

International Family Support: Currency Conversion

Background

The issue of how to approach currency conversion in international cases has existed as long as there has been international trade and commerce. A starting point for tracing the “modern” resolution of what exchange rate to use might begin with two US Supreme Court cases arising out of World War I; although, some reference is made to commercial transactions made during the Civil War. In discussing the issue, it is also necessary to discuss events tangential to the courts’ decisions.

The precipitating event for the discussion is the Coinage Act of 1792. This was the first act by the fledgling federal Congress regarding coinage and money.

SEC. 20. And be it further enacted, That the money of account of the United States shall be expressed in dollars or units, dimes or tenths, cents or hundredths, and milles or thousandths, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, a mille the thousandth part of a dollar, and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation. (Emphasis added)

This language was taken to mean that a judgment in a US court had to be stated in US currency. Thus, the development of an approach regarding the applicable conversion principle and date to be used had to take into account the fact there is always a time gap between the occurrence of the “wrong” and the “remedy” (judgment). The task of resolving the issue has taken place in both the federal and State courts. It is the federal judiciary which seems to have struggled most

In *Hicks v. Guinness*, 269 U.S. 71, 46 S.Ct. 46, 70 L.Ed. 168 (1925) a German company owed a debt to an American company based on an account stated in German marks. The American company brought suit in the United States and the Court held Hicks was entitled to not seek payment of the debt but to seek damages in equity. The Court affirmed that the damages the American company suffered should be determined in dollars as of the “breach date”.

Almost a year to the date, the Court decided *Deutsche Bank Filiale Nurnberg v. Humphry*, 272 U.S. 517, 47 S.Ct. 166, 71 L.Ed. 383 (1926) which involved an American depositor in a German bank filing suit in the United States for the Bank’s failure to pay him his deposited marks upon demand. The Court noted the event was not subject to US jurisdiction at the time it occurred. Thus, the Court opined that when a contractual obligation arises under and is payable in a foreign country in that country’s currency, a “judgment day” conversion rule should apply.

Initially, the *Hicks* and *Deutsche Bank* cases were viewed as stating the principle that the rule to be applied is based upon the place the payment is to be made. That principle was revisited and revised in *In re Good Hope Chemical Corp.* 747 F.2d 806 (1st Cir.1984). The *Good Hope* court looked at the law that gives rise to the cause of action. If the cause of action arose entirely under foreign law such that damages are in the foreign currency, the “judgment day” rule should apply. If the cause of action arose under American law, the “breach day” rule applies.

As the federal courts were struggling with the development of two “bright line” rules, states were

also attempting to resolve the issue. Early on, many states had adopted the “N.Y. Rule” of “breach date” regardless of where the cause of action arose. See *Hoppe v. Russo-Asiatic Bank*, 235 N.Y. 37, 138 N.E. 497 (1923); and, *Parker v. Hoppe*, 257 N.Y. 333, 178 N.E. 550 (1931), on rehearing, 258 N.Y. 365, 179 N.E. 770 (1932). The dual approaches being developed by the federal courts became more focused on the “breach date” approach when *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), decreed that federal courts should apply State law in most cases.

Significantly, while the federal courts and other State courts were struggling with development of some “bright line” rule, a Texas Court in *Butler v. Merchant*, 27 S.W. 193 (Tex. Civ. App. 1894, no writ.) articulated a very prescient resolution. It found the value of the Mexican peso had varied widely between the “breach date” and the ostensible “judgment date”. Thus, it approved of a “blended” approach.

Although the “breach date” remains at the fore with the “judgment date” still an option, a third approach is developing, driven in part by a confluence of historical events combined with academic and judicial rethinking.

Towards the end of World War II, representatives from all 44 Allied nations met at the Mount Washington Hotel in Bretton Woods, New Hampshire. The task was to establish a framework for post-war cooperation in monetary and financial matters. A part of this process involved setting fixed par values for currency exchange that could only vary in a one percent range. This agreement lasted until 1971 when the US backed out of the agreement. By 1973, the other major currency issuers had abandoned the process as well.

In 1980, the court in *Baumlin & Ernst, Ltd. v. Gemini, Ltd.*, 637 F.2d 238 (4th Cir.1980) questioned whether the Coinage Act actually prohibited entry of a judgment stated in foreign currency. This issue became more moot when the Coinage Act was reenacted in 1982 without the questionable text.

