Message from the Chair

William D. Johnston
Chair, Business and Corporate Litigation Committee

I hope you are enjoying the Fall.

If you haven't already done so, please register soon for our Committee's Fall Meeting (Washington, D.C. November 17-18). We'll have the Committee Dinner on Thursday, November 17th. To register for the dinner (you first need to be registered for the meeting), click here for online registration or click here for a faxable registration form. On Friday, we'll enjoy a great line-up of programs that will include the always popular "Bankruptcy for Breakfast" and the standing-room-only U.S. Supreme Court look back and look ahead. We'll add what should be an informative program of broad appeal: Litigating With the Government. And, certain of our subcommittees and task forces will be meeting. In particular, our newest subcommittee, the Sports-related Disputes Subcommittee will have its organizational meeting (and will be welcoming anyone with an interest in the subject area).

The Fall Meeting is always a great opportunity to connect or re-connect with fellow members of our Committee in a convenient setting that is easy to navigate. It also is a great opportunity to gather with members of the other committees of the Business Law Section and to speak with Section officers and other members of the Section's Council.

Please also be sure to "save the date" for the 2012 Spring Meeting and the 2012 Annual Meeting. The Spring Meeting will be in Las Vegas (March 22-25), and the Annual Meeting will be in Chicago (August 2-6). Program planning for both meetings is already well underway. And, as always, we will have a full array of subcommittee and task force meetings in Las Vegas and Chicago (with telephone participation available for those who won't be able to attend in-person).

A word about Committee membership. Our Committee prides itself on providing early, meaningful opportunities to its members for writing, speaking, networking, leadership, and fellowship. Each of you is our best means of attracting, retaining, and promoting Committee members. Please take a moment to reach out to colleagues - practicing attorneys, members of the judiciary, law school professors, and law students - and invite them to join the Business and Corporate Litigation Committee. The price is right (zero), and the benefits are many. And, if your colleagues are already members, please encourage their active participation in our Committee.

Finally, with this issue of the Network newsletter, I thank BCL Committee members Peter Valori and Gary Zhao for all that they do to encourage topical and timely submissions and to offer helpful editing. I also thank Frank Hilles of the Business Law Section staff for all of his expert assistance in making the newsletter a reality, so that it can reliably land on each of our electronic doorsteps. And I commend to your reading the informative subcommittee and task force reports that appear in this issue as well as the outstanding set of remarks on the evolution of our profession (and the challenges and opportunities that we face), which BCL Committee member The Hon. Ben F. Tennille (Ret.) has kindly agreed to share.

As always, please let me know if you have any questions or if I can lend a hand in any way. I hope to see you in Washington!

Bill Johnston is a partner in the Wilmington, Delaware-based law firm of Young Conaway

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Stargatt & Taylor, LLP. He is a past chair of the firm’s Corporate Counseling and Litigation practice group.

Transcript of the J. Robert Elster Professionalism Lecture by The Hon. Ben F. Tennille (Ret.)

The following is the text of a presentation by The Hon. Ben F. Tennille (Ret.) delivered at the annual Ethics and Professionalism dinner sponsored by Kilpatrick Townsend & Stockton honoring their former partner Bob Elster.

Complete Transcript...

Featured Article

Definitely Maybe: Status of Service by Mail Under Article 10(a) of the Hague Convention in the Eleventh Circuit States

By Aaron S. Weiss

The United States is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 UST 361, TIAS No. 6638 (1969) (the “Hague Service Convention”), a multilateral treaty designed to simplify the methods for serving process abroad to assure that defendants sued in foreign jurisdictions receive actual and timely notice of suit and to facilitate proof of service abroad.

More...

Subcommittee Updates

Class and Derivative Actions

Joseph Ianno Jr, Mac Richard McCoy, Co-Chair

The Class and Derivative Actions Subcommittee is pleased to report that Christopher M. Hubbard of McCarthy Tétrault LLP was appointed as the Subcommittee Vice Chair following the Annual Meeting in Toronto. Additionally, the Subcommittee has proposed a program for one of the discretionary programming slots at the 2012 Spring Meeting in Las Vegas. The proposed program, entitled "A Spoonful of Sugar: Educating Boards of Directors About Class and Derivative Action Exposure, Avoidance and Procedure," will explore the ways in which lawyers who regularly counsel boards can proactively educate directors about potential corporate exposure to class and derivative actions, with an eye toward prevention. Lastly, the Subcommittee is already hard at work updating the chapter on Class Action Law for the 2012 edition of the Annual Review of Developments in Business and Corporate Litigation. We have expanded our team of authors and we plan to include new sections relating to Canadian class action law and U.S.-Canadian cross-border class actions.

