assessing enforceability and two model statutory approaches to judgment enforcement.

1. The Rule of Reciprocity

The eminent doctrine extending from a case law approach to regulating foreign judgment enforcement in the United States stems from the concepts of comity[218] and reciprocity[219] between foreign nations' legal systems, as the United States Supreme Court first stated in *Hilton v. Guyot*.[220] *Hilton* involved a French firm's liquidator's attempt to enforce a judgment from France in a case the liquidator brought to recover a debt from two American citizens who did business

---

states to adopt a standard for rejecting foreign judgments based on attainment by fraud); Hague Conference on Private International Law, *Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* 1 (July 2, 2019), https://assets.hcch.net/docs/806e290e-bbd8-413d-b15e-8e3e1bf1496d.pdf (last visited Feb. 7, 2020) [https://perma.cc/4EH4-Z3WD] (archived Feb. 21, 2021) [hereinafter HAGUE CONVENTION] (Hague Conference on Private International Law convention that also advocates for rejecting foreign judgments obtained by fraud).

217. *See supra* Part II; *infra* Part IV.

218. The United States Supreme Court has defined "comity" as "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." In sum, it is basically the idea of one country giving effect within its borders to the law of another country. *See* Hilton v. Guyot, 159 U.S. 113, 164 (1895).

219. Reciprocity, while related, is narrower of a concept, stated as when countries "give effect in their territories to the judgments of foreign States." *Id.* at 212. Thus, there is reciprocity between countries when one will allow for enforcement of a judgment from the other without the need to retry the case in its own courts. *See, e.g.*, *id.* at 211–12 (giving examples and explanations of reciprocity between different states).

220. *See id.* at 163–64 (espousing the doctrine of comity in recognition of foreign judgments).

in Paris.[221] The Court began by acknowledging the practice during the colonial period of the United States' history where the individual colonies originally treated judgments from other colonies as foreign judgments, thus making them serve a merely evidentiary purpose for *de novo* review in the colony where a party tried to enforce them.[222] The difficulties this practice presented led to the development of the concept of giving "full faith and credit" to judicial proceedings in other colonies, which eventually applied to the states through the United States Constitution's Full Faith and Credit Clause in article IV § 1.[223] The Court also noted that the first United States Congress enacted a statute clarifying the scope of the clause (as the Full Faith and Credit Clause gives it the power to do), which said that full faith and credit applied in every court, both state and federal, in the United States in the same manner as it would in the judgment's forum state.[224]

The Court then proceeded to distinguish recognizing foreign judgments from recognizing out-of-state judgments, stating that "[t]he decisions of this court have clearly recognized that judgments of a foreign state are prima facie evidence only, and that, but for these constitutional and legislative provisions, judgments of a state of the Union, when sued upon in another state, would have no greater effect."[225] The Court went on to further examine several sources, both American and European, in an attempt to determine whether the prevailing principle for foreign judgment recognition is simply that it is merely "prima facie evidence," thus giving American courts the ability to assess the merits of the judgment itself, or rather if foreign judgments should receive conclusive treatment.[226] The Court ultimately held that "[i]n view of all the authorities upon the subject, and of the trend of judicial opinion in this country and in England," that given certain factors, there is no need for American courts to reexamine the merits of the foreign court's decision.[227] It summarized this conclusion as such:

---

221. *See id.* at 114–20 (describing the factual circumstances leading to the case's proceedings in the United States).

222. *See id.* at 181 (discussing the early colonial practice for enforcing judgments between colonies).

223. *See id.* (citing U.S. CONST. art. IV, § 1) (explaining the concept of full faith and credit).

224. *See id.* at 181–82 (citing Act of May 26, 1790, ch. 11, 1 Stat. 122) (describing the statute and its effect).

225. *Id.* at 182 (making this distinction based on the constitutional and statutory recognitions for state judgments and the lack of such recognition for foreign judgments).

226. *See id.* at 182–204 (citing several sources from different point in the 19th century and assessing the development of foreign judgment recognition doctrine).

227. *See id.* at 202–03 (stating the factors that entitle a foreign judgment to full recognition based on objection to the merits alone).

> When an action is brought in a court of this country, by a citizen of a foreign country against one of our own citizens, to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that by the principles of international law, and by the comity of our own country, it should not be given full credit and effect.[228]

From this conclusion, the Court turned to the case in front of it.[229] The defendants made a claim that the plaintiffs misled the French court in receiving the judgment at issue, which the Court acknowledged would be grounds for an American court to examine the merits of the judgment.[230] However, the Court carved out a different reason for rejecting recognition of the French judgment: it found that French law would not accord any finality to a judgment rendered in an American court.[231] The Court noted that France had both a royal ordinance and a provision in its code of civil procedure that would give no effect to foreign judgments and would allow French citizens to try the case over before a French court.[232] Based on this finding, the Court determined that "the comity of our nation does not require us to give conclusive effect to the judgments of the courts of France; and that ground is the want of reciprocity . . . ."[233] It went on to note that "there is hardly a civilized nation on either continent which, by its general law, allows conclusive effect to an executory foreign judgment for the recovery of money."[234] Further, it found that many countries in Europe, along with several other developed countries in other parts of the world, do not allow conclusive authority for a foreign judgment unless the country issuing the judgment would do the same for the enforcing country's judgments.[235] Based on this finding, the Court stated, "the rule of reciprocity has worked itself firmly into the structure of international jurisprudence."[236] The court thus concluded that French judgments, in addition to judgments from other countries with similar

---

228. *Id.* at 205–06.

229. *Id.* at 209.

230. *See id.* at 202–03 (analyzing the defendants' claims).

231. *See id.* at 210–11 (analyzing French law).

232. *See id.* (summarizing French law).

233. *Id.* at 210.

234. *Id.* at 227.

235. *See id.* (stating its findings about the worldwide treatment of foreign judgments).

236. *Id.*

laws on foreign judgment recognition, could only serve as *prima facie* evidence in an enforcement proceeding in the United States.[237]

This rule of reciprocity from *Hilton* has remained a staple of case law into the modern day.[238] However, the case and its reciprocity standard also establish a foundation for the principles underlying the creation of judicial standards for foreign-judgment enforcements to which the courts of multiple countries could bind themselves. Indeed, the Supreme Court noted that full faith and credit extends between the states because of the states' status as parties to the United States Constitution.[239] So too, many countries could theoretically bind themselves to similar standards by becoming signatories to the same agreement.[240]

2. The Uniform Foreign-Country Money Judgments Recognition Act

The Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA), a project of the Uniform Law Commission, is a model law that is a 2005 update to the 1962 Uniform Foreign Money-Judgments Recognition Act,[241] which seeks to provide a law states could adopt to satisfy foreign countries' reciprocity requirements and thus increase the chance that an adopting state's money judgments would gain recognition in those foreign countries' courts.[242] In total, 26 states and Washington, D.C. have currently adopted the UFCMJRA as of 2021, and both the New York and Rhode Island state legislatures have introduced it for adoption in 2021.[243]

---

237. *See id.* ("The reasonable, if not the necessary, conclusion appears to us to be that judgments rendered in France, or in any other foreign country, by the laws of which our own judgments are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in this country, but are prima facie evidence only of the justice of the plaintiffs' claim.").