31 U. S. C. § 5101. Decimal system

United States money is expressed in dollars, dimes or tenths, cents or hundredths,[1] and mills or thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar.

The next institution to add to the discussion was the American Law Institute which in 1987 released its Restatement (Third) of Foreign Relations Law. The Reporter’s Notes track the development of the law in the US as well as internationally. The Notes mention the often inconsistency of approaches while observing the focus of all decisions had been to make the injured party whole. Thus, the Restatement provides:

§ 823. Judgments On Obligations In Foreign Currency: Law Of The United States

(1) Courts in the United States ordinarily give judgment on causes of action arising in another state, or denominated in a foreign currency, in United States dollars, but they are not precluded from giving judgment in the currency in which the obligation is denominated or the loss was incurred.

(2) If, in a case arising out of a foreign currency obligation, the court gives judgment in dollars, the

conversion from foreign currency to dollars is to be made at such rate as to make the creditor whole and to avoid rewarding a debtor who has delayed in carrying out the obligation.

However, it is the Comment to this Section which places the new concept of “**payment date**” into the lexicon.

d. Alternative conversion rules. Under Subsection (2), and Comment c, a judgment in dollars should be given on the basis of conversion at whichever date would serve the ends of justice in the circumstances.

(i) Breach date. When the breach date is applied for conversion of foreign obligations, Comment c, an obligation to pay a sum of money is convertible as of the date it was payable; an obligation to deliver goods or perform services is convertible as of the last date on which the obligation could be performed in compliance with the agreement on which it was based, or the date on which default was declared. For an obligation not arising out of contract, such as a tort or ships' collision, the date for conversion is the date of the event giving rise to the claim. When a judgment is based on multiple obligations, conversion should be made separately in respect of each obligation.

(ii) Judgment date. When the judgment date rule is applied for conversion of foreign obligations, the obligation is convertible into dollars as of the date on which the judgment is rendered, regardless of the duration of any appeal.

(iii) Payment date. When judgment is given in a foreign currency, it may be paid in that currency within the normal time for payment of judgments, or in the dollar equivalent on the date of payment.

Shortly after the Restatement, the National Conference of Commissioners of Uniform State Laws (NCCUSL) promulgated the Uniform Foreign-Money Claims Act in 1989. The Act has been adopted in 24 States. It, also, adopts the “payment date” approach although termed “conversion date”.

SECTION 1. DEFINITIONS. In this [Act]:

...
(3) “Conversion date” means the banking day next preceding the date on which money, in accordance with this [Act], is:

- (i) paid to a claimant in an action or distribution proceeding;
- (ii) paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or
- (iii) used to recoup, set-off, or counterclaim in different moneys in an action or distribution proceeding.

Comment

3. “Conversion date.” Exchange rates may fluctuate from day to day. A date must be picked for calculating the value of foreign money in terms of United States dollars. As used in the Act, “conversion date” means the day before a foreign-money claim is paid or set-off. The day refers to the time period of the place of the payor, not necessarily that of the recipient. The exchange rate prevailing at or near the close of business on the banking day before the day payment is made will be well known at the time of payment. See Comment 2 to Section 7.

SECTION 7. JUDGMENTS AND AWARDS ON FOREIGN-MONEY CLAIMS; TIMES OF MONEY CONVERSION; FORM OF JUDGMENT.

(a) Except as provided in subsection (c), a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(b) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

- (c) Assessed costs must be entered in United States dollars.
- (d) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

...

The combination of the revision to the Coinage Act, Restatement, and Uniform Foreign-Money Claims Act resulted in most all courts recognizing not only the ability to enter a judgment in a foreign currency but also the advisability. *Comptex v. LaBow*, 783 F.2d 333 (2nd Cir. 1986); *Matter of Oil Spill by the Amoco Cadiz Off the Coast of France on March 16, 1978*, 954 F.2d 1279 (7th Cir 1992); *Mitsui & Co., Ltd. v. Oceantrawl Corporation*, 906 F.Supp. 202 (S.D. New York 1995)

To show the practical application of the payment date concept, the Prefatory Note to the Uniform Foreign-Money Claims Act provides an example from an actual case:

An American citizen (A) owes 18,790 pounds sterling to a British corporation (BCo) suing in New York, and the pound is falling against the dollar. Due to the declining value of the pound, the three rules worked out as follows:

Date Rate of Exchange BCo Gets

| | |
|-----------------------------|----------|
| Breach day Pound = \$2.20 | \$41,338 |
| Judgment day Pound = \$1.50 | \$28,185 |
| Payment day Pound = \$1.20 | \$22,548 |

A judgment of \$41,338 may be entered based on the breach day rule. However, the payment in dollars was worth 34,449 pounds (\$41,338 divided by \$1.20) when eventually received, an excess of £15,659 over the actual loss.

