

News & Types: Litigation Update

U.S. Supreme Court Finds Overseas Service of Suits by Mail is Permitted

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Practices: Litigation

U.S. SUPREME COURT FINDS OVERSEAS SERVICE OF SUITS BY MAIL IS PERMITTED

Summary

The United States Supreme Court, in an unanimous decision, held that, as long as the receiving country has not objected via the Hague Convention and the applicable U.S. procedural law to the suit recognizes service by mail, service of a Complaint by mail is permitted and more onerous service requirements through, for example, the receiving country's Central Authority or other channels are not required. The Court's decision resolves a split between U.S. Appellate Courts.

Background

The treaty known as the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Convention") is the typical mechanism through which service of Complaints and other legal documents is effected by and between member countries. The typically costlier and more time consuming method to effect service overseas is to have the documents translated into the receiving country's language and then have the papers served upon the intended recipient via the receiving country's Central Authority or through diplomatic channels. The cost and time of effecting such service oftentimes deters a Plaintiff from adding an overseas defendant to a lawsuit.

The Supreme Court's Ruling

Water Splash brought suit against a former employee in Texas state court. At the time the suit was brought by Water Splash, the former employee resided in Canada. Water Splash, pursuant to the authority provided in Texas' code of civil procedure which permitted service via the mail, served the former employee in Canada via that method.

After service was effectuated, the Texas state court entered a default judgment against her. The former employee then tried to set aside the judgment arguing that proper service had not been effectuated. The Texas trial court denied her motion but the Texas Court of Appeals agreed with the former employee. On appeal to the U.S. Supreme Court, the Court resolved a dispute on the issue between federal appellate courts holding that service can be effected via mail consistent with the Hague Convention as long as the receiving country

has not objected via Hague Convention procedures to such service and the procedural law applicable to the proceeding permits service by mail.

Takeaways and Practice Notes

Although resolving the appellate court dispute the ruling does not change the method of effecting service in countries that have objected to service by mail such as Germany. For those receiving countries that have not objected to service via the mail, the Court's opinion clarifies that said service is effective, as long as the U.S. procedural law applicable to the matter approves said service and the other requirements of the Hague Convention are satisfied.