

# PRATT'S JOURNAL OF BANKRUPTCY LAW

---

VOLUME 7

NUMBER 4

MAY/JUNE 2011

---

**LIFTING THE VEIL OF ASSET PROTECTION: FOREIGN  
MANUFACTURERS ARE OFFSHORE BUT NOT OUT OF REACH**

David Cook

**330**

**EDITOR-IN-CHIEF**

**Steven A. Meyerowitz**

*President, Meyerowitz Communications Inc.*

**BOARD OF EDITORS**

**Scott L. Baena**

*Bilzin Sumberg Baena Price &  
Axelrod LLP*

**Leslie A. Berkoff**

*Moritt Hock Hamroff &  
Horowitz LLP*

**Andrew P. Brozman**

*Clifford Chance US LLP*

**Kevin H. Buraks**

*Portnoff Law Associates, Ltd.*

**Peter S. Clark II**

*Reed Smith LLP*

**Thomas W. Coffey**

*Tucker Ellis & West LLP*

**Mark G. Douglas**

*Jones Day*

**Timothy P. Duggan**

*Stark & Stark*

**Gregg M. Ficks**

*Coblentz, Patch, Duffy & Bass  
LLP*

**Mark J. Friedman**

*DLA Piper Rudnick Gray Cary  
US LLP*

**Robin E. Keller**

*Lovells*

**William I. Kohn**

*Schiff Hardin LLP*

**Matthew W. Levin**

*Alston & Bird LLP*

**Alec P. Ostrow**

*Stevens & Lee P.C.*

**Deryck A. Palmer**

*Cadwalader, Wickersham &  
Taft LLP*

**N. Theodore Zink, Jr.**

*Chadbourne & Parke LLP*

PRATT'S JOURNAL OF BANKRUPTCY LAW is published eight times a year by A.S. Pratt & Sons, 805 Fifteenth Street, NW., Third Floor, Washington, DC 20005-2207. Copyright © 2011 THOMPSON MEDIA GROUP LLC. All rights reserved. No part of this journal may be reproduced in any form — by microfilm, xerography, or otherwise — or incorporated into any information retrieval system without the written permission of the copyright owner. Requests to reproduce material contained in this publication should be addressed to A.S. Pratt & Sons, 805 Fifteenth Street, NW., Third Floor, Washington, DC 20005-2207, fax: 703-528-1736. For permission to photocopy or use material electronically from *Pratt's Journal of Bankruptcy Law*, please access [www.copyright.com](http://www.copyright.com) or contact the Copyright Clearance Center, Inc. (CCC), 222 Rosewood Drive, Danvers, MA 01923, 978-750-8400. CCC is a not-for-profit organization that provides licenses and registration for a variety of users. For subscription information and customer service, call 1-800-572-2797. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 10 Crinkle Court, Northport, NY 11768, [SMeyerow@optonline.net](mailto:SMeyerow@optonline.net), 631-261-9476 (phone), 631-261-3847 (fax). Material for publication is welcomed — articles, decisions, or other items of interest to bankers, officers of financial institutions, and their attorneys. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher. POSTMASTER: Send address changes to *Pratt's Journal of Bankruptcy Law*, A.S. Pratt & Sons, 805 Fifteenth Street, NW., Third Floor, Washington, DC 20005-2207.

ISSN 1931-6992

# Lifting the Veil of Asset Protection: Foreign Manufacturers Are Offshore but Not Out of Reach

DAVID COOK

*This article discusses post judgment strategies to reach the assets of uncooperative, distant, or reclusive judgment debtors.*

Consumers suffer at the hands of corrupt manufacturers that knowingly introduce dangerous products into the stream of commerce. After incurring serious damages from these products, and exhausting potential routes to recovery through intermediaries (the U.S. importers, distributors, and retailers), consumers suffer further when they are unable to recover judgments against offshore manufacturers. Unburdened of the obligation to pursue judgments<sup>1</sup> against offshore manufacturers and facing a fruitless quest anyway,<sup>2</sup> litigation counsel often decline to attempt to enforce these judgments because collection is nearly impossible, and very expensive, given that local law bars realistic enforcement.<sup>3</sup> As the manufacture of goods moves increasingly offshore, the problem is growing.