This example is adapted from an actual case. See *Comptex v. LaBow*, 783 F.2d 333 (2d Cir. 1986). The facts are simplified.

Of course the converse is true when the dollar is losing value in comparison to the applicable currency. The same 18,790 pounds sterling converts:

| | |
|-----------------------------|----------|
| Breach day Pound = \$1.20 | \$22,548 |
| Judgment day Pound = \$1.50 | \$28,185 |
| Payment day Pound = \$ 2.20 | \$41,338 |

In this situation, it is the obligor who has not made the payment when due or when the judgment is entered that must expend more dollars to satisfy the foreign denominated debt.¹

Family Support Applicability

Clearly, the above example can be changed to a situation where an Obligor residing in America owes a fixed amount of family support to an Oblige in another country based on a support order issued by that country. (While applicable to both child and spousal support, the term “child support” will be used to include either or both.) However, child support cases, especially with unpaid support, present some rather unique issues. Both these issues are related to the fact the support obligation is not a one time event.

- Ongoing support. Obviously, for prospective support, there has been no breach date nor has there been a judgment date. Whether by judicial or administrative process, whenever an amount of child support stated in a foreign currency is “restated” in US\$, it must be considered an equivalence. Otherwise, the Obligor will almost always be either underpaid or overpaid at the time the obligation ends. Thus, to achieve the objective of making the both the Obligor and Obligee whole over time, the payment date must be utilized.
- Unpaid support. Although cumbersome, it is certainly possible to use a breach date approach for missed support payments. The blended or an annual average approach is also viable; as is the judgment date. The approach of the Restatement, Uniform Foreign-Money Claims Act, and current case law is that the US judgment should be stated in the foreign currency. This really makes the breach versus average versus judgment date discussion moot. The foreign currency amount used in the judgment should have been derived by subtracting the foreign currency amount received on the “payment date” from the foreign currency amount accrued on that date. As shown by the example above, considering the arrears to be paid in full when based on the payment date is the best way to assure both Obligor and Obligee are made whole while acknowledging that fluctuations over time will have an adverse impact on at least one of the parties.

The entire body of law relating to foreign currency conversion is premised on a situation where an obligation is not being met or some injury has occurred. If there is no dispute regarding the support obligation, it would seem axiomatic that the Obligor would tender whatever amount of US\$ is needed to provide the amount of foreign currency ordered, i.e. the payment date approach. It is only when the obligation is not being met that these issues become relevant.

To establish the requirements necessary for effective enforcement, the US court will obviously need to set a fixed US\$ equivalence. To measure compliance with the order, the focus must be on the timely payment of the US\$ equivalence. However, the court and parties must not lose sight of the fact the obligation is not paid in full until the final payment equates to the total amount of foreign currency due on that payment date. An obligor can make each and every payment of current support and a payment on the arrears when due and still be under or over paid regarding the obligation up until the date the entire obligation ends and is paid in full. Obviously, an obligor who pays the stated equivalence should not be punished or held in contempt if the rate of exchange on the payment date does not cover the full amount of order currency due on that date.

Because support is an ongoing obligation, the issue can arise regarding the correct currency conversion application for ongoing payments. The Uniform Foreign-Money Claims Act addresses this issue at some length.

SECTION 11. DETERMINING UNITED STATES DOLLAR VALUE OF FOREIGN-MONEY CLAIMS FOR LIMITED PURPOSES.

- (a) Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.
- (b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment,

garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections (c) and (d).

...

Comment (d) to the Restatement § 823 states it more succinctly:

If payment was to be made on more than one date, the conversion must be made separately on each date of payment. If execution is levied against the property of a judgment debtor in the case of a judgment expressed in foreign currency, the conversion should be made as of the date of levy.

