

# Welcome to the Jungle: Judgment Enforcement



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# GETTING TO JUDGMENT



- **Lawsuit - Process**
- **End game - Judgment**
- **Objective - Payment**

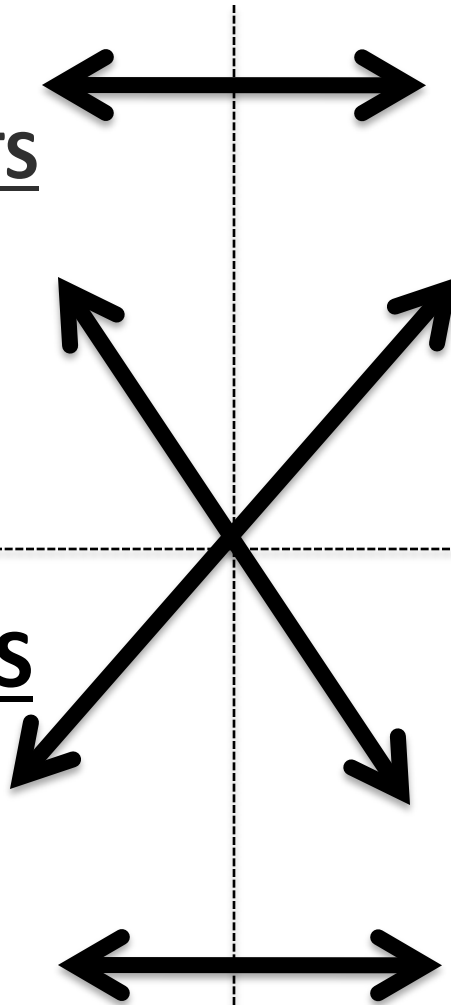