238. *See, e.g.*, Somportex Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971) (citing *In re* Christoff's Est., 192 A.2d 737 (Pa. 1963) (stating that under Pennsylvania state law, the standard for recognizing foreign judgments is comity); Chevron Corp. v. Donziger, 974 F. Supp. 2d 362, 608–09 (S.D.N.Y. 2014) (choosing to not give comity to the Ecuadorian judgments because Ecuador's "judicial system . . . does not provide impartial tribunals or procedures compatible with due process . . . .").

239. *See* Hilton v. Guyot, 159 U.S. 113, 181 (1895) (noting the constitutional nature of full faith and credit).

240. *See* Council Regulation 1215/2012, *supra* note 21, ch. III (dictating standards for recognition, enforcement, and refusal of foreign judgments in European Union member states); *see also infra* Part IV (discussing a proposed transnational enforcement standard).

241. *See* UFCMJRA, *supra* note 216, Prefatory Note.

242. *See id.* (describing the purpose of the UFCMJRA).

243. *See Foreign-Country Money Judgments Recognition Act*, UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?CommunityKey=ae280c30-094a-4d8f-b722-8dcd614a8f3e [https://perma.cc/KF2A-FBME] (archived Feb. 21, 2021) (noting the states that have adopted or proposed to adopt the UFCMJRA).

Section 4 of the UFCMJRA covers its standards for recognition of foreign judgments in American courts.[244] Section 4(b) gives three mandatory reasons for denying recognition of a foreign judgment,[245] and § 4(c) gives eight scenarios where a court may discretionarily refuse to recognize a foreign judgment.[246] Among those eight scenarios includes a provision allowing nonrecognition for a judgment the plaintiff procures through fraud "that deprived the losing party of an adequate opportunity to present its case,"[247] which, as a comment to § 4 explains, limits this provision to include extrinsic fraud, such as intentional insufficient service or misinformation leading to a default judgment.[248] Thus, the UFCMJRA does not allow for recognition denial based on intrinsic fraud "such as false testimony . . . or admission of a forged document into evidence," which it sees as matters for the court offering the judgment to resolve rather than the court where the plaintiffs seek recognition.[249] The UFCMJRA allocates the burden of proof to the party challenging the recognizability of a foreign judgment when it asserts any of the grounds for nonrecognition in an enforcement proceeding.[250]

One particularly curious feature of the UFCMJRA is that it conspicuously omits any inclusion of the reciprocity standard found in American case law dating back to *Hilton* and somewhat abridges courts' ability to recognize money judgments under a comity standard.[251] The UFCMJRA drafters noted that the 1962 Act decided to forego adding reciprocity as a prerequisite to foreign judgment recognition and thus decided to maintain that same approach.[252] The drafters said that "[w]hile 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

---

244. UFCMJRA, *supra* note 216, § 4.

245. *See id.* § 4(b) (giving courts a directive to not recognize a judgment based on the unavailability of "impartial tribunals or procedures compatible with the requirements of due process of law" or the foreign court's lack of personal or subject matter jurisdiction in the case).

246. *See id.* § 4(c) (listing eight scenarios for courts to consider when deciding whether to recognize a foreign judgment).

247. *Id.* § 4(c)(2).

248. *See id.* § 4 cmt. 7 (explaining the limits of § 4(c)(2)).

249. *See id.* (explaining the UFCMJRA's approach for intrinsic fraud).

250. *Id.* § 4(d).

251. *See id.* Prefatory Note (discussing how the UFCMJRA leaves open the possibility of recognition by comity for judgments not within the Act's scope as well as the drafters' belief that the inclusion of a reciprocity standard would not lead to more countries recognizing U.S. judgments than the Act already would accomplish).

252. *See id.* (noting the 1962 Act's approach and the UFCMJRA drafters' decision to leave reciprocity out as well).

than does the approach taken by the Act."[253] As to comity, the UFCMJRA disallows it as a reason to recognize foreign money judgments,[254] with an exception carved out for money judgments and awards involved in domestic relations cases.[255] The act also includes a saving clause, which expressly states that the UFCMJRA leaves courts free to recognize foreign judgments the act does not cover by a comity standard,[256] which includes nonmonetary judgments.[257]

The UFCMJRA is a useful model to assess because of the breadth and depth of its mechanisms for foreign judgment recognition and enforcement.[258] Its goal of meeting the reciprocity requirements of foreign courts is an attractive feature to empower the courts of individual states to hold foreign defendants accountable in the civil justice system,[259] and its application to a wide range of judgments makes it an effective tool for setting standards for courts assessing virtually any type of judgment.[260] It also covers a variety of scenarios for rejecting foreign judgment recognition, which is helpful for promoting uniformity and *ex ante* certainty on a judgment's enforceability.[261] These features are likely part of the reason that more than half of state legislatures have at least proposed, if not adopted, the UFCMJRA as their own law.[262]

The UFCMJRA is not without its potential shortcomings, however. First, the discretionary nature of some of its grounds for judgment rejection would likely function better as mandatory grounds for rejection, namely the provisions for rejection based on fraud, concerns about the integrity of the issuing court, or the prior

---

253. *See id.* (arguing additionally that "the certainty and uniformity provided by the approach of the 1962 Act, and continued in this Act, creates a stability in this area that facilitates international commercial transactions.").

254. *See id.* § 3 cmt. 2 (defining the scope of the judgments the UFCMJRA applies to).

255. *See id.* § 3 cmt. 4 (noting three exceptions for money judgments the UFCMJRA does not cover, including domestic relations, and explicitly notes the applicability of a comity standard to those types of judgments).

256. *See id.* § 11 ("This [act] does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this [act].").

257. *See id.* § 3 cmt. 2.

258. *See id.* §§ 3, 4 (setting the scope of the UFCMJRA's application and substantive recognition standards).

259. *See id.* Prefatory Note (noting the UFCMJRA's goal of enhancing the possibility of American state court judgment recognition in foreign courts).

260. *See id.* § 3 (delineating the types of judgments the UFCMJRA applies to).

261. *See id.* § 4 (defining the possible reasons for foreign judgment recognition rejection).

