

Two Judge Albright Rulings Require Hague Service Convention for Non-U.S. Defendants

NOVEMBER 30, 2021

On November 16 and November 18, 2021, U.S. District Judge Alan Albright issued two rulings in favor of utilization of the Hague Service Convention for non-U.S. defendants from signatory countries. Together, the two rulings could force plaintiffs suing in the Western District of Texas to serve defendants pursuant to the Hague Service Convention, rather than serving a nonresident defendant under the Texas long-arm statute or alternative service under Federal Rule of Civil Procedure 4(f)(3).

In *The Trustees of Purdue University v. STMicroelectronics International N.V. et al. (Purdue University)*, plaintiffs applied for leave to serve one of the three defendants by alternative service. In denying the motion, the court stated that it “has time-and-again recognized that principles of comity encourage the court to insist, as a matter of discretion, that a plaintiff attempt to follow foreign law in its effort to secure service of process upon a defendant.” (Internal quotes omitted.) The relevant defendant in the case is from the Netherlands, a signatory to the Hague Service Convention. The court, viewing the Hague Service Convention as a conventional means of service, denied the motion for alternative service “for failing to at least attempt to serve [defendant] pursuant to the Hague Convention.”

Only days earlier, in *ACQIS, LLC v. Lenovo Group Ltd. et al. (ACQIS)*, Judge Albright granted a motion to dismiss in favor of non-U.S. defendants from signatory countries that were served under the Texas long-arm statute rather than pursuant to the Hague Service Convention. The analysis provides that service on the Texas Secretary of State (SOS) is improper for entities organized under the laws of a signatory country that objected to mailing of judicial documents under article 10 of the Hague Service Convention (Objecting Countries). If the ruling withstands potential appeal, companies organized in Objecting Countries would need to be served pursuant to the Hague Service Convention.

Judge Albright’s analysis is straightforward. Texas provides for service on nonresident defendants without a subsidiary or agent in Texas through service on the Texas Secretary of State, pursuant to Tex. Civ. Prac. & Rem. Code § 17.044. Defendants were served in that method in this case. The procedures described under Tex. Civ. Prac. & Rem. Code § 17.045 require the SOS to immediately mail the complaint to the defendant. Article 10 of the Hague Service Convention allows signatory nations to “send judicial documents, by postal channels, directly to persons abroad,” but numerous countries, including China and Mexico, lodged declarations objecting to service of judicial documents through the mail. Thus, the question before the court was whether service pursuant to Tex. Civ. Prac. &

Rem. Code § 17.044 is complete when provided to the SOS or if due process requires the mailing from the SOS to the defendant.

Because the court determined that due process and the statute require the second mailing by the SOS for service to be completed, it naturally follows that where a defendant is from an Objecting Country, the SOS cannot mail the judicial documents, and, therefore, service should follow the Hague Service Convention procedures. Thus, the court granted the motion to dismiss for three defendants.

Taken together, these cases mark powerful wins for foreign companies, particularly those from Objecting Countries that, until now, have been frequently served by delivery of the complaint to the Texas SOS. Assuming the analysis withstands a potential appeal, the *ACQ/S* decision forecloses the ability to utilize the Texas long-arm statute to serve a non-U.S. company from an Objecting Country. *Purdue University* further indicates that the Hague Service Convention should be used as a first resort where possible.

These two decisions could modify the initial strategy for patent litigation in the Western District. Service under the Hague Service Convention can take more than six months, depending on the country where the defendant is organized. Thus, in the short term, we can expect numerous motions to dismiss to be filed and granted on similar grounds, if the rationale holds up. In the long term, this could change the strategy of plaintiffs, either in forum or defendant selection.

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