Offshore manufacturers peddle defective scooters, unsafe bicycles, poisonous food products, candy, medicines, asbestos,<sup>4</sup> and shoddy dry-wall<sup>5</sup> that poison, choke, mangle, and kill Americans.<sup>6</sup> In response, the

---

David J. Cook, the founding partner of Cook Collection Attorneys PLC in San Francisco, focuses his practice on commercial collections; creditors' rights in the enforcement of judgments; recovery of claims based upon forgery and mishandling of negotiable instruments; fraudulent conveyances; and creditor representation in bankruptcy cases. He can be reached at [davidcook@cookcollectionattorneys.com](mailto:davidcook@cookcollectionattorneys.com).

aggrieved survivors file mass tort actions culminating in default judgments at times exceeding the \$10,000,000 mark.<sup>7</sup> Protected by their domicile's laws, offshore manufacturers thumb their noses at these judgments because they enjoy virtual immunity from effective enforcement.<sup>8</sup>

The costs, both in emotional and monetary terms, to consumers are tremendous, and cannot be overstated, but the legal system itself also falls victim to these untouchable tortfeasors. Losing a child due to a defective product is a horrific, but private catastrophe. But being deprived of the only means of compensation for the loss, monetary, is a crime against justice itself. Immunity from judgment for these manufacturers tears at the very fabric of American society and our justice system.<sup>9</sup>

Does our legal system really wish to leave grieving parents and others who fall victim to dangerous products to be thrown under the wheel of the offshore manufacturer's<sup>10</sup> bus, which callously bears a license plate reading "Immune" or worse?<sup>11</sup> Creative justice, as described herein, might tap the manufacturer on the shoulder, very hard.<sup>12</sup>

Manufacturers continue to sell their product lines, whether dangerous products (unlikely) or other lines of safe merchandise (more likely) in the United States or other jurisdictions in which the local buyers bear a U.S. presence. Given that the buyers are subject to U.S. jurisdiction, the judgment creditors enjoy a smorgasbord of remedies to reach obligations due to the manufacturers from the buyers for the product purchases.<sup>13</sup>

## MARSHALING INFORMATION

Consistent with ignoring service of the lawsuit, the manufacturer as judgment debtor will ignore post judgment discovery requests as well.<sup>14</sup> The judgment creditor therefore should not anticipate that an audited financial statement or tax return revealing the debtor's assets, such as bank accounts, receivables, and inventory, will be forthcoming.<sup>15</sup> However, there may be another route to recovery. The judgment creditor should investigate whether the manufacturer continues to sell its safe products to U.S.-based wholesalers or retail merchants.<sup>16</sup> These product sales generate accounts and accounts receivable subject to enforcement under the money judgment due the creditors.<sup>17</sup> The trick is to identify<sup>18</sup> the targets

(the accounts and accounts receivable due the judgment debtor) for garnishment or other post judgment relief.

Tracking these entities begins with the identification of the modes of transporting the goods into the U.S. Offshore manufacturers often ship their product lines into the U.S. by ocean going shipper ("shipping lines"), or truck (from Canada or Mexico) or train (from Canada).<sup>19</sup> Ocean going carriers, truckers, and trains regularly issue bills of lading and other documents of title subject to Division 7 of the Uniform Commercial Code.<sup>20</sup> The bills of lading evidence the consignor,<sup>21</sup> who is the person or entity placing products in the possession of the shipper, and the consignee,<sup>22</sup> who is the person or entity receiving the product. Absent the unusual transaction which uses several layers of involved parties, the consignor is often the seller, exporter, distributor or manufacturer of the goods, and the consignee is the buyer (or recipient) of the goods, obligated to make payment.<sup>23</sup>

## POST JUDGMENT DISCOVERY

Post judgment Federal Rule of Civil Procedure Rule 69(a) (2)<sup>24</sup> authorizes the judgment creditor to serve Rule 45 subpoenas upon the common carriers, which are the shipping lines. Identifying the specific shippers is fairly simple as all shipping lines post their routes and the harbors they service online in great detail.<sup>25</sup> If, for example, the offshore debtor is located in Taiwan, Quebec, or China, the judgment creditor can readily identify those shipping lines that service the closest port and the shipping schedule.<sup>26</sup> Nearly all major shipping lines have a U.S. presence and physical office.<sup>27</sup> Served<sup>28</sup> upon the shipping lines, the subpoena of shipping records will produce the bills of lading issued to the judgment debtor as consignor showing what products were shipped, when, what weight (and inductively dollar value), and most importantly, the consignee, who is the probable buyer.<sup>29</sup> Service of subpoenas upon multiple shipping lines is *de rigueur*.<sup>30</sup>

With the names and addresses of the customer of the judgment debtor in hand, the judgment creditor can reach the obligations (i.e., the accounts receivable) due the judgment debtor.