262. *See id.* Prefatory Note (noting that 25 states, plus Washington D.C., have adopted the UFCMJRA, with two other states having proposed it for adoption).

proceeding being incompatible with due process of law.[263] These provisions involve defects that generally present more concerns about the accuracy and reliability of the judgment, as opposed to the other provisions in § 4, which are less facially malignant.[264]

The UFCMJRA further exacerbates this issue with its sole focus on extrinsic fraud in judgments contested based on fraud.[265] The UFCMJRA's comments note that extrinsic fraud is grounds for denying recognition of a judgment when it "deprives the defendant of an adequate opportunity to present its case";[266] it does not assess intrinsic fraud[267] because it finds those issues are better suited for resolution in the court that issues the judgment.[268] This position is reasonable because, presuming the issuing court is competent and trustworthy, it will be able to fairly assess the issue.[269] Likewise, where the plaintiffs obtain a judgment by fraud and either the integrity of the issuing court is questionable,[270] the proceedings do not comport with due process of law,[271] or both,[272] the ignorance of intrinsic fraud claims in the original forum will be probative evidence of those issues.[273]

There is also a mandatory denial mechanism for situations where a country's entire judicial system is fundamentally corrupted,[274] which was likely the case in *Chevron*,[275] that can be serviceable in those situations of broad systemic issues. Even though the fraud, integrity,

---

263. *See id.* §§ 4(c)(2), 4(c)(7), 4(c)(8) (setting out these three standards for rejection).

264. *See, e.g.*, *id.* §4(c) ("the foreign court was a seriously inconvenient forum for the trial").

265. Extrinsic fraud includes "when the plaintiff deliberately had the initiating process served on the defendant at the wrong address, deliberately gave the defendant wrong information as to the time and place of the hearing, or obtained a default judgment against the defendant based on a forged confession of judgment." *Id.* § 4 cmt. 7 (describing limits on the types of fraud that qualify for denying recognition).

266. *Id.* § 4(c)(2).

267. The comments give the examples of "false testimony of a witness or admission of a forged document into evidence during the foreign proceeding" for intrinsic fraud. *Id* § 4 cmt. 7.

268. *Id.*

269. *Cf. id.* § 4(c)(7).

270. *See id.*

271. *See id.* § 4(c)(8).

272. *See, e.g.*, Chevron Corp. v. Donziger, 974 F. Supp. 2d 362, 608–10 (S.D.N.Y. 2014) (finding the proceedings in Ecuador's courts were not fair and impartial and did not meet the standard of due process).

273. *See, e.g.*, *id.* (finding Ecuadorian proceedings did not meet fairness and impartiality nor due process).

274. *See* UFCMJRA, *supra* note 216, § 4(b)(1) (mandating denial of a judgment where "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").

275. *See* 974 F. Supp. 2d at 561–66, 608–10 (finding that the judicial system in Ecuador was not fair and impartial in a manner consistent with due process).

and due process provisions seem like they can work in tandem to cover virtually all situations, it is probably a stronger policy to allow the assessment of intrinsic evidence in a claim that a judgment is fraudulent when it comes into the court's purview for integrity and due process issues.[276] Depending on how covert the corruption is, evidence of intrinsic fraud may be the best evidence a defendant can present to contest a foreign judgment,[277] and thus the interest in assessing that evidence would be high.[278] These reasons for nonenforcement are permissive and thus rely on the strength of each claim to be sufficient for nonenforcement.[279] This allows for more leeway for intrinsic fraud evidence presentation, which may better serve parties challenging judgments.[280]

3. The ALI Proposed Federal Statute on Recognition and Enforcement of Foreign Judgments

In 2006, the American Law Institute (ALI) drafted and released a statute, the Foreign Judgments Recognition and Enforcement Act, meant to serve as a model for a federal law that Congress could adopt to create a blanket standard recognizing and enforcing foreign judgments in the United States.[281] The scope of the proposed statute is quite broad, encompassing all money and nonmoney judgments.[282] The act is similar to the UFCMJRA in many ways, but has a few key differences. Notably, it includes several more factors in its mandatory nonrecognition provision, including for fraud, integrity, and due

276. *See* UFCMJRA, *supra* note 216, § 4 cmt. 11 (stating that integrity-related claims "[require] a showing of corruption in the particular case that had an impact on the judgment that was rendered."); *id.* § 4 cmt. 12 (giving the example of a due process-related showing as "for political reasons the particular party against whom the foreign-country judgment was entered was denied fundamental fairness in the particular proceedings leading to the foreign-country judgment.").

277. *See, e.g.*, *Donziger*, 974 F. Supp. 2d at 560–64 (assessing evidence of fraudulent documents filed in the Ecuadorian court).

278. *See, e.g.*, *id.* (finding the evidence of fraudulent documents filed in the Ecuadorian court to constitute fraud and be informative in determining the general corruption in the Ecuadorian proceedings).

279. *See* UFCMJRA, *supra* note 216, § 4(c).

280. *See generally id.* (prescribing the permissive reasons for nonenforcement).

281. *See* S.I. Strong, *Recognition and Enforcement of Foreign Judgments in U.S. Courts: Problems and Possibilities*, 33 REV. LITIG. 45, 54 (2014) (describing the ALI's proposed statute); *Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute*, AM. L. INST., (last visited Feb. 21, 2021) https://www.ali.org/publications/show/recognition-and-enforcement-foreign-judgments-analysis-and-proposed-federal-statute/ [https://perma.cc/J3NT-YKRA] (archived Feb. 21, 2021) (describing the proposed statute's purpose and basis).

282. *See* THE FOREIGN JUDGMENTS RECOGNITION AND ENF'T ACT (WITH COMMENTS AND REPORTERS' NOTES) 29–30 (AM. L. INST. 2006) [hereinafter FJREA] (detailing what types of judgments the act covers and acknowledging that it is broader than the UFCMJRA's coverage).

process issues.[283] This offers a more forceful nonrecognition provision than the UFCMJRA,[284] because it raises serious consequences for fraudulent behavior or acquiescence to impartial systems on the part of defendants.[285] The Foreign Judgments Recognition and Enforcement Act also does not explicitly bar consideration of intrinsic fraud in a fraud challenge, but points out that it will not normally be sufficient to avoid enforcement in the United States, as the issue should normally be raised in the issuing court.[286] Even so, the diminution in value of the evidence of intrinsic fraud here is not as severe as in the UFCMJRA, because fraud, integrity, and due process are all mandatory reasons for nonenforcement under the Foreign Judgments Recognition and Enforcement Act.[287]

The Foreign Judgments Recognition and Enforcement Act is a strong model law that offers a lot of the attractive benefits of the UFCMJRA[288] while also giving a broader scope of protections.[289] It has received some positive recognition from commentators.[290]

B. *Judgment Recognition and Enforcement in Europe*

Europe is ripe for analyzing transnational judgment enforcement standards because it has plentiful transnational structures, particularly in the form of European Union regulations and transnational conventions, that reach foreign-judgment enforcement

---

283. *See id.* at 55–56 (listing the reasons for mandatory foreign judgment nonrecognition).

284. *See* UFCMJRA, *supra* note 216, § 4(b), (c) (listing the grounds for mandatory and permissive nonrecognition, respectively).

285. *See* FJREA, *supra* note 282, at 55–57 (listing the reasons for mandatory foreign judgment nonrecognition).

286. *See id.* at 62 (discussing the criteria for an allegation of a judgment obtained by fraud).

287. *See generally id.* at 55–56 (making nonrecognition and nonenforcement on these grounds mandatory).

288. *Compare* UFCMJRA, *supra* note 216, § 4(b), (c) (listing reasons for nonrecognition), *with* FJREA, *supra* note 282, at 55–57.