It is immutable that income withholding is the best mechanism for the enforcement of ongoing support and one of the best for obtaining payments towards any arrears. Thus, it makes legal and financial sense to give the Obligor credit for the amount of foreign currency that is applied to the official payment record of the order entering country on the date the currency is posted, i.e. payment date.

Regardless of the approach chosen, there will always be an issue regarding the gain or loss of purchasing power, i.e. dollars to diapers. To make up for the loss of use of the currency, countries can, and do, impose interest or other periodic “fees” on the missed obligation.

Practical Implementation

The challenge becomes to keep the closest exchange approximation in effect at all times. Both administrative and judicial processes used to collect support will need the flexibility to implement periodic adjustments. These must be accomplished not in the context of a “modification” but rather a “re-conversion”. To the extent the payments are resulting in a shortfall, this can be resolved by utilizing the enforcement processes currently in place for increasing payments on “arrears”. To the extent the payments are resulting in an overage, the same basic principle will have the obligor “pre-paid” and the total support obligation may end prior to the child being emancipated.

The task of setting a converted amount for payments towards arrears should be able to utilize existing intrastate and interstate processes. Virtually all states have an administrative mechanism for adjusting the amount paid towards arrears. Some states use an annual “super notice”. Others have a periodic review process, some linked to new employment information. The common feature of all the approaches is that they provide the obligor with due process through some type of contest process.

The challenge is to have a procedure for adjusting the conversion amount for the prospective support. The critical element is that the obligor be afforded due process with both notice and a right to be heard; albeit this can be by contest. There are two existing methods that would seem to suffice:

- UIFSA § 507 provides for an administrative process to implement enforcement actions, including income withholding, for orders not issued by the enforcing state.

SECTION 507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.

...

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this [Act].

The due process requirement is met through the ability to contest with the onus of Registration placed on the support enforcement agency. The ability of the support enforcement agency to initially take an enforcement action that includes converting a currency amount would seem implicit and is explicit in UIFSA 2001 § 307.

SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.

...

(d) A support enforcement agency of this State that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

The issue that remains is the authority of the support enforcement agency to make periodic re-conversion of the prospective support. While it is an ability that certainly seems to derive from the initial administrative enforcement powers, policy and procedural issues may militate against its use.

- The second approach is to treat the fluctuation in currency exchange as a form of “cost of living”. There are a few states that currently have a process in place to adjust the prospective support based upon an established index set out in the support order. Implementing the adjustment involves sending a notice to the obligor of the re-calculation based upon the index and giving the obligor a period in which to contest before the new amount becomes effective. Given the paucity of international enforcement cases, having states adding or revising statutory authority to utilize this approach is problematic.

While the examples above are instructive in a single incident situation, the impact on an ongoing support obligation requires a more extended demonstration. A couple of examples can illustrate the conundrum in a varying exchange rate environment. Both examples start with an order issued in euros (€) 5 years ago in the amount of € 200 per month due the first day of the month. An agreed resolution was achieved 25 December of last year stipulating that the arrears as of 5 December were € 900.

In both examples, the obligor fully pays the ongoing support and fully complies with the agreement regarding payment of the arrears. The only variable is the change in the exchange rate. The approach is to use the “payment date” and for simplicity it is assumed the date the dollars are paid is the date the euro equivalence is applied. Admittedly, this makes the payment date the same as the payment date. Obviously, this will seldom occur in the normal processing of payments; however, the operative conditions shown below will still exist.

| Example 1 | | | | | |
|--|---------|----------|----------|--------------|------------|
| On 25 December, € 1 = \$ 1.20 Ongoing support of € 200 = \$ 240 Arrears of € 900 = \$ 1080 to be paid in 9 months @ \$ 120 Total \$ to be paid per month = \$ 360 | | | | | |
| Date | \$ paid | € 1 = \$ | € credit | € to arrears | \$ 240 = € |
| 1/1 | 360 | 1.22 | 295.08 | 95.08 | 196.72 |
| 2/1 | 360 | 1.25 | 288.00 | 88.00 | 192.00 |
| 3/1 | 360 | 1.28 | 281.25 | 81.25 | 187.50 |
| 4/1 | 360 | 1.30 | 276.92 | 76.92 | 184.62 |
| 5/1 | 360 | 1.32 | 272.73 | 72.73 | 181.82 |
| 6/1 | 360 | 1.35 | 266.67 | 66.67 | 177.78 |
| 7/1 | 360 | 1.34 | 268.66 | 68.66 | 179.10 |
| 8/1 | 360 | 1.38 | 260.87 | 60.87 | 173.91 |
| 9/1 | 360 | 1.40 | 257.14 | 57.14 | 171.43 |
| Totals | 3240 | | 2467.32 | 667.32 | 1644.88 |
| Total € owed | | | 2700.00 | 900.00 | 1800.00 |