Corporate Counseling & Litigation

Denise Kraft, Chair

The Corporate Counseling & Litigation Subcommittee met on September 23, 2011. A brief summary of topics discussed and our forward-looking objectives is as follows. The need for maximum attendance and robust participation at the Fall, Spring and Annual meetings was discussed and well received. Publications also were discussed. Without diminishing the historical and continuing significance of the Annual Chapter, the members discussed how to target additional publications, such as Business Law
Today and other publications of interest to practitioners and our clients. Particular focus, and enthusiasm, was directed toward our objective of expanding the Subcommittee's scope and presence through organizing and/or presenting CLEs and other programs of interest to our membership and the legal community in general. For example, we have submitted for approval a proposal to lead a panel discussion on the various issues implicated by the often times divergent interests and rights of common vs. preferred stockholders at the upcoming Annual Meeting. Finally, we are pleased to announce that the Subcommittee has more than doubled its membership roster since last year, and has also seen a significant uptick in diversity.

The Subcommittee will meet during the Fall Meeting in Washington D.C. on Friday November 17, 2011. For information, please contact Denise Kraft at denise.kraft@dlapiper.com. Please join us.

Membership
Elizabeth S. Strong, Chair

The Membership Subcommittee welcomes your thoughts on how to identify new member prospects for the Business and Corporate Litigation Committee, including younger lawyers and lawyers in new and emerging areas of business litigation. We are especially interested in identifying prospects who may be able to join us at the Committee's upcoming gatherings at the Section Fall CLE meeting in Washington DC, and the Section Spring Meeting in Las Vegas.

So please take a moment to think about member prospects, and please plan on attending our Membership Subcommittee meeting in Washington DC!

Pro Bono and Public Service
Kristin Gore and Victoria Mitchell, Co-Chair

On Wednesday, March 21, prior to the Business Law Section’s Spring Meeting in Las Vegas, the Pro Bono and Public Service Subcommittee of the Business and Corporate Litigation Committee, along with the Section’s Young Lawyer Committee, will partner with Junior Achievement of Southern Nevada, Inc. for an afternoon of financial literacy, business ethics, or similar instruction. The volunteer team will meet with local high school students and to teach a scheduled Junior Achievement lesson from prepared materials. The experience will be patterned after the volunteer effort that took place during the Section’s 2011 Spring Meeting in Boston. We are seeking twelve volunteers for this effort. If you have any questions about this year's JA volunteer experience, the plans for 2012 or would like to volunteer, contact Kristin Gore at kgore@carltonfields.com or Victoria Mitchell at victoria.mitchell@hklaw.com.

The New Sports-Related Disputes Subcommittee
Michael A.R. Bernasconi, Chair

A. Background: Sport and Litigation

1. Recent years have seen a constant, important growth of sports-related disputes, involving not only athletes and teams but also business enterprises.

2. To the first group one may think for instance about the very high number of doping cases, disputes regarding the transfer of players (in particular basketball and soccer), disputes concerning the status of players (NHL’, NFL’ and NBA’lockout) or cases relating to other disciplinary sanctions, the eligibility of an athlete to the Olympic games or financial claims of athletes and teams.

3. Examples of disputes of the second group are disputes involving sponsoring agreements, media rights, merchandising or marketing matters.

B. The New Subcommittee “Sports-related Disputes”
4. At the occasion of the 2011 Spring Meeting of the Business Law Section, held in Boston, the idea was launched to create a new Subcommittee of the Committee Business and Corporate Litigation, aiming at providing Section members with a platform dedicated to the special area of sport litigation and sport arbitration.

5. The Sub-Committee “Sports-related Disputes” will have its first organizational meeting at the Committee's Fall Meeting in Washington, D.C., November 17-18. The Chair, Michael A.R. Bemasconi, and the Vice-Chair, Hon. Allen S. Goldberg, will be welcoming anyone with an interest in the subject area. In particular, discussions will be around the topics for a Session to be presented at the Spring Meeting 2012, with choice of topics, speakers, etc.