289. *See* FJREA, *supra* note 282, at 29–30, 55–56 (giving broader coverage to more types of judgments than the UFCMJRA, and also making nonrecognition and nonenforcement mandatory on weightier grounds).

290. *See, e.g.*, Strong, *supra* note 281, at 92–93 (analyzing the Foreign Judgments Recognition and Enforcement Act as a possible solution to perceived issues in judgment recognition and enforcement); Yuliya Zeynalova, *The Law on Recognition and Enforcement of Foreign Judgments: Is It Broken and How Do We Fix It?*, 31 BERKELEY J. INT'L L. 150, 199–205 (2013) (giving the Foreign Judgments Recognition and Enforcement Act generally positive analysis, with some proposed changes, and generally advocating for a federal statute in response to perceived problems in judgment enforcement).

standards across several individual nations.[291] This subpart will focus on two particular European Union regulations from the twenty-first century, and provide a bit of background on the events leading up to the passage of those two regulations.

1. European Union Regulations 44/2001 and 1215/2012

The European Council, a body made up of the leaders of the European Union's member states,[292] passed regulation 44/2001 on December 22, 2000, which provides standards for, among other things, recognizing and enforcing judgments across EU member states.[293] This regulation had two major predecessors upon which its substance builds:[294] the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1968[295] and the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1988.[296] The regulation describes its purpose as providing a common legal mechanism for resolving issues about judgment recognition and enforcement across the member states "[i]n order to attain the objective of free movement of judgments in civil and commercial matters."[297] The European Council has added subsequent amendments since that time, but they mostly deal with jurisdictional nuances and do not substantially affect the functioning of provisions relevant to this Note.[298]

Regulation 44/2001's provision allows a member state to automatically enforce a judgment from another when a party seeks its enforcement and the member state determines the judgment is enforceable.[299] Like the Full Faith and Credit Clause in the United

---

291. *See, e.g.*, Council Regulation 1215/2012, *supra* note 21, ch. III (giving standards for judgment recognition and enforcement across the European Union); *see also* Council Regulation 44/2001 *supra* note 21, ch. III.

292. *The European Council*, EUROPEAN COUNCIL, https://www.consilium.europa.eu/en/european-council/ (last visited Feb. 17, 2021) [https://perma.cc/4W3J-VSQE] (archived Feb. 17, 2021).

293. *See generally* Council Regulation 44/2001, *supra* note 21.

294. *See id.* at 2 (noting the significance of the Brussels and Lugano Conventions).

295. *See* 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1968 O.J. (L 299) pmbl. (describing the purpose of the Brussels Convention).

296. *See* Convention 88/592/EEC, 1988 O.J. (L 319) pmbl. (describing the purpose of the Lugano Convention).

297. *See* Council Regulation 44/2001, *supra* note 21, at 1 (outlining the purpose of Regulation 44/2001).

298. *See, e.g.*, Commission Regulation 2245/2004, 2004 O.J. (L 381) (amending jurisdictional provisions of Regulation 44/2001); Commission Regulation 1937/2004, 2004 O.J. (L 334); Commission Regulation 1496/2002, 2002 O.J. (L 225).

299. *See* Council Regulation 44/2001, *supra* note 21, at 14 (describing the provision for enforcement of a judgment from another member state).

States Constitution's application among the states, this provision provides a powerful mechanism for seeking enforcement of judgments across members of the European Union.[300] However, where Regulation 44/2001's binds otherwise totally sovereign nations under a supranational governmental organization,[301] the Full Faith and Credit Clause covers states that are sovereign but beholden to an overarching federal government that represents the nation as a whole.[302]

Regulation 44/2001's provisions for denying recognition of a judgment, however, generally lack teeth.[303] It only allows for nonrecognition of a judgment in cases where its recognition would be "manifestly contrary to public policy" in the prospective recognizing member state: if it is a default judgment, if it is not reconcilable with earlier judgments between the parties on the same issue in another jurisdiction, or if there are jurisdictional issues in the court where a plaintiff seeks recognition.[304] "Contrary to public policy" is a broad standard, which makes sense in light of the purpose of the regulation,[305] and indeed is included in some of the previously analyzed mechanisms.[306] However, the lack of specific standards may make this agreement less attractive than others with more concrete grounds for nonrecognition.[307]

In late 2012, the European Union passed a new regulation to further bolster its foreign-judgment recognition and enforcement scheme known as Regulation 1215/2012.[308] Its portions related to judgment enforcement, however, are substantially the same as in Regulation 44/2001; that is, there are still only grounds for refusal to recognize a judgment based on public policy conflict, irreconcilability with previous judgments between the parties, jurisdictional issues, or

---

300. *See, e.g.*, Hilton v. Guyot, 159 U.S. 113, 181–82 (1895) (citing U.S. CONST. Art. IV § 1) (explaining the Full Faith and Credit Clause and its effect).

301 *See The EU in Brief*, EUR. UNION, https://europa.eu/european-union/about-eu/eu-in-brief_en (last visited Feb. 17, 2021) [https://perma.cc/47F4-2M3N] (archived Feb. 17, 2021).

302. *See, e.g.*, U.S. CONST. art. I, § 10 (placing limits on state power to engage with foreign powers without permission from the federal legislature); *id.* art. VI, cl. 2 (stating that laws made at the federal level in the United States are supreme to state-level laws).

303. *See generally* Council Regulation 44/2001, *supra* note 21, at 10 (listing the reasons for not recognizing a judgment).

304. *See id.* at 10 (listing criteria for not recognizing a judgment).

305. *See id.* at pmbl. para. 6 ("In order to attain the objective of free movement of judgments….").

306. *See, e.g.*, UFCMJRA, *supra* note 216, § 4(c)(3) (making a judgment being contrary to public policy a permissive ground for denying recognition).

307. *See, e.g.*, FJREA, *supra* note 282, at 55–56 (listing reasons for mandatory foreign judgment nonrecognition, including specific criteria such as fraud or contrariness to due process standards).

308. *See* Council Regulation 1215/2012, *supra* note 21, at 1 (noting that the purpose of Regulation 1215/2012 is to enhance the application of Regulation 44/2001).

if it is a default judgment.[309] However, since Regulation 1215/2012 also came forth with the purpose "to further facilitate the free circulation of judgments and to further enhance access to justice,"[310] it is not difficult to imagine why the European Council may be averse to enacting more stringent standards.

C. *The Hague Conference on Private International Law's Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters of 2019*

The Hague Conference on Private International Law is an intergovernmental organization that seeks to promulgate uniform rules to be used across nations.[311] Presently, 88 bodies are members of the Hague Conference, including the United States, China, Russia, Japan, and the European Union.[312] The Hague Conference primarily effectuates its uniform rules by creating multilateral treaties called *conventions*,[313] which member and nonmember states can then choose whether or not to sign.[314] While not every member state has signed on to conventions relating to civil procedure in the past,[315] a Hague Convention is likely the most practical mechanism for transnational judicial standards given the breadth of the Hague Conference's worldwide reach.[316]

---

309. *See id.* at 15–16 (discussing refusal of recognition standards).