In this example, the value of the dollar is declining relative to the euro; that is, it takes more dollars to purchase the same, fixed amount euros. This example shows that even full compliance with the dollar equivalence will leave a euro shortfall of € 232.68 or an additional \$ 325.75 on 9/1. It should be noted that even if no arrears were owed to start and all dollar equivalent payments were made, there is still a shortfall of € 155.12 (\$ 217.17) on 9/1.

Having paid over time does inure to the obligor's benefit. Had no payments been made during the interim, the full obligation of arrears and ongoing support of € 2700 would require payment on 9/1 of \$ 3,780. Instead, getting current as of 9/1 will involve a total outlay of \$ 3,565.75.

This situation is the circumstance discussed above where a US enforcing agency could use existing enforcement remedies to increase the amount of dollars paid towards the arrears to assure the gap caused solely by the exchange rate does not widen.

This example also demonstrates the inequity of applying the "judgment date" rule to even the arrears. Were the \$ 1080 to have not been paid until 9/1, that amount would be the 9/1 equivalent of € 771.43. As discussed below, the imposition of interest would play a role in increasing the ultimate amount owed in euros.

| Example 2 | | | | | |
|--|---------|----------|----------|--------------|------------|
| On 25 December, € 1 = \$ 1.40 Ongoing support of € 200 = \$ 280 Arrears of € 900 = \$ 1260 to be paid in 9 months @ \$ 140 Total \$ to be paid per month = \$ 420 | | | | | |
| Date | \$ paid | € 1 = \$ | € credit | € to arrears | \$ 280 = € |
| 1/1 | 420 | 1.38 | 304.35 | 104.35 | 202.90 |
| 2/1 | 420 | 1.34 | 313.43 | 113.43 | 208.96 |
| 3/1 | 420 | 1.35 | 311.11 | 111.11 | 207.41 |
| 4/1 | 420 | 1.32 | 318.18 | 118.18 | 212.12 |
| 5/1 | 420 | 1.30 | 323.08 | 123.08 | 215.38 |
| 6/1 | 420 | 1.28 | 328.13 | 128.13 | 218.75 |
| 7/1 | 420 | 1.25 | 336.00 | 136.00 | 224.00 |
| 8/1 | 420 | 1.22 | 344.26 | 144.26 | 229.51 |
| 9/1 | 420 | 1.20 | 350.00 | 150.00 | 233.33 |
| Totals | 3780 | | 2928.54 | 1128.54 | 1952.36 |
| Total € owed | | | 2700.00 | 900.00 | 1800.00 |

In this example, the value of the dollar is increasing relative to the euro; that is, it takes less dollars to purchase the same, fixed amount euros. As a result, the obligor is overpaid using the same time period as Example 1.

It is true this example could be used to argue that an obligor is better off waiting until absolutely compelled to pay the accruing support since payment of the full € 2700 on 9/1 would only cost \$ 3240 instead of the \$ 3780 paid in compliance with the agreement.

It is well known that applying interest to a child support obligation exacerbates the ability to ultimately pay the full amount owed. However, in the situation where there is a foreign order and an increasing dollar vis-a-vis the currency of the order, it is the imposition of interest on the debt that becomes an incentive to pay timely. The numbers chosen for the example show an increase in value of around 14% over the nine months. This is unrealistically high. An interest rate in the 5% - 8% range should be sufficient to exceed most currency fluctuations and provide the impetus to pay when the obligation becomes due.

The last aspect of the practical implementation to be discussed is the wording that should be used to accomplish the currency conversion. What must be avoided is any suggestion that the tribunal is to substitute a dollar amount for the foreign currency amount. Particularly with respect to ongoing support, any attempt to “fix” the exchange rate should be viewed as an attempt to impose an impermissible modification on the order.