Tribal Court Litigation

Heidi McNeil Staudenmaier and Gabe Galanda, Co-Chairs

The Subcommittee continues to work closely with the Section's Gaming Law Committee and the International Masters of Gaming Law in assisting with programming for the ABA Gaming Law Minefield Institute (scheduled for February 2012 in Las Vegas). The Subcommittee also is working on the Tribal Courts Litigation chapter for the Business & Corporate Litigation Committee's Annual Review of Developments publication.

Judges Initiative Committee Update

Merrick L. Gross and Donald F Parsons Jr., Co-Chairs, Co-Chairs

The Judges Initiative Committee is working closely with the Business and Corporate Litigation Committee to put on a CLE program titled "Trying Cases in a Business Court" at the 2012 Spring Meeting. It is also working to push forward the Section's Diversity Business Court Law Clerk program including coming up with an independent funding source for the program. Finally, it is exploring methods for funding educational programs for Business Court judges.

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DEFINITELY MAYBE: STATUS OF SERVICE BY MAIL UNDER ARTICLE 10(a) OF THE HAGUE CONVENTION IN THE ELEVENTH CIRCUIT STATES

By: Aaron S. Weiss
Carlton Fields, P.A.

INTRODUCTION

The United States is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 UST 361, TIAS No. 6638 (1969) (the “Hague Service Convention”), a multilateral treaty designed to simplify the methods for serving process abroad to assure that defendants sued in foreign jurisdictions receive actual and timely notice of suit and to facilitate proof of service abroad.

Under the Hague Service Convention, the primary method of service is through the Central Authority established by each member state. However, service through the Central Authority is often time-consuming and costly. An often overlooked fact is that the Central Authority for service is not necessarily mandatory under the Hague Service Convention.

As an alternative to service through the Central Authority, service of process may be effectuated by mail under Article 10(a) of the Hague Service Convention, provided that the state of destination does not object. Article 10 provides in relevant part as follows:

Provided the State of destination does not object, the present Convention shall not interfere with—

(a) the freedom to send judicial documents, by postal channels, directly to persons abroad,

(b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,

(c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

The current list of countries where such service method can be used (assuming the U.S. court agrees) are: Albania; Australia; Belarus; Belgium; Bosnia and Herzegovina; Bulgaria; Canada; China (including Hong Kong and Macau); Cyprus; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Israel
Of course, nothing is ever that simple. There is a dispute in the U.S. federal courts as to whether service of process (i.e., summons and complaint and other “jurisdictional” papers, as opposed to motions) may be effectuated under Article 10(a). This question hinges on whether the word “send” in Article 10(a) means the same thing as the word “service” in paragraphs (b) and (c) of Article 10 of the Hague Service Convention.

Five of the federal circuit courts of appeal have addressed the issue. The Second and Ninth Circuits both held that Article 10(a) permits service of process via postal channels. The Eighth and Fifth Circuits have held otherwise.

In the first federal appellate decision to consider the issue, Akermann v. Levine, 788 F.2d 830, 839-40 (2d Cir. 1986), the Second Circuit concluded that the word “send” was intended to mean “service.” In a more detailed opinion many years later, the Ninth Circuit agreed in Brockmeyer v. May, 383 F.2d 798 (9th Cir. 2004). In Brockmeyer, the court considered the purpose of the Convention and concluded that the word “send” in Article 10(a) includes service of process. Brockmeyer, 383 F.2d at 802. The court relied on commentaries on the history of the negotiations leading to the Hague Service Convention and a letter written by the State Department disagreeing with contrary authority. The Seventh Circuit also addressed the issue, in passing in Research Systems Corp. v. IPSOS Publicite, 276 F.3d 914, 926 (7th Cir. 2002), where it noted that service “by simple certified mail … [is ]a method permitted by Article 10(a) of the Hague Convention, so long as the foreign country does not object.”

If the Ackermann, Brockmeyer and Research Systems Corp. decisions were the only cases on point, the issue would be far less complicated. However, in Bankston v. Toyota Motor Corp., 889 F.2d 172 (8th Cir. 1989), the Eighth Circuit compared the use of the word “send” in Article 10(a) to the use of the words “serve” or “service” throughout the rest of the Convention and concluded that the difference was intentional. Bankston, 889 F.2d at 174.