310. *See id.* at 1 (stating the reasons for Regulation 1215/2012's promulgation).

311. *See More About HCCH*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, https://www.hcch.net/en/about/more-about-hcch (last visited Feb. 17, 2021) [https://perma.cc/DGS5-F4B6] (archived Feb. 17, 2021) (describing what the Hague Conference is).

312. *See HCCH Members*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, https://www.hcch.net/en/ecstates/hcch-members (last visited Feb. 17, 2021) [https://perma.cc/BLZ5-N2WN] (archived Feb. 17, 2021) (listing the current Hague Conference members). Membership basically confers the right to participate in the operation—to sit at the table, so to speak—of the Hague Conference); *see also Statute of the Hague Conference on Private International Law*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, https://www.hcch.net/en/instruments/conventions/full-text/?cid=29 (last visited Feb. 17, 2021) [https://perma.cc/JD28-YZXH] (archived Feb. 17, 2021) (setting out the membership process and consequences of membership in the Hague Conference).

313. *See More About HCCH*, *supra* note 311 (discussing what Conventions are).

314. *See HCCH Conventions: Signatures, Ratifications, Approvals and Accessions*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, https://assets.hcch.net/docs/ccf77ba4-af95-4e9c-84a3-e94dc8a3c4ec.pdf (last visited Feb. 17, 2021) [https://perma.cc/8GPR-STRN] (archived Feb. 17, 2021) (organizing the member states that have taken action on various Hague Conference Conventions into a chart).

315. *Id.*

316. *See HCCH Members*, *supra* note 313 (providing a list of the current Hague Conference members, as well as a world map with Conference members shaded).

The Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, which the Hague Conference originally drafted in 2017[317] and finalized on July 2, 2019,[318] will be the focus of this section because of its recency and potentially broad-reaching scope. As this convention is so recent, only two member states have signed on to it thus far.[319] However, the potential exists for virtually any country, including major international economic players, to sign on, making the convention an ideal framework to propose a standard that will combat the country-hopping problem set out above.[320]

The convention applies broadly to "the recognition and enforcement of judgments in civil or commercial matters"; the only nonapplicable judgment types deal with "revenue, customs or administrative matters."[321] For the bases for nonrecognition or nonenforcement of a judgment, it includes familiar standards, such as if a plaintiff obtains a judgment through fraud, or where "the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness" of the jurisdiction reviewing the judgment for enforcement,[322] which is a broad standard that likely would encompass the integrity and due process rationales mentioned previously in American frameworks.[323] These refusal provisions give strong mechanisms to combat plaintiff misbehavior which, when combined with standards of judicial review, should be able to create incentives for plaintiffs to not engage in misbehavior from the

317. *See generally* HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, SPECIAL COMMISSION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS, FEBRUARY 2017 DRAFT CONVENTION (2017), https://assets.hcch.net/docs/d6f58225-0427-4a65-8f8b-180e79cafdbb.pdf (last visited Feb. 17, 2021) [https://perma.cc/NB9T-AW8H] (archived Feb. 17, 2021) (setting out proposals for standards for recognition and enforcements of foreign judgments).

318. *See* HAGUE CONVENTION, *supra* note 216, at 1 (noting the date the convention concluded).

319. As of February 3, 2020, the two Member-State signees are Ukraine and Uruguay; no non-member states have signed on. Further, neither of the signees have ratified the convention. *HCCH Conventions: Signatures, Ratifications, Approvals and Accessions*, *supra* note 314.

320. *See supra* Part II (discussing the country-hopping case from the litigation against Chevron in Ecuador and its extended aftermath of repeated judgment enforcement attempts in different countries).

321. *See* HAGUE CONVENTION, *supra* note 216, at 1 (detailing the scope of the convention).

322. *See id*. at 5–6 (noting this as a component to its "contrary to public policy" provision).

323. *See, e.g.*, FJREA, *supra* note 282, at 55–56 (listing integrity issues in the court issuing the judgment and proceedings that do not comport with standards for due process as reasons for mandatory foreign judgment nonrecognition).

outset and to prevent plaintiffs from dragging defendants around seeking unmeritorious enforcement for years post-judgment.[324]

D. *Judicial Review Standards: Clear and Convincing Evidence, Clear Error, and the Presumption of Regularity*

Two standards of judicial review, the clear and convincing evidence standard and the clearly erroneous review standard, both typically found in American common law, are important to the main proposition of this Note because they provide the foundation for the burdens of proof in its proposed judgment review mechanism.[325] First, the clear and convincing evidence standard requires the factfinder in a case to find the likelihood a party's contentions are true to be "highly probable."[326] This is an intermediate evidentiary standard,[327] requiring more than a preponderance of the evidence—the standard in civil trials requiring a level of certainty greater than fifty percent[328]—but less than the standard of beyond a reasonable doubt, which is used in criminal trials and requires near-certainty of a defendant's guilt.[329] Thus, clear and convincing evidence provides more of a hurdle to overcome than the relative ease of a preponderance, but it also allows more leeway than the beyond a reasonable doubt standard.[330] This standard applies in certain contexts in both civil and criminal trials, notably in fraud claims.[331]

---

324. *See, e.g.*, *supra* Part II.A.4.

325. *See Clear and Convincing Evidence*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/clear_and_convincing_evidence (last visited Feb. 17, 2021) [https://perma.cc/GL2S-432Z] (archived Feb. 17, 2021) (detailing the evidentiary standard of clear and convincing evidence); *Clearly Erroneous*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/clearly_erroneous (last visited Feb. 17, 2021) [https://perma.cc/3866-RLQT] (archived Feb. 17, 2021) (detailing clearly erroneous review).

326. *See, e.g.*, Colorado v. New Mexico, 467 U.S. 310, 316 (1984) (describing the clear and convincing evidence standard).

327. *See Clear and Convincing Evidence*, *supra* note 325 (describing this standard as "a medium level of burden of proof").

328. *See Preponderance of the Evidence*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/preponderance_of_the_evidence (last visited Feb. 17, 2021) [https://perma.cc/4ES8-7PKA] (archived Feb. 17, 2021) (discussing the preponderance of the evidence standard).

329. *See Reasonable Doubt*, NOLO, https://www.nolo.com/dictionary/reasonable-doubt-term.html (last visited Feb. 17, 2021) [https://perma.cc/4KGL-XH5Z] (archived Feb. 17, 2021) (discussing reasonable doubt and talking about the beyond a reasonable doubt standard).

330. *See Clear and Convincing Evidence*, *supra* note 325 (comparing the different standards of proof).

331. *See id.* (discussing the applicability of the clear and convincing evidence standard).

Clearly erroneous review applies in slightly different circumstances, notably as an appellate review standard.[332] This standard dictates that the appellate court may reverse a lower court decision only if, after considering all the evidence, the lower court's conclusion is implausible.[333] Clearly erroneous review gives some deference to the initial court but still allows for the reviewing court to be critical of the conclusions below.[334]

Another important concept is the presumption of regularity for official actions by government officers.[335] Under this standard, courts apply a presumption that government officials "have properly discharged their official duties," to which the only rebuttal is "clear evidence to the contrary."[336] This standard would then presumably be applicable to courts, which will be instrumental in Part IV below for crafting this Note's ultimate solution.