While it is certainly possible to apply the breach or judgment date rule to an arrears determination, it is not advisable. The breach date approach has the obvious problem that the tribunal making the determination would have to convert the currency for each missed payment. As the examples demonstrate, while a judgment date approach has perhaps a greater viability than the breach date, it is the payment date that does the most to make both parties closer to being “made whole”.

To achieve the goal of using the payment date, the Restatement contains some suggested language for orders.

SECTION 7. JUDGMENTS AND AWARDS ON FOREIGN-MONEY CLAIMS; TIMES OF MONEY CONVERSION; FORM OF JUDGMENT.

...
(f) A judgment substantially in the following form complies with subsection (a):
[IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see Section 9) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.] [Note: States should insert their customary forms of judgment with appropriate modifications.]

Certainly, this language appears more than sufficient. However, for child support cases, some additions and revisions might be suggested. There are also some practical and logistical factors that come into play. One significant factor is whether the documents being used to process the case include some form of “official” or “verified” computation that also includes a currency conversion. If so, the allegations should conform to the equivalence provided.

When no conversion to dollars is provided, the default should be “document preparation” date. However, this does have some pitfalls. Caution must be taken when the computation date is different from the document preparation date. The examples below use the values in Example 1 above and posit that the document is being prepared on 9/1 using data provided with a calculation date of 12/25

Using the UIFSA registration process as a model, the following paragraphs are suggestions for possible use.

NOTICE OF REGISTRATION OF FOREIGN SUPPORT ORDER (UIFSA)

¶ The amount of the alleged arrearage is € 900 (Euros) having a United States of America Dollar equivalence of \$ 1080 as of 12/25/YYYY.

OR

¶ The amount of the alleged arrearage is € 900 (Euros) as of 12/25/YYYY having a United States of America Dollar equivalence of \$ 1260 as of 9/1/YYYY.

MOTION FOR ENFORCEMENT (UIFSA)

PRIOR ORDERS

- ¶ On 1/10/99 a tribunal ordered *Obligor* to pay regular child support of € 200 (Euros) monthly, beginning 1/1/99, and monthly thereafter. The amount and frequency of *Obligor*'s child support obligation remains unchanged.

CHILD SUPPORT ARREARAGE

- ¶ *Obligor* failed to pay court ordered child support. The amount of the alleged arrearage is € 900 (Euros) having a United States of America Dollar equivalence of \$ 1080 as of 12/25/YYYY.

OR

- ¶ *Obligor* failed to pay court ordered child support. The amount of the alleged arrearage is € 900 (Euros) as of 12/25/YYYY having a United States of America Dollar equivalence of \$ 1260 as of 9/1/YYYY.

[NOTE: Using the same “as of” dates in the enforcement pleading presupposes the Registration documents are prepared at the same time as the Motion. If there is a significant time gap between the filings, the best practice is to seek an updated arrears calculation and use that date in the remedy pleading. In either situation, the pleadings should recite the support in the currency of the order along with an alleged dollar equivalence.]

ARREARAGE JUDGMENT

- ¶ The Court should confirm and enter judgment for the child support arrearage and accrued interest and order income withholding to liquidate the judgment.

[NOTE: The request for confirmation of the arrearage is combined with the request in the next paragraph for the tribunal to convert the current and arrears amounts into equivalent US dollars. At this point, the concepts of “judgment date” and “payment date” are merged. The tribunal in setting an equivalence is going to have to operate as if the prospective support and arrears amount is to be paid on the date of judgment. Using this approach, the amounts found most likely will be different than those used when the Registration or Enforcement pleadings were prepared.]

EXCHANGE RATE

- ¶ The Tribunal should find the United States of America Dollar equivalence of any foreign currency ordered payable by an appropriate foreign tribunal pursuant to [UIFSA § 305(f)]. The Tribunal should make all further monetary findings in United States of America Dollars based on the finding of United States of America Dollar equivalence.

