Shill on Judgment Arbitrage in the United States

Gregory H. Shill, who is visiting assistant professor at Hofstra law school, has posted Ending Judgment Arbitrage: Jurisdictional Competition and the Enforcement of Foreign Money Judgments in the United States on SSRN.

> *Recent multi-billion-dollar damage awards issued by foreign courts against large American companies have focused attention on the once-obscure, patchwork system of enforcing foreign-country judgments in the United States. That system's structural problems are even more serious than its critics have charged. However, the leading proposals for reform overlook the positive potential embedded in its design.*
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> *In the United States, no treaty or federal law controls the domestication of foreign judgments; the process is instead governed by state law. Although they are often conflated in practice, the procedure consists of two formally and conceptually distinct stages: foreign judgments must first be recognized and then enforced. Standards on recognition differ widely from state to state, but under current law once plaintiffs have secured a recognition judgment all American courts must enforce it. Thus, plaintiffs can enforce in states that would have rejected the foreign judgment in the first place.*
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> *This extreme form of forum shopping, which I call "judgment arbitrage," creates a fundamental structural problem that has thus far escaped scholarly attention: it undermines the power of individual American states to determine whether foreign-country judgments are enforced in their territory and against their citizens. It also suggests a powerful, if implied, conflict of recognition laws among sister U.S. states that precedes and often determines the outcome of what scholars currently consider the primary conflict, between American and foreign law. Finally, this system impedes the development of state law and weakens practical constraints on the application of foreign nations' laws in the United States.*
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> *This Article constructs a novel framework for conceptualizing these problems, and addresses them by proposing a federal statute that would allow states to*

capture the benefits — and require them to internalize the costs — of their own recognition rules. Rather than scrap the current state-law regime in favor of a single federal rule, as the ALI and leading scholars call for, the statute proposed in this Article would provide incentives for competition among states for recognition law. The Article argues that sharpening jurisdictional competition would encourage experimentation, the development of superior law, and, eventually, greater uniformity in an area where scholars agree uniformity is desirable. The proposal may also suggest ways to manage other sister-state conflicts of law in an age when horizontal conflicts are proliferating.

The paper is forthcoming in the *Harvard International Law Journal*.