IV. A NEW TRANSNATIONAL STANDARD FOR FOREIGN-JUDGMENT RECOGNITION AND ENFORCEMENT

Currently, plaintiffs who obtain a judgment under dubious circumstances can move from jurisdiction to jurisdiction attempting to enforce it against a defendant and its assets, a process which can drag on for indefinite amounts of time.[337] This Note proposes to set a standard of judicial review applicable to parties under a transnational agreement, using the Hague Conference's Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters as a framework.[338] This standard involves two additions to the Convention: first, it applies standards of review in the initial court to review a foreign judgment, and then it imposes different standards in subsequent courts that review the judgment following enforcement refusal in the initial court.

---

332. *See Clearly Erroneous*, *supra* note 325 (stating the applicability of the clearly erroneous standard).

333. *See id.* (describing what rises to the clearly erroneous standard).

334. *See generally id.* (discussing what weight the trial court's discretion receives in clearly erroneous review, which is that its factfinding will be rejected only if implausible under all the evidence considered together).

335. *See, e.g.*, United States v. Chem. Found., Inc., 272 U.S. 1, 14–15 (1926) (discussing the presumption of regularity).

336. *Id.*

337. *See, e.g.*, *Ecuador Lawsuit*, *supra* note 2 (chronicling judgment enforcement attempts against Chevron stemming from the *Aguinda* case).

338. *See generally* HAGUE CONVENTION, *supra* note 216 (setting standards for recognition and enforcement of foreign judgments for signatory parties to the convention).

A. *Mechanics of the Standard*

The proposal works as follows: first, the court in a member state in which plaintiffs first seek recognition and enforcement of a foreign judgment would apply a presumption of regularity to the court that issued the judgment;[339] next, it would assess a defendant's challenge to the enforceability of the judgment on the basis of fraud or lack of procedural fairness by requiring proof of those claims by clear and convincing evidence.[340] The goal of this standard is to require defendants to make a concrete showing of defects in the proceedings that brought forth the judgment at issue, but not to set too high of a threshold for them to meet to make proving a claim unrealistic.[341] The clear and convincing evidence standard also finds support in the United States Supreme Court's formulation of the presumption of regularity, which requires "clear evidence" to rebut the presumption that a government entity has properly fulfilled its duties.[342]

If the defendant met this burden in the initial court and the plaintiffs sought recognition in another country that was a party to the convention, that country's trial court would look at the findings made in the initial court and only choose to enforce the judgment if it found the initial reviewing court's findings were clearly erroneous.[343] While this standard normally applies to appellate proceedings, the subsequent reviewing court could apply this standard in a similar way to an appellate court by reviewing the initial court's findings and the record to come to its determinations.[344] This standard gives deference to the findings of the initial court and should make it possible for plaintiffs with meritorious judgments to get enforcement if the initial reviewing court was arbitrary or erroneous in its choice to not recognize or enforce.[345] However, it should also be a high enough bar that plaintiffs may be deterred from seeking enforcement in multiple countries and dragging out cases and may even be induced to try to

---

339. *See Chem. Found., Inc.*, 272 U.S. at 14–15 (defining the presumption of regularity).

340. *See* HAGUE CONVENTION, *supra* note 216, art. 7 (listing reasons for refusal of recognition and enforcement); *Clear and Convincing Evidence*, *supra* note 325 (stating the standard a party has to meet for clear and convincing evidence).

341. *See Clear and Convincing Evidence*, *supra* note 325 (comparing clear and convincing evidence to a lower and higher standard, noting that it is a moderate evidentiary burden).

342. *See Chem. Found., Inc.*, 272 U.S. at 14–15 (delineating the requirements to rebut the presumption of regularity).

343. *See Clearly Erroneous*, *supra* note 325 (describing the clearly erroneous standard).

344. *See, e.g.*, Chevron Corp. v. Donziger, 974 F. Supp. 2d 362, 608–10 (S.D.N.Y. 2014) (reviewing the proceedings in Ecuador and finding that they were not fair and impartial and did comport with the standard of due process).

345. *See Clearly Erroneous*, *supra* note 325.

manage the proceedings fairly before receiving a judgment.[346] The clearly erroneous standard can also provide some consistency by providing for uniform application of standards across proceedings. Since many of the world's major economic powers, where many defendants on the contesting end of these types of judgments are likely to have assets, are members of the Hague Conference on Private International Law,[347] this rule may carry some force by making it difficult for a plaintiff to enforce a judgment obtained under dubious circumstances, assuming that many of these countries signed on to the Convention.[348] While some countries may take pause at the idea of agreeing to limit their independent decision-making power even in these limited circumstances,[349] they may on the contrary find an incentive to sign on in order to protect their largest investors from fraudulent country-hopping issues.[350]

B. *Potential Feasibility Concerns and Solutions*

One potentially controversial point of this proposal is that it may appear to impose a higher burden on a plaintiff who seeks to enforce a judgment following an initial denial in another jurisdiction.[351] Indeed, the clearly erroneous standard does give an initial reviewing court's finding a stronger level of deference than under current systems, where most jurisdictions would review a foreign judgment under a *de novo* standard[352] regardless of prior reviews in other fora.[353] As a result, some could worry that this may impose too much of a burden on plaintiffs to seek recognition and enforcement of their judgment, virtually assuring that plaintiffs who had suffered real harm would

---

346. *See id.* (noting what is required to take contrary action under the clearly erroneous standard).

347. *See HCCH Members*, *supra* note 312 (listing the current members of the Hague Conference).

348. As noted above, as of February 3, 2020, only one country has signed on to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. *See HCCH Conventions: Signatures, Ratifications, Approvals and Accessions*, *supra* note 314. However, this may be solely because the convention is still relatively new. *See* HAGUE CONVENTION, *supra* note 216, at 1 (stating the convention's conclusion date).

349. *See supra* Part IV.A.

350. *See supra* Part II.

351. *See, e.g.*, *Clearly Erroneous*, *supra* note 325 (describing the responsibilities of a reviewing court for overturning a previous court's findings).

352. *See De Novo*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/de_novo (last visited Feb. 17, 2021) [https://www.law.cornell.edu/wex/de_novo] (archived Feb. 17, 2021) (describing de novo review, which does not require any reference to a previous court's findings).