[NOTE: Logistically, unless internet access is available immediately prior to or at court, it is impractical to use the conversion rate on the hearing date in setting the current support equivalence. Still, the best practice is to use the most recent information available. Fortunately, UIFSA 2001 § 102(15) provides the mechanism:

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

This definition fits perfectly with the ability to print an Internet page. The use of Internet sites to obtain currency conversion information is permissible based upon UIFSA 2001 § 305(f):

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this State shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

The internet site should be considered a source of a market exchange rate that is publically reported. The copy of the conversion computations along with web page prints showing the rate used should be submitted to the court as a "commercial publication" admissible under a state rule comparable to the Federal Rules of Evidence, Rule 803(17).

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

1. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

...

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

The major sites used for currency conversion are clearly utilized by currency traders.]

FOREIGN LAW

[Use only if applicable]

Pursuant to Rules of Evidence/Civil Procedure, Rule XXX, notice is hereby given of intent to raise an issue concerning the law of a foreign country. A copy of said foreign law is attached as Exhibit "?" and incorporated by reference.

[NOTE: This is **not** the conversion calculation mentioned above. This paragraph would be inserted if there is some provision of the law of the other nation that the court needs to be aware of. Examples might include: duration, interest, defenses, or limitations. The citation would be to the applicable law of the enforcing forum. Whether found in the Rules of Civil Procedure or Rules of Evidence, most states have a provision comparable to the Federal Rules of Civil Procedure, Rule 44.1

Rule 44.1.Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

While it is certainly the best practice to provide the specific law, it is important to note that the ability to determine foreign law is an inherent power of the court and one that can be exercised by considering sources beyond those submitted by the parties. If the law is not attached or

provided, the advocating party should assure that a request is made to take notice and the substance and citation is provided.]

ORDER ENFORCING CHILD SUPPORT OBLIGATION (UIFSA)

PRIOR ORDERS

The Court FINDS that on 1/10/99 a tribunal ordered *Obligor* to pay regular child support of € 200 (Euros), monthly, beginning 1/1/99 and monthly thereafter. The Court finds that the United States of America legal tender equivalent of the prospective child support ordered payable in foreign currency by the support ordering tribunal in this cause is \$ 250.00.

All further monetary findings regarding the support obligation, including prospective support and arrears, are stated in United States of America Dollar equivalency.

[NOTE: The most important aspect of obtaining enforcement of a foreign support order is to assure that nothing in the US order can be construed as an impermissible “modification” of the support amount or a “fixing” of the currency exchange. A statement by the tribunal that all US dollar recitations are an equivalence should make this clear. However, in an abundance of precaution, the attorney may want to repeat the approach of stating the order amount in the foreign currency with the dollar equivalency. The equivalency language should make clear that it applies to every payment recitation including the periodic payment on arrears. The only exception, noted above, is that court costs and fees incurred in the US court should be stated in US dollars only.]

JUDGMENT ON ARREARS

The Court FINDS and confirms that *Obligor* is in arrears in the amount of \$ 1,150.49 as of _____, 20____. This includes all unpaid child support and any balance owed on previously confirmed arrearage or retroactive support judgments as of the specified date, but does not include application of any child support paid on that date. The judgment for this amount is a cumulative judgment.

Court GRANTS and RENDERS judgment against *Obligor* and in favor of *Obligee* in the amount of \$ 1,150.49, with interest at the rate provided by the law of the jurisdiction that issued the controlling order, for collection and distribution according to law.

[NOTE: Like an interstate case, the law of the issuing tribunal determines the interest rate and methodology.]

The sites below have “publicly reported market exchange” rate information and provide historical rates as well as conversion calculators. The first two addresses have a conversion application that can be used to convert historical data.

www.oanda.com
www.fxtop.com
www.exchangerate.com

www.x-rates.com
www.xe.com

Conclusion

As opposed to the difficulties encountered in determining the correct amount of damages, a support obligation is akin to a debt expressed as a sum certain. Having made this sum certain determination, the problem with converting the debt owed in one currency into another currency had existed for centuries. No “perfect” solution has or is available that will completely satisfy the competing interests of the creditor and debtor.

The developing, modern view is that satisfaction of the debt should be based upon payment of the amount of “local” currency needed to obtain the amount owed as of the date the debt is actually paid. This creates special problems for ongoing support obligations. The solution requires recognition that the exchange rate will vary over time. Thus, the amount to be paid in the currency of the enforcing forum must be stated as an equivalent to the currency ordered by the establishing forum.