The Bankston decision drew an immediate rebuke from the United States Department of State. Specifically, On March 14, 1990, Alan J. Kreczko (the then incumbent legal advisor to the Department of State) wrote a letter (the “Kreczko Letter”)2 to the National Center for State Courts that criticized the Eighth Circuit’s

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1 A full text of the Hague Convention, along with information with respect to the identities of the member states, and the status of each member’s position with respect service by mail under Article 10(a) may be found at http://www.hcch.net/index_en.php?act=text.display&tid=44.

decision in Bankston. Kreczko asserted United States Department of State position is that the Bankston decision was incorrect and concluded that permitting service by mail would spare plaintiffs in the United States time and expense. Furthermore, the Kreczko Letter that a Japanese delegate at a meeting of new Hague Convention members expressed Japan’s position on Article 10(a), which was that service by mail did not violate Japan’s judicial sovereignty. Kreczko, on behalf of the Department of State, asked the Center to distribute his letter to the state courts. The Kreczko Letter is particularly significant because of the longstanding proposition that the views of the State Department should be given special weight in construing treaties. See, e.g., Sumitomo Shoji Am., Inc. v. Avagliano, 457 U.S. 176, 184-85 (1982); Bush v. United States (The Yulu), 71 F.2d 635, 636 (5th Cir. 1934); see also 1 RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 112 cmt. c, at 59 (1987).

So what does this mean for practicing lawyers in the courts of the Eleventh Circuit? While the Eleventh Circuit has not interpreted Article 10(a), several federal district courts within the circuit and the Alabama Supreme Court have addressed this issue. The following is a summary of those opinions for Florida, Georgia and Alabama lawyers to consider.

**FLORIDA CASES**

A. Service By Mail Under 10(a) Permitted

The earliest reported case in Florida finding that service can be made by mail under Article 10(a) of the Hague Service Convention dates from 1996. Specifically, in Lestrade v. U.S., 945 F. Supp. 2d 1557 (S.D. Fla. 1996), Judge William M. Hoeveler of the Southern District of Florida found that the Hague Service Convention permits service of process via postal channels. Lestrade, 945 F. Supp. at 1559. The court was persuaded by Ackerman v. Levine, 788 F.2d 830 (2nd Cir. 1986). Id. Fourteen years later, in TracFone Wireless, Inc. v. Bequator Corporation, Ltd., 717 F. Supp. 2d 1307 (S.D. Fla. 2010), Judge Hoeveler once again found that Article 10(a) of the Hague Service Convention permits service of process by mail and supported his finding by citing to several district court opinions within the Eleventh Circuit. See TracFone Wireless, 717 F. Supp. 2d at 1309. Judge Hoeveler also cited several other federal circuit and district court opinions. Id.


Two cases from the Middle District of Florida also support the proposition that service by mail is allowed under Article 10(a) of the Hague Service Convention. First, in
Conax Florida Corp. v. Astrium Ltd., 499 F. Supp. 2d 1287 (M.D. Fla. 2007), Judge Thomas G. Wilson found that service of process via postal channels is permitted under Article 10(a) of the Hague Service Convention. See Conax, 499 F. Supp. 2d at 1293. In reaching his conclusion, Judge Wilson relied on Brockmeyer v. May, 383 F.3d 798 (9th Cir. 2004). Id. Also, the court found that service of process by mail is consistent with the purpose of the Hague Service Convention, which is to facilitate international service of judicial documents. Id. Lastly, Judge Wilson noted that his interpretation of Article 10(a) is shared by several other member countries of the Hague Service Convention. Id. Likewise, in Julien v. Williams, No. 10-CV-2358T-TBM, 2010 WL 5174535 (M.D. Fla. 2010), Judge Susan C. Bucklew found that service of process via postal channels is permitted under Article 10(a) of the Hague Service Convention. Julien v. Williams, No. 10-CV-2358T-TBM, 2010 WL 5174535, at 2 (M.D. Fla. 2010). Judge Bucklew was persuaded by Brockmeyer v. May, 383 F.3d 798 (9th Cir. 2004). Id.

The Florida state courts have not directly addressed service by mail under Article 10(a) in any reported appellate decisions. One decision—Chabert v. Bacquie, 694 So. 2d 805, 812 (Fla. 4th DCA 1997)—mentions Article 10(a) in passing, but only in support of its finding that Article 15 of the Hague Service Convention, which relates to service of judgments, did not apply. However, one trial court judge in Florida state court, entered a highly detailed order allowing service by mail under 10(a) in Safra Nat’l Bank of N.Y. v. Crystal Springs Partners, Ltd., Case No. 11-09045 CA 30 (Fla. Cir. Ct. (Miami-Dade County) May 13, 2010). (A copy of this order is available at http://www.carltonfields.com/files/upload/2011_05_13_Order_on_Service_of_Process.pdf.

B. Service By Mail Under 10(a) Not Permitted

The very first reported decision from any Florida court on 10(a) service by mail came from the Northern District of Florida in McClennon v. Nissan Motor Corporation in U.S.A., 726 F. Supp. 822 (N.D. Fla. 1989), where Judge Clyde R. Vinson found that service of process via postal channels is impermissible under Article 10(a) of the Hague Service Convention. See McClennon, 726 F. Supp. at 826. Specifically, Judge Vinson stated that “it strains plausibility that the Conventions’ drafters would use the word ‘send’ in Article 10(a) to mean service of process, when they so carefully used the word ‘service’ in Articles 10(b) and (c).” Id. Judge Vinson’s opinion in McClennon remains the only Northern District of Florida case on 10(a) service by mail.

The next year in Wasden v. Yamaha Motor Co., Ltd., 131 F.R.D. 206 (M.D. Fla. 1990), Judge Elizabeth A. Kovachevic found that service of process via postal channels is not permitted under Article 10(a) of the Hague Service Convention. Wasden, 131 F.R.D. at 209. Judge Kovachevic solely relied on the Eighth Circuit’s opinion in Bankston and did not consider the Second Circuit’s contrary view in Akermann or the State Department’s objection to Bankston.

Two years later, the Southern District of Florida joined in completing the trifecta of the Florida federal districts finding that service by mail was not permitted under 10(a). In ARCO Electronics Control LTD. v. Core Int’l, 794 F. Supp. 1144 (S.D. Fla. 1992),
Judge Norman C. Roettger, Jr. found that service of process via postal channels is impermissible under Article 10(a) of the Hague Service Convention because of the difference between the language used in Article 10(a) and the language used in the rest of the Convention. *Core Int'l*, 794 F. Supp. at 1147. Persuaded by Judge Kovachevic’s decision in *Wasden v. Yamaha Motor Co., Ltd.*, 131 F.R.D. 206 (M.D. Fla. 1990), Judge Roettger expressed his belief that treaty conventions act intentionally. *Id.* He further concluded that the drafters of the Hague Service Convention intentionally used the word “send” rather than the word “serve” when drafting Article 10(a). *Id.*

After the initial trifecta, the only Florida decision finding service by mail was not permitted under 10(a) until 2010 came in 2002. In *In re Greater Ministries International, Inc.*, 282 B.R. 496 (Bankr. M.D. Fla. 2002), Bankruptcy Judge Thomas E. Baynes found that service of process by use of postal channels is not permitted under Article 10(a) of the Hague Service Convention. See *In re Greater Ministries International, Inc.*, 282 B.R. at 502-03. Judge Baynes concluded that the drafters could have simply used the word “service” if they intended to provide for an additional method of service under Article 10(a). *Id.*

After being an issue that came up in a reported Florida federal opinion about once every 3 years between 1989 and 2010, service by mail under 10(a) became a frequent topic in 2010, as there were 4 separate reported decisions on the issue in that year. In addition to the *TracFone v. Bequator* and *Julien* decisions discussed above, finding that service by mail was permitted under 10(a), two different Florida federal judges found that service by mail was not permitted under 10(a).

First, in *In re Mak Petroleum*, 424 B.R. 912 (Bankr. M.D. Fla. 2010), Bankruptcy Judge Paul M. Glenn found that Article 10(a) of the Hague Service Convention should not be read to permit service of process by mail. See *In re Greater Ministries International, Inc.*, 424 B.R. at 918. Judge Glenn noted that Article 10(a) refers to “sending” documents by mail while Article 10(b) and 10(c) refer to “effecting service” through judicial officers. *Id.* Recognizing that the word “service” has a well established technical meaning, the judge found that Article 10(a) should not be read to include the word “serve.” *Id.* Rather, Article 10(a) should be read only to enable parties to send documents such as motions and discovery responses. *Id.* at 918-19.

Next, in *Intelsat Corp. v. Multivision TV LLC*, 736 F. Supp. 2d 1334 (S.D. Fla. 2010), Judge Cecilia M. Altonaga found that service of process via postal channels is not permitted under Article 10(a) of the Hague Service Convention. See *Intelsat Corp.*, 736 F. Supp. 2d at 1343. In reaching her conclusion, Judge Altonaga noted that the majority of district courts in Florida tend to follow the line of cases rejecting service by postal channels under Article 10(a). *Id.* Judge Altonaga also emphasized the difference between the language used in 10(a) and the language used throughout the Convention. While the rest of the Convention uses the word “service,” 10(a) uses the word “send.” *Id.* at 1342. Judge Altonaga reasoned that this difference in language was intentional and stated, “Where a legislative body uses language in one place but not in another, it is generally presumed that the body acts intentionally.” *Id.* at 1342-43.
GEORGIA CASES

Unlike Florida, the Georgia federal courts have been consistent in construing Article 10(a) and have all found that service by mail was permitted under 10(a). First, in *Curcuruto v. Cheshire*, 864 F. Supp. 1410 (S.D. Ga. 1994), Judge Anthony A. Alaimo found that Article 10(a) of the Hague Service Convention contemplates service of process via postal channels. *See Curcuruto*, 864 F. Supp. at 1412-13. In reaching his conclusion, the judge found that such an interpretation provides adequate notice to those served and respects the protocol of the receiving countries. *Id.* at 1412.

Next, in *Patty v. Toyota Motor Corp.*, 777 F. Supp. 956 (N.D. Ga. 1991), Judge Harold L. Murphy found that Article 10(a) of the Hague Service Convention contemplates service of process via postal channels. *Patty*, 777 F. Supp. at 959. Judge Murphy found that such an interpretation followed from the language of the Convention. *Id.* The judge also found that such an interpretation serves the purposes of the Convention and the Federal Rules of Civil Procedure by providing adequate notice of the complaint and its grounds to those who are served. *Id.*

The most recent Georgia case on 10(a) came in 2000, in *Schiffer v. Mazda Motor Corp.*, 192 F.R.D. 335 (N.D. Ga. 2000), where Judge Thomas W. Thrash found that service of process by mail is permitted under Article 10(a) of the Hague Service Convention. *Schiffer*, 192 F.R.D. at 338. Judge Thrash took a broader view and determined that the purpose of the Convention is to create a means to serve documents. *Id.* Judge Thrash found support for his conclusion in the preamble of the Convention. *Id.* Judge Thrash also noted that all of the articles in the Convention involved service of process and not one involved later aspects of a case. *Id.* Notably—and properly under *Sumitomo Shoji Am., Inc.*—Judge Thrash considered the State Department’s position, as set forth in the Kreczko letter. *See Id.* at 339.

ALABAMA CASES

Like Georgia, the Alabama courts have found that service by mail was permitted under 10(a)—though it has been more than 20 years since a court in Alabama has examined the issue. In *Coblentz GMC/Freightliner, Inc. v. General Motors Corp.*, 724 F. Supp. 1364 (M.D. Ala. 1989), Judge Myron H. Thompson found that service of process by mail was permissible under Article 10(a) of the Hague Service Convention. *See General Motors Corp.*, 724 F. Supp. at 1373. In support of his finding, the court noted that Sweden had not objected to Article 10(a) of the Convention. *Id.* at 1372.

Justice Hugh Maddox of the Supreme Court of Alabama indirectly acknowledged that service of process via postal channels is acceptable under the Hague Service Convention. *See Parsons v. Bank Leumi Le-Israel, B.M.*, 565 So. 2d 20, 25 (1990). Justice Maddox was faced with the question of whether a foreign bank was required to serve an Alabama citizen with a translation of the summons and complaint. *Id.* Justice Maddox held that no translation was required because service of process was
effectuated via postal channels. *Id.* He noted that “the procedures used for obtaining service of process complied with the Hague Convention.” *Id.*

**CONCLUSION**

The courts within the Eleventh Circuit have not reached the same conclusions regarding the scope of Article 10(a). Until the Eleventh Circuit weighs in on the issue, lawyers in the circuit should carefully review the existing case law on the topic from lower federal courts and from state courts before attempting to serve a party by mail under Article 10(a) of the Hague Service Convention. This method should be a safe bet in Alabama, as it enjoys support from the Alabama Supreme Court and an Alabama federal court. Likewise, in Georgia, there is no contrary authority. Florida is another case all together. It is possible, though, to ask the court in advance for an order permitting service by mail under Article 10(a), and such a request would likely be wise in Florida. This would avoid wasting time with an after the fact challenge to service.