353. *See, e.g.*, Council Regulation 1215/2012, *supra* note 21, at 15–16 (noting no particular standard of review related to any prior assessment of a judgment's recognizability or enforceability).

have no avenues for relief if they could not win on their initial attempt.[354]

Any fears of this sort, however, are not likely to be salient in practice. First, plaintiffs will receive the benefit of having the defendant need to overcome the presumption of regularity and a clear and convincing evidence standard, which will protect meritorious and fairly obtained judgments, and possibly even some where any faults in the foreign proceedings were minor or more discrete.[355] Further, the threat of the clearly erroneous standard following a recognition and enforcement rejection in a different forum could prevent plaintiffs' lawyers from engaging in subversive activities, and possibly even encourage them to monitor questionable courts for any problematic issues, like the legal team in *Chevron* did since the possibility of getting no recovery would be heightened.[356] Finally, the clearly erroneous standard is not so hard and fast that a subsequent reviewing court would have to automatically deny consideration without giving its own thorough consideration to the judgment,[357] nor is it even the most scrutinizing standard of review possible;[358] the clearly erroneous standard leaves enough room for subsequently reviewing courts to account for any idiosyncratic determinations in an initial reviewing court and make differing findings as is appropriate, which should adequately protect plaintiffs' interests while maintaining the integrity of the judgment recognition and enforcement scheme.[359]

Similarly, another criticism of the proposal could be that making enforcement and recognition after an initial denial more difficult for plaintiffs may limit access to justice by effectively over deterring potential plaintiffs from bringing suits in jurisdictions they may have questions about, but which may be the only possible forum for them to

---

354. This situation would be analogous to the one the Ecuadorian plaintiffs mentioned above are left in in that ongoing case under the current de novo standards. *See* BARRETT, *supra* note 1, at 9–13, 20, 26–30, 212–22 (2014) (describing some of the damage Texaco's operations in Ecuador caused); *Ecuador Lawsuit – Press Releases*, *supra* note 198 (listing articles that chronicle the *Chevron* plaintiffs' inability to enforce the judgment to this point).

355. *See Chem. Found., Inc.*, 272 U.S. at 14–15 (discussing the presumption of regularity); *Clear and Convincing Evidence*, *supra* note 325 (describing the clearly erroneous standard).

356. *See, e.g.*, Chevron Corp. v. Donziger, 974 F. Supp. 2d 362, 557–64 (S.D.N.Y. 2014), aff'd, 833 F.3d 74 (2d Cir. 2016) (describing just a few of the plaintiffs' legal team's actions in Ecuador that have led to their post-judgment enforcement issues).

357. *See Clearly Erroneous*, *supra* note 325 (defining the clearly erroneous standard of review).

358. *See Abuse of Discretion*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/abuse_of_discretion (last visited Feb. 17, 2021) [https://perma.cc/6NTD-9Q25] (archived Feb. 17, 2021) (describing the abuse of discretion standard).

359. *See Clearly Erroneous*, *supra* note 325 (discussing the mechanics of clearly erroneous review).

sue in.[360] The purpose of this proposal is not to lead to that overdeterrence, however, but rather try to prevent issues on the front end by providing a sufficiently strong mechanism to make it less worthwhile for plaintiffs' lawyers to participate in or acquiesce to fraudulent or problematic conduct in courts that may support that type of behavior.[361] Thus, the standard would provide clarity about the expectations for litigants and their behavior from the outset if they hope to obtain recovery later following a judgment and disincentivize the type of behavior seen in *Chevron*.[362] Further, if any issues with limitations on access to justice arose, it could be possible that Member State legislatures could expand the jurisdiction of their courts to allow plaintiffs to avoid suing in countries with unreliable court systems.[363] By doing so, plaintiffs could obtain a pathway to litigation in a forum that would be far less likely to cause them issues at the judgment recognition and enforcement stage and would add certainty to the prospect of relief from the outset of the litigation, which would likely further incentivize individuals or classes to bring suits.[364]

There could also be some concern about whether this would lead to a moral hazard issue in the behavior of large corporations—like the defendants mentioned in Part II of this Note—in developing countries and jurisdictions with vulnerable judiciaries and whether that behavior shift would cause third parties to bear massive costs.[365] In brief, moral hazard is a situation where the presence of some

---

360. On the prospect of overdeterrence, see generally Jonathan T. Molot, *How U.S. Procedure Skews Tort Law Incentives*, 73 IND. L. J. 59, 105–08 (1997) for a discussion of how the tort regime in the United States can lead to overdeterrence of otherwise efficient and beneficial economic behavior on the part of potential defendants because of concerns about large litigation costs.

361. *See Clearly Erroneous*, *supra* note 325 (explaining the burden imposed by a clearly erroneous standard of review); *see also Donziger*, 974 F. Supp. 2d at 557–64 (listing some of the *Chevron* plaintiffs' legal team's behavior in Ecuador during the litigation in its courts).

362. *See Donziger*, 974 F. Supp. 2d at 557–64 (describing the actions the *Chevron* plaintiffs' legal team engaged in in Ecuador).

363. *See, e.g.*, Alien Tort Statute, 28 U.S.C. § 1350 (1948) (allowing foreign individuals to sue in the United States for a tort, such as a human rights violation, committed in violation of international law). Using the Alien Tort Statute as an example, the Congress of the United States could expound upon this act to allow plaintiffs to sue for harms in a foreign country by an American citizen or corporation even if the foreign country would be a more appropriate forum. *Cf., e.g.*, Aguinda v. Texaco, Inc., 945 F. Supp. 625, 627 (S.D.N.Y. 1996) (dismissing the original American litigation for *forum non conveniens*).

364. *See generally* Alien Tort Statute (giving foreign individuals the right to sue in the United States under certain circumstances); Molot, *supra* note 360, at 105–08 (discussing deterrence issues that arise in the American tort law scheme).

365. *See generally* Mark Thoma, *Explainer: What is "Moral Hazard"?*, CBS NEWS (Nov. 22, 2013, 8:00 AM), https://www.cbsnews.com/news/explainer-moral-hazard/ [https://perma.cc/8CKF-SYG3] (archived Feb. 17, 2021) (discussing what moral hazard is generally).

mechanism, the paradigmatic example being insurance, that insulates a party from losses takes away that party's incentives to take care to avoid the harms that cause those losses.[366] This becomes problematic when that party's failure to take care results in third parties bearing those losses—most commonly, an insurer bearing the costs that the insured incurs.[367] But it could also be a situation such as a company coming into a region and extracting natural resources, leading to massive pollution in the local community.[368] Under this Note's proposed framework, some could worry that putative defendants would be less inclined to avoid undertaking these sorts of actions without proper precautions if they knew the court system would make it difficult for any potential plaintiffs to enforce a judgment if it had questionable integrity.[369]

These concerns are legitimate and do seem like they could materialize, but there are countervailing considerations to neutralize, or at least greatly limit, their impact. For example, as mentioned above, the proposed review standard would incentivize plaintiffs' lawyers suing in a vulnerable jurisdiction to take control of the litigation process and ensure the legitimacy of the proceedings that lead to a judgment.[370] Further, the proposed standard does give a fairly plaintiff-friendly review in the initial enforcement proceeding, which could make it difficult for any potential defendant to determine on the front end whether any judicial system or proceeding would be sufficiently fraudulent for it to avoid liability with certainty.[371]

Finally, such a broad transnational standard for judgment recognition and enforcement requiring clearly erroneous review over *de novo* review may create conflicts in the application of jurisdiction-specific law to the issues that arise in judgment recognition and enforcement.[372] Indeed, in many existing transnational judgment recognition and enforcement mechanisms, grounds for refusing to recognize a judgment and enforce a judgment often include reasons based on the judgment being at odds with the public policy in the state where a plaintiff seeks enforcement, as well as inconsistency with judgments previously given in a member state within a case between

---

366. *See, e.g.*, *id.*

367. *See, e.g.*, *id.* (making the argument as an example that fully insured healthcare may cause people to avoid risks to their health at a lesser rate, thus causing insurers to bear the costs and raising insurance rates for all insureds).