# U.S. COURT SYSTEM

FEDERAL COURTS

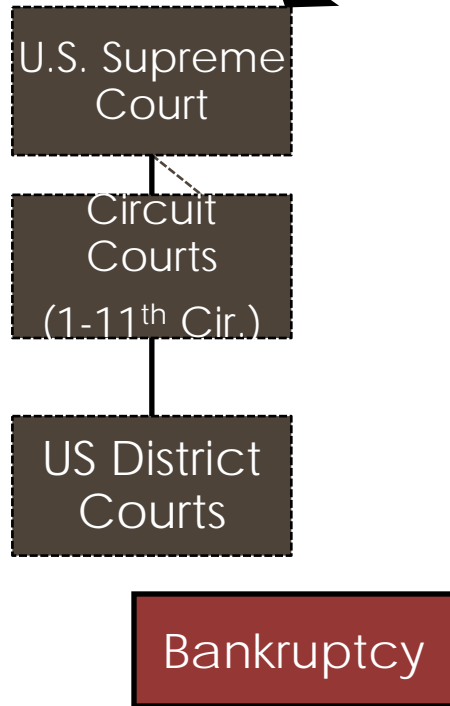
CIVIL LAW

STATE COURTS

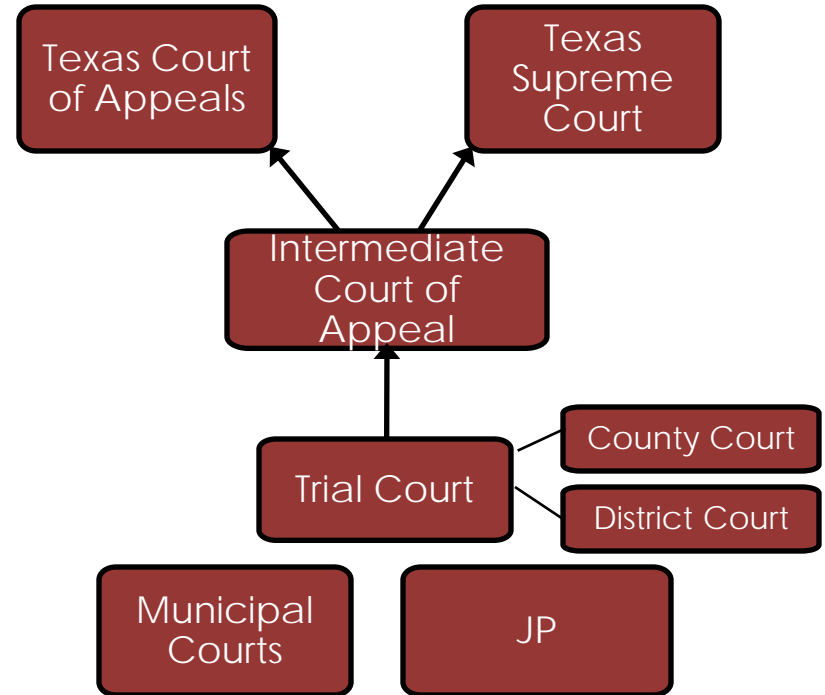
CRIMINAL LAW



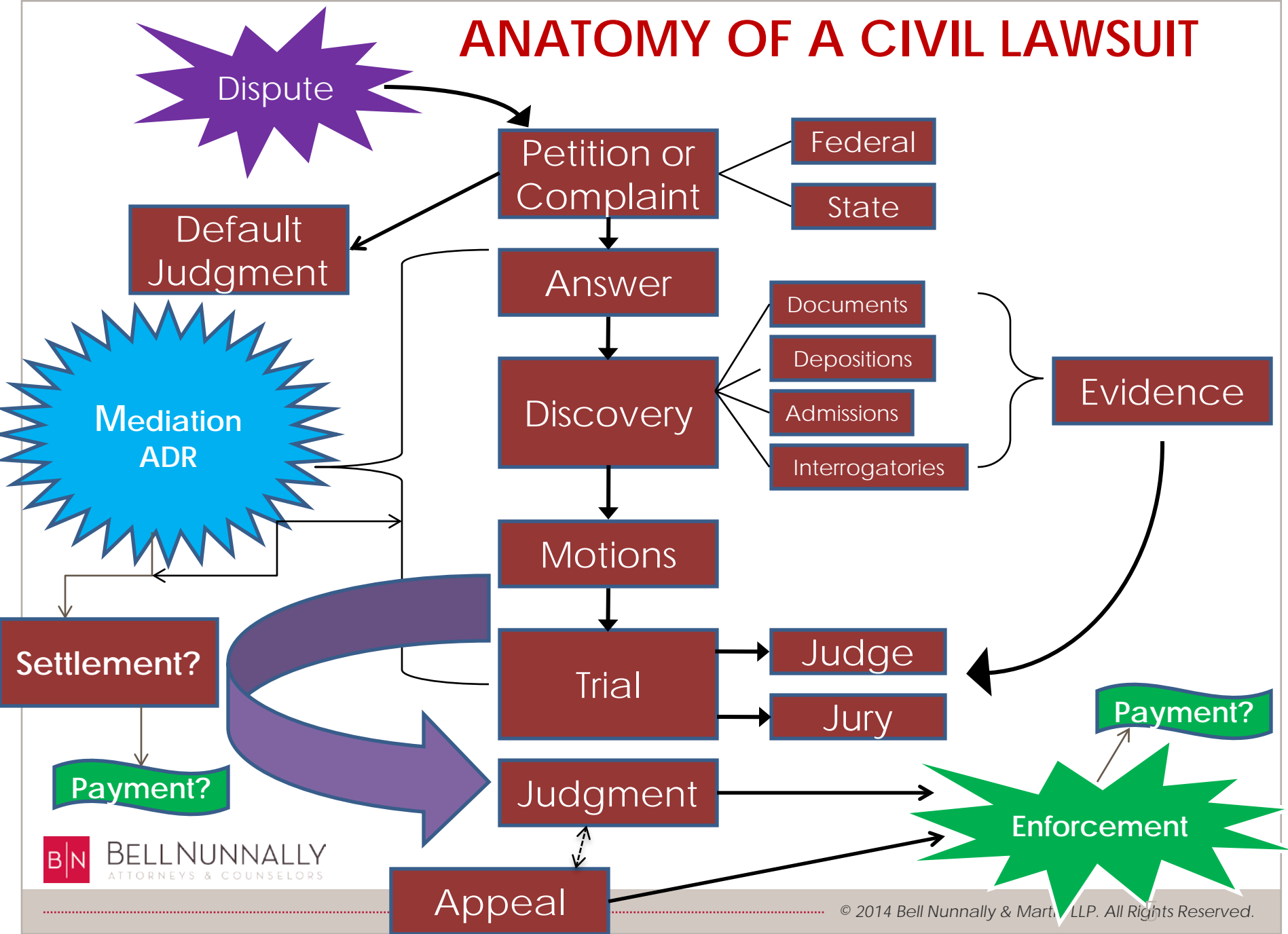
## Federal Court