## **ENFORCEMENT STRATEGIES**

With the consignee in its sights,<sup>31</sup> the judgment creditor levies upon the obligation (payment for the product) due the judgment debtor (the consignor), and owed by its customer (the consignee), called the garnishee under a garnishment. However, identifying the consignee is not cause for immediate celebration. The judgment debtor, as consignor, and garnishee, as consignee, are sensitive to the risk that judgment creditors may attempt to intercept the payment due to the consignor. The parties will arrange for payment by the garnishee (the buyer of the product) through a wire transfer (or even pre-payment) upon turning over the product to the common carrier. Frequently buyer and seller arrange for payment through a letter of credit,<sup>32</sup> bypassing direct contact between the parties and therefore the interception by the judgment creditor. These are all well-known risks.<sup>33</sup>

Even in the face of pre-payment or a collusive arrangement to circumvent legal process, the judgment creditor, if possible, can still serve a garnishment through basic legal process upon the consignee listed on the bill of lading as the probable buyer as an act of basic due diligence. However, garnishments are snapshots and reach only those funds owed to the judgment debtor when served.<sup>34</sup> Such precision in payment compels the judgment debtor to repeatedly levy the consignee, even on a monthly (or daily) basis.

## **SUPPLEMENTAL REMEDIES AVAILABLE TO THE JUDGMENT CREDITOR**

Given these well-understood viscidities of payment, the judgment creditor can seek a judicially authorized assignment order that assigns to the judgment creditor all rights of the judgment debtor to receive payment under the obligation as authorized in California by California Code of Civil Procedure Section 708.510(a).<sup>35</sup> These assignment orders reach accounts due the judgment debtor and redirect them to the judgment creditor (i.e., obligations in which the party paying the obligation is the obligor, and the judgment debtor is the obligee). These are called “pay

me” orders, under which the judgment creditor’s attorney informs the obligor (consignee under the bills of lading) to pay the judgment creditor, and not the judgment debtor.<sup>36</sup> Pay me orders reach obligors located offshore.

Assignment orders can reach “off-shore” (including out-of-state) property. In *Global Money Management v. McDonnold*,<sup>37</sup> the court discussed its reach over the defendant’s assets, holding, as follows:

...Because the Court has personal jurisdiction over Defendant in this matter, the Court has “the power to affect out-of-state property by means of decree, based on personal jurisdiction over the parties, which determines the parties’ personal rights or equities in that property.” *UMG Recordings, Inc. v. BCD Music Group, Inc.*, 2009 WL 2213678, at \* 4 (C.D.Cal. July 9, 2009) (quoting *Legion for the Survival of Freedom, Inc. v. Liberty Lobby, Inc.*, 2003 WL 22922960, at \*4 (Dec. 11, 2003). “[A] court having the parties before it can, in a proper case, through its coercive powers, compel them to act in relation to property not within the territorial jurisdiction of the court.” *Hardy v. Hardy*, 164 Cal.App.2d 77, 79, 330 P.2d 278 (1958).

Therefore, the Court does not find it is without jurisdiction to order defendant to assign his rights to property outside of California.

Other states lack the remedy of a judicial assignment, but offer creditors a creditor’s bill that authorizes the appointment of a receiver in aid of execution or supplemental relief. Traditionally, post judgment receivers assume custody of the debtor’s assets and can enforce the obligations in the debtor’s name. Enforcement receivers are a staple in post judgment remedy enforcement.<sup>38</sup> Viewing receivers as the remedy of last resort, the courts decline to appoint a receiver in the face of other basic remedies such as a garnishment, the levy and sale of personal or real property, or other inexpensive remedies.<sup>39</sup> California, on the other hand, authorizes receivers to act under a more liberal standard, as follows:

The court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the

judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.<sup>40</sup>

The liberal relief afforded California judgment creditors in seeking a receiver, or judicial assignment, beckon<sup>41</sup> judgment creditors in both federal and state courts to docket their judgments in a California court, whether federal<sup>42</sup> or state.