368. *See, e.g.*, *supra* Part II.A.1.

369. *See generally* Part IV.A.

370. *See supra* notes 332–34 and accompanying text.

371. *See generally supra* Part IV.A.

372. *See, e.g.*, HAGUE CONVENTION, *supra* note 216, at 5–6 (listing the grounds for refusal of a judgment under the Hague Convention, which includes it being against the "public policy" of the reviewing member state, or if the judgment is incompatible with another judgment given in the reviewing member state or another state).

the same parties.[373] However, the proposed standard is not meant to override these considerations, and its breadth is meant to give countries leeway in their ability to recognize or not recognize judgments that may come before them.[374] And further, having the proposed standard in place may help serve the ends of the Hague Convention in the first place by helping "to facilitate the effective recognition and enforcement of [foreign] judgments."[375]

To begin, the clearly erroneous standard is only meant to apply to determinations of fraud or lack of procedural fairness, and thus should not play any interfering role with most determinations of public policy or country-specific law as reasons for whether or not to recognize and enforce a judgment.[376] Thus, it is unlikely in most cases that there will be any conflict between these interests and the clearly erroneous standard.[377] In a case where an actual finding of fraud may conflict with country-specific interests, such as upholding a less strict definition of fraud in a country that would have an interest in enforcing a particular judgment, the proposed standard should not interfere either.[378] It seems unlikely that most defendants could overcome the clear and convincing evidence standard on the front end during judgment review except for in particular circumstances with very low or vague fraud standards or with an abnormally lenient court.[379] As such, this circumstance seems like it would be a rare one, and the clearly erroneous standard is flexible to where courts could still have room to find some error in the prior refusal if necessary.[380]

And even if the fears about conflicting interests were to materialize, the benefits of a transnational standard for foreign judgment recognition and enforcement may outweigh these

---

373. *See generally* UFCMJRA, *supra* note 216, § 4(c)(3)–(5) (listing the above-mentioned reasons as grounds for non-recognition and non-enforcement of a foreign judgment); *see also* HAGUE CONVENTION, *supra* note 216, at 5–6.

374. *See generally Clearly Erroneous*, *supra* note 325 (defining clearly erroneous review).

375. *See* HAGUE CONVENTION, *supra* note 216, pmbl. (stating the purposes behind the convention).

376. *See generally supra* text accompanying notes 309–13 (discussing this Note's proposed standard for transnational foreign judgment recognition and enforcement).

377. *See generally id.* (detailing the mechanics of this Note's proposed standard).

378. For an example of this sort of disparity in definitions, compare 40 U.S.C. § 123 (2002) (defining civil fraud against the federal government in the United States), with Fraud Act 2006, c. 35, § 1 (Eng.) (defining fraud in England, which includes different standards for the actions that may constitute fraud, such as specifically enumerating "abuse of position" and "failing to disclose information"). These are meant to serve as examples of countries employing different standards, not necessarily as an illustration of the hypothetical given in the accompanying text.

379. *See Clear and Convincing Evidence*, *supra* note 325 (discussing what it takes to overcome a clear and convincing evidentiary burden).

380. *See Clearly Erroneous*, *supra* note 325 (discussing clearly erroneous review).

concerns.[381] Indeed, the ubiquity of these types of agreements may speak to their general desirability and utility in ensuring uniform standards for foreign judgment recognition and enforcement across several jurisdictions.[382] Considering the general goal of these agreements is to form uniformly applicable standards across several jurisdictions and, thus, to enjoy the efficacy of those standards by using judicial coordination to encourage activity like trade and investment through a reliable judgment enforcement scheme,[383] it seems that there are large benefits to come from entering into these agreements. Further, it seems that, given the voluntary signatory nature of the Hague Convention,[384] it is likely that most countries that choose to sign on would understand these possible conflicts and account for them.

In sum, this proposed standard seeks to bolster what is already a strong framework in the Hague Conference's Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.[385] By adding a clear and convincing evidentiary standard to an initial review and a clearly erroneous standard of review to subsequent enforcement attempts following an initial denial, the proposal seeks to address the possibility of the country-hopping enforcement issue the *Chevron* case illustrates by adding standards to discourage actions that make judgment recognition and enforcement problematic in the first place.[386] If adopted, this proposal would thus lead to a stronger foreign judgment enforcement system that supports fairness to all parties.[387]

V. CONCLUSION

The potential for plaintiffs—or, alternatively, plaintiffs' lawyers—to string out litigation through multiple attempts to enforce a judgment they obtain through dubious means presents a major flaw in the transnational litigation system. Indeed, this is the situation illustrated in *Chevron*; the litigation has been ongoing for over 25

---

381. *See generally* HAGUE CONVENTION, *supra* note 216, at 1 (listing the Convention's aims and purposes).

382. *See, e.g.*, Council Regulation 44/2001, *supra* note 21 (applying to the European Union); *id.* (applying to any countries that choose to become signatories); UFCMJRA, *supra* note 216, at § 4(c)(3)–(5) (applying to several states in the United States after adoption by their individual legislatures).

383. *See* HAGUE CONVENTION, *supra* note 216, at 1 (describing the Convention's purposes and perceived benefits and outcomes).

384. *See id.* (noting that parties subject to the Convention are signatories).

385. *See supra* text accompanying notes 308–15 (discussing the proposed standard and how it supplements the Convention).

386. *See id.* (noting the intended goals of the proposal).

387. *See supra* text accompanying notes 308–13 (discussing the mechanics of the proposed standard and its intended benefits).

years; enforcement attempts have spanned multiple countries and continents; the defendant has sued the plaintiffs' lead lawyer for racketeering and won against him; and the members of the plaintiff class themselves, whose home was polluted so badly decades ago, have yet to see relief because of their lawyers' choices in the case.

Adding moderate evidentiary and review standards to the foreign-judgment recognition and enforcement process can help avoid these issues. By including these standards in a transnational agreement, parties subject to such an agreement can have uniform standards to rely on that can better ensure the equitable and efficient exercise of foreign-judgment enforcement. And by doing so, all parties involved in transnational litigation can better experience the fair administration of civil justice.

Ryan Everette[*]

* J.D. 2021, Vanderbilt University Law School. I would like to thank Professor Brian Fitzpatrick for his guidance on the subject matter of this note, my wife Becky Everette for her support through the writing and editing process, and especially the editorial staff of the Vanderbilt Journal of Transnational Law for their tireless and thorough work on this Note.