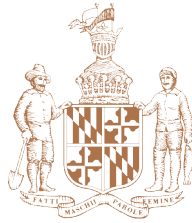


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August 9, 2023

The Honorable David Fraser-Hidalgo
Maryland General Assembly
350 Taylor House Office Bldg.
Annapolis, MD 21401
Via email

Re: House Bill 915 (2023), "Climate Change Adaptation and Mitigation Payment Program and Climate Impact Health Coverage Program – Establishment"

Dear Delegate Fraser-Hidalgo:

You asked for advice about House Bill 915, which you introduced during the 2023 session; the bill was not enacted. You asked, "whether the state of Maryland would be able to force these multinational companies to pay what this bill requires of them."

The Attorney General has previously explained:

The Full Faith and Credit Clause of the United States Constitution states:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

United States Constitution, Article IV, §1; *see also* 28 U.S.C. §1738 (full faith and credit for legislative acts and judicial proceedings). The Full Faith and Credit Clause clearly requires one state to respect a judgment rendered by a court of another state. *Nevada v. Hall*, 440 U.S. 410, 421 (1979). However, the constitutional provision does not require a state to

recognize or apply another state's laws if doing so would run contrary to its own "legitimate public policy." *Id.* at 422.

95 *Opinions of the Attorney General* 3, 13 (2010).

Thus, if Maryland secured a judgment against a company for the compensatory payment owed under HB 915, there are mechanisms available to enforce the judgment in another state.

[T]he clear purpose of the full faith and credit clause [is] to establish throughout the federal system the salutary principle of the common law that a *litigation* once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered.

Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 439-40 (1943) (emphasis added).

At the same time, the full faith and credit principle has limitations.

Chief among those limitations [of the full faith and credit doctrine] is the caveat, consistently recognized by this Court, that "a judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment."... [B]efore a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree. If that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given.

Underwriters National Assurance Co. v. North Carolina Life and Accident and Health Insurance Guaranty Ass'n, 455 U.S. 691, 704-05 (1982) (citation omitted).

The court in the state in which Maryland would try to enforce the judgment would likely apply a similar analysis used by Maryland courts to determine whether a sister state court properly exercised jurisdiction. First, the court would determine whether the sister state asserted personal jurisdiction consistent with the full limits allowed by constitutional due process. Second, the court must determine whether the exercise of jurisdiction violates the Due Process Clause of the Fourteenth Amendment. *See Superior Court v. Ricketts*, 153 Md. App. 281, 332 (2003). Most states have adopted the Uniform Enforcement of Foreign Judgments Act, which provides an expedited procedure for enforcement of a judgment in a sister state. Maryland adopted the Act in Courts & Judicial Proceedings Article, §§ 11-801 – 807.

The Honorable David Fraser-Hidalgo

August 9, 2023

Page 3

If Maryland sought to bring an action against an out-of-state company directly in another state's court, that court would use a choice of law analysis. *See Franchise Tax Bd. of California v. Hyatt*, 538 U.S. 488 (2003) (upholding the decision of the Nevada Supreme Court, in a case brought against a California agency, to apply Nevada law as consistent with the Full Faith and Credit Clause because (1) the Clause does not require one state to apply another state's law that violates its own legitimate public policy and (2) Nevada's choice of law did not exhibit hostility to the public Acts' of a sister State, rather Nevada had evinced a healthy regard for California's sovereign status by relying on the contours of Nevada's own sovereign immunity from suit "as a benchmark for its analysis").

In summary, there are mechanisms, based on the Full Faith and Credit Clause of the U.S. Constitution, available to the State to enforce satisfaction of a compensation payment owed by an out-of-state company. The mechanism to be used would depend on the circumstances surrounding the company owing the payment, and whether the State is seeking to enforce a judgment imposed by a Maryland court or whether the State is bringing a direct action against the company based on Maryland law in another state court.

Sincerely,



Sandra Benson Brantley
Counsel to the General Assembly