## **CREDIT CARD POINTS BRING IN CUSTOMERS**

Routinely, offshore manufacturers accept American Express as payment because American Express provides valuable points to the card holder, who is usually the principal of the corporate buyer. Large purchases in the \$100,000 range reward numerous points which allows the corporate principal to purchase airlines tickets for worldwide travel free of charge, and, given the informality of the transaction, free of taxes.<sup>43</sup>

A garnishment can reach American Express, whose agent for service of process is located in California.<sup>44</sup> If the judgment is in state court, the judgment creditor delivers to the Los Angeles County Sheriff<sup>45</sup> a letter of instructions, a \$30 check, an original and 12 copies of a writ of execution. If the judgment is in federal court, the judgment creditor delivers to the U.S. Marshal:<sup>46</sup>

- A letter of instructions;
- An order under Fed. R. Civ. P. 4.1(a);<sup>47</sup>
- Notices of levy;
- A fully typed (not word-processed) USM 285;
- Memorandum of garnishee; and
- A check for \$55.00 for each levy.

Of course, a very competent process server should be in tow.

## CONCLUSION

Offshore manufacturers are indeed difficult to reach when trying to enforce U.S. judgments, but they are not completely out of the reach of judgment creditors. It takes time and perseverance. No stone should be left unturned when judgment creditors are seeking redress for the wrongs committed by the manufacturers of dangerous goods.

## NOTES

<sup>1</sup> The general common law rule is that the duties of an attorney employed to conduct litigation end upon entry of judgment in the absence of an agreement to the contrary. (Citing *Mizrahi v. Miscione*, 252 Cal.App.2d 673, 676, 60 Cal.Rptr. 680 [1967] and *Maxwell v. Cooltech, Inc.* [1997]) *But see Barboza v. West Coast Digital GSM, Inc.*, 179 Cal.App.4th 540, 547-548 (Cal. App. 2 Dist. 2009).

<sup>2</sup> If the offshore manufacturer declined settlement upon service of the summons and complaint, plaintiff can expect that the offshore manufacturer will continue to resist or ignore all process.

<sup>3</sup> The Commercial Law League of America, Lawyers.Com, commercial forwarding services, and recommendations might identify local offshore counsel to enforce the judgment. The issue is not counsel, but the local law that impedes enforcement of a U.S. judgment. See ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK — COMMITTEE ON FOREIGN AND COMPARATIVE LAW, *Survey on Foreign Recognition of U.S. Money Judgments* (2001).

<sup>4</sup> *Hamilton vs. Asbestos Corporation Ltd.*, 22 Cal. App. 4th 1127, 95 Cal. Rptr.2d 701 (2000).

<sup>5</sup> See, e.g., Wyckoff, John S., Martin, Robert, *Chinese Drywall Liability*, 21(4) Environmental Claims Journal 272-284 (2009); See, e.g., Jason Hanna, *Chinese-made Drywall Ruining Homes. Owners Say*. (CNN cable broadcast March 18, 2009).

<sup>6</sup> The author represents victims who confront obstacles attempting to enforce judgments against judgment debtors whose assets are located offshore.

<sup>7</sup> Whether due to inflation or other reasons, civil courts hand down significant large dollar judgments to assure payment of the compensatory

loss and impose large dollar punitive damages, even in the face of the constraints imposed by *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003). The fact that the defendant defaulted plays a factor in the court imposing large punitive damages.

<sup>8</sup> For example, Taiwan bars recognition of default judgments. See C.V. CHEN AND REBECCA HSIA, Taiwan's Court's Attitude to Recognition and Enforcement of Foreign Money Judgments, IBA Legal Practice Division, Asia Pacific Forum News (Oct. 2005). Given immunity from enforcement arising from a default United States judgment, Taiwan entities appear in United States courts to challenge jurisdiction, and absent a victory, default in responding to the lawsuit that leads to a default judgment. A Canadian company, Asbestos Corporation, Ltd. claims that (a) American courts have no jurisdiction over it, a Canadian company, and (b) American courts do not have jurisdiction to hear cases arising out of the extraction of minerals from Québec. Under Québec's civil code, the Québec courts assert exclusive original jurisdiction to hear cases arising out of exposure to or the use of raw materials [asbestos], whether processed or not, originating in Québec. See C.C.Q. §§ 3126, 3129, and 3151. California courts have rejected this claim. *Garza vs. Asbestos Corporation Ltd.*, 161 Cal. App. 4th 651 (Cal App. 1 Dist., 2008) Foreign states are protected by the Foreign Sovereign Immunities Act [28 USC Section 1602 seq.].

<sup>9</sup> No surprise here. The Internet, academic journals and review, armies of "asset protectors," attorneys, and bankers solicit asset protection schemes and offer strategies which judgment proof manufacturers. Foreign states compete for the best and more effective protector of assets.

<sup>10</sup> This article presumes that the defendant is a manufacturer that presents a common paradigm. For the purposes of this article, when a judgment is rendered, the defendant manufacturer becomes a common judgment debtor or "debtor."

<sup>11</sup> "In *Conaway v. Conaway*, 218 Cal.App.2d 427, 429, 32 Cal.Rptr. 890, plaintiff appealed from an order denying appointment of a receiver to receive her husband's Air Force retirement checks and apply them to a judgment for accrued alimony. The court held the retirement checks exempt under section 690.22 and affirmed the judgment, but added: 'Exemption from execution does not equate with a refusal to support from funds available, though exempt. *Immunity does not necessarily imply impunity.*'" *Ogle v. Heim*, 69 Cal.2d 7, 10 (1968).

<sup>12</sup> Enforcement of judgments against offshore entities requires a significant commitment of time and resources as the judgment debtor has often made a conscious decision to introduce dangerous products into the U.S. market, and to escape justice by shielding its assets from the reach of U.S. courts.

<sup>13</sup> For the sake of brevity, this article presumes that the consumer prosecuted the action in district and not state court. While post judgment discovery rules might differ between state and federal courts, many states have adopted the Federal Rules of Civil Procedure as their state rules. *See* Fed R. Civ. Pro. 69(a)(2) that permits the judgment creditor to pursue federal or state authorized discovery. All references are to the federal rules for purpose of clarity.

<sup>14</sup> Under Fed R. Civ. Pro. 69(a)(2), Fed R. Civ. Pro. 26-37 authorizes service of the entire panoply of federal discovery. California Code of Civil Procedure Sections 708.010-708.030 permit service of post judgment interrogatories and document requests.

<sup>15</sup> Despite an assured default in post judgment discovery propounded to debtor, the judgment creditor must pursue this remedy. First, for some unfathomable reason, the judgment debtor might respond. Second, the judge expects the judgment creditor to pursue core remedies. Third, a default in discovery enhances the judgment creditor's request for more exotic remedies because the judgment debtor defaulted and curtailed the creditor's access to information. Fourth, a default in post judgment constitutes, ultimately a violation of a court order, "kicking off the process of civil disenfranchisement should the judgment debtor file an appeal or motions at the trial court level." *See Degen v. U.S.*, 517 U.S. 820, 824 (1996); *Goya Foods Inc. v. Ulpiano Unanue-Casal*, 275 F.3d 124, 128-29 (1st Cir. 2001) (alleged flight from jurisdiction, concealment of assets, violation of court orders, and repetitive frivolous appeals and claims previously rejected by the court); *In re Ben Prevot*, *Prevot v. Prevot*, 59 F.3d 556, 562 (6th Cir. 1995) (disenfranchisement bars access in the federal trial courts for civil and criminal matters); *Empire Blue Cross & Blue Shield v. Finkelstein*, 111 F.3d 278 (2nd Cir. 1997) (allegedly absconded from jurisdiction, arrest warrant outstanding, failure to respond to post judgment discovery); *TMS, Inc. v. Aihara*, 71 Cal. App. 4th 377, 83 Cal.Rptr.2d 834 (Cal. App. 2 Dist. 1999) (debtor defaulted in post judgment discovery and ensuing order compelling discovery). Trial or appellate disenfranchisement mitigates the creditor's burden by ousting the judgment debtor from the courthouse. Most offshore debtors decline to participate

anyway; however, the enforcement initiated by the creditor might compel the judgment debtor to file an appearance to attack the successful levy. *See Rubin v. Islamic Republic of Iran* 436 F. Supp.2d 938 (N.D. Ill. 2006) (court held that only Iran could assert immunity from execution under the Foreign Sovereign Immunities Act (28 U.S.C. 1602 seq.), which compelled Iran to appear and litigate the immunity of its cuneiform tablets, fragments, pottery shards, and other antiquities held by the Oriental Institute of the University of Chicago. This case is on appeal before the Seventh Circuit.

<sup>16</sup> Buyers purchasing dangerous products should stop these purchases lest they face enormous liability to the consumer. However, nothing stops the U.S. purchaser from continuing to do business with an offshore manufacturer in acquiring products free of any danger or risk.

<sup>17</sup> Corporations are not entitled to exemptions, as they are not a natural person for purposes of enforcement. *Canal-Randolph Anaheim v. Wilkoski*, 103 Cal.App.3d 282, 163 Cal.Rptr. 30 (Cal.App. 2 Dist. 1980 (corporation not entitled to claim of exemption); *In re SA Auto-Jack, Inc.* (N.D.Cal. 1974) 380 F.Supp. 99.

<sup>18</sup> The obvious is the best. Manufacturers or their known distributors post product lines on their Web sites, and telephone calls to the sales departments should produce information helpful to identifying U.S. wholesalers or retailers.

<sup>19</sup> Telephone calls to competitors of the judgment debtor are highly productive as importers, wholesalers, and retailers carry lines of competing products and might reveal the “lay of the land.” If the information enables the judgment creditor to reach the judgment debtor’s receivable and damage its market share, the competitor might have an interest in divulging substantial market information.

<sup>20</sup> Bills of lading cover any negotiable or non-negotiable instruments that authorize the transportation, shipment, storage, drayage, warehouse or possession of products.

<sup>21</sup> Commercial Code Section 7102(a)(4): “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment. Business experience suggests that the person who originates the goods is usually, but not always, the seller.

<sup>22</sup> Commercial Code Section 7102(a)(3) “(3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery. Likewise the recipient is usually the buyer.

<sup>23</sup> Reaching the products in the hands of the common carrier is very difficult. *See* Commercial Code Section 7602: 7602. Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

<sup>24</sup> Federal Rule of Civil Procedure 69 (a) In General.

(1) Money Judgment; Applicable Procedure. A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution — and in proceedings supplementary to and in aid of judgment or execution — must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person — including the judgment debtor — as provided in these rules or by the procedure of the state where the court is located.

<sup>25</sup> Trains, trucks, warehouses, and other participants in the transportation, handling, storage and shipment of products are similarly subject to subpoena as these entities all issue documents of title which are analogous to a bill of lading.

<sup>26</sup> Given that many large dollar shipments are financed, shipping lines offer very precise schedules to enable the commercial community to price financing costs.

<sup>27</sup> The Internet provides information detailing shipping lines, schedules and nearly the time when the ship docks and leaves. The days of paper (or published in the newspaper) shipping schedules are nearly over.

<sup>28</sup> Shipping companies routinely receive subpoenas for bills of lading, and might well accept service by mail and might even waive the witness fee. For a substantial fee, commercial services offer bills of lading, and other import/

export documents that likewise provide this information. These commercial services provide a worthwhile service in the face of a large and collectable judgment.

<sup>29</sup> Similar targets are the freight forwarder, and if products are shipped by air, all airlines that offer cargo service, freight forwards, U.S. custom houses, and customs brokers.

<sup>30</sup> Most shipping lines maintain offices in major U.S. ports or have corporate agents for service of process.

<sup>31</sup> The word “sights” refers to gun sights.

<sup>32</sup> Subject to Division 5 of the Uniform Commercial Code and the Uniform Customs and Practice for Documentary Credits. Letters of credit are highly precise. *Board of Trade of San Francisco vs. Swiss Credit Bank*, 597 F.2d 146, 148-149 (9th Cir. 1979) (Trial issue of material fact whether “bills of lading” meant “airbill”); (This author was counsel for the Board of Trade of San Francisco at the trial level and succeeded in winning a summary judgment which was later reversed on appeal).

<sup>33</sup> Letters of Credit, SWIFT, or IBAN expedite payment due from the buyer to the seller. Wire transfers are now routine means of payment, and preferred in most large dollar international transactions in light of the delays and risks inherent in the mails. (Sophisticated thieves steal checks out of the mail, “wash them,” and insert new payees and amounts. Most business people demand payment through wire transfer for any transaction from unstable regions.)

<sup>34</sup> “In order to be subject to garnishment, it must definitely appear that a debt or credit actually exists. The attaching creditor can acquire no greater right in the attached property than the debtor has at the time of the levy.” See *First Central Coast Bank v. Cuesta Title Guarantee Co.*, 143 Cal.App.3d 12, 191 Cal.Rptr. 433 (Cal. App. 2 Dist. 1983); see also *Dawson v. Bank of America*, 100 Cal.App.2d 305 (Cal. App. 2 Dist. 1950).

<sup>35</sup> California Code of Civil Procedure Section 708.510(a) “Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610 *seq.*) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following type of payments....” See also *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 10 Cal. Daily Op. Serv. 14,962,

2010 Daily Journal D.A.R. 18,113 (9th Cir. 2010). “California enforcement law authorizes a court to ‘order the judgment debtor to assign to the judgment creditor...all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments.’ Cal. Civ. Proc. Code § 708.510(a). The FSIA abrogates the immunity of all Iranian commercial property in the United States. 28 U.S.C. § 1610(a)(7). Therefore, a right to payment belonging to Iran is assignable only if that right is located in the United States.” [This author is lead counsel in the enforcement of this judgment. This decision was 2-1 in which the minority stated that immunity from enforcement is affirmative defense solely borne by the foreign state. The majority did hold that to the extent that title or ownership of the asset is doubtful, that the foreign state bears the affirmative burden to demonstrate that the asset is immune from execution under FSIA [28 USC 16710(a)(10)], and only the foreign state can assert immunity and not a third party. This ruling bars museums, academic institutions, government (i.e., the U.S.), and public interest groups from asserting a foreign state’s sovereign immunity from enforcement.]

<sup>36</sup> Pay Me Orders emanate from the *in personam* power of the court to order a judgment debtor to transfer property even if the property is located outside the court’s jurisdiction. *Fall v. Eastin*, 219 U.S. 1 (1909).

<sup>37</sup> 2009 WL 3352574 (S.D.Cal.)(page 4).

<sup>38</sup> See “Post Judgment Remedies In Reaching Patents, Copyrights and Trademarks in the Enforcement of a Money Judgment,” David J. Cook, *Northwestern Journal of Technology and Intellectual Property*, Fall, 2010, Vol. 9, No. 3, pp 128-174.

<sup>39</sup> Traditionally, courts appoint post judgment receivers as the remedy of last resort, given the expenses and cumbersome machinery. *Maxwell v. Enterprise Wall Paper Mfg. Co.*, 131 F.2d 400, 403 (3d Cir. 1942).

<sup>40</sup> California Code of Civil Procedure Section 708.620.

<sup>41</sup> In New York, see *Koehler v. Bank of Bermuda, Ltd.*, 12 N.Y.3d 533, 883 N.Y.S.2d 763 (2009) (reaches property held offshore by a financial institution subject to New York state jurisdiction).

<sup>42</sup> Federal judgments are registered and immediately enforceable under the laws of the new “domicile state,” under 28 U.S.C. Section 1983. State court judgments are domesticated under the Sister State Judgment Act at California Code of Civil Procedure Sections 1710.10 to 1710.65.

<sup>43</sup> A six-figure purchase assures free airlines tickets to the cardholder.

<sup>44</sup> CT Corporation System 818 West 7th Street, Los Angeles, California 90017.

<sup>45</sup> 110 N. Hill Street, Suite 525, Los Angeles, California 90012.

<sup>46</sup> 255 East Temple Street, Los Angeles, California 90012.

<sup>47</sup> Fed R. Civ. Pro. (a) In General. Process — other than a summons under Rule 4 or a subpoena under Rule 45 — must be served by a United States marshal or deputy marshal or by a person specially appointed for that purpose. It may be served anywhere within the territorial limits of the state where the district court is located and, if authorized by a federal statute, beyond those limits. Proof of service must be made under Rule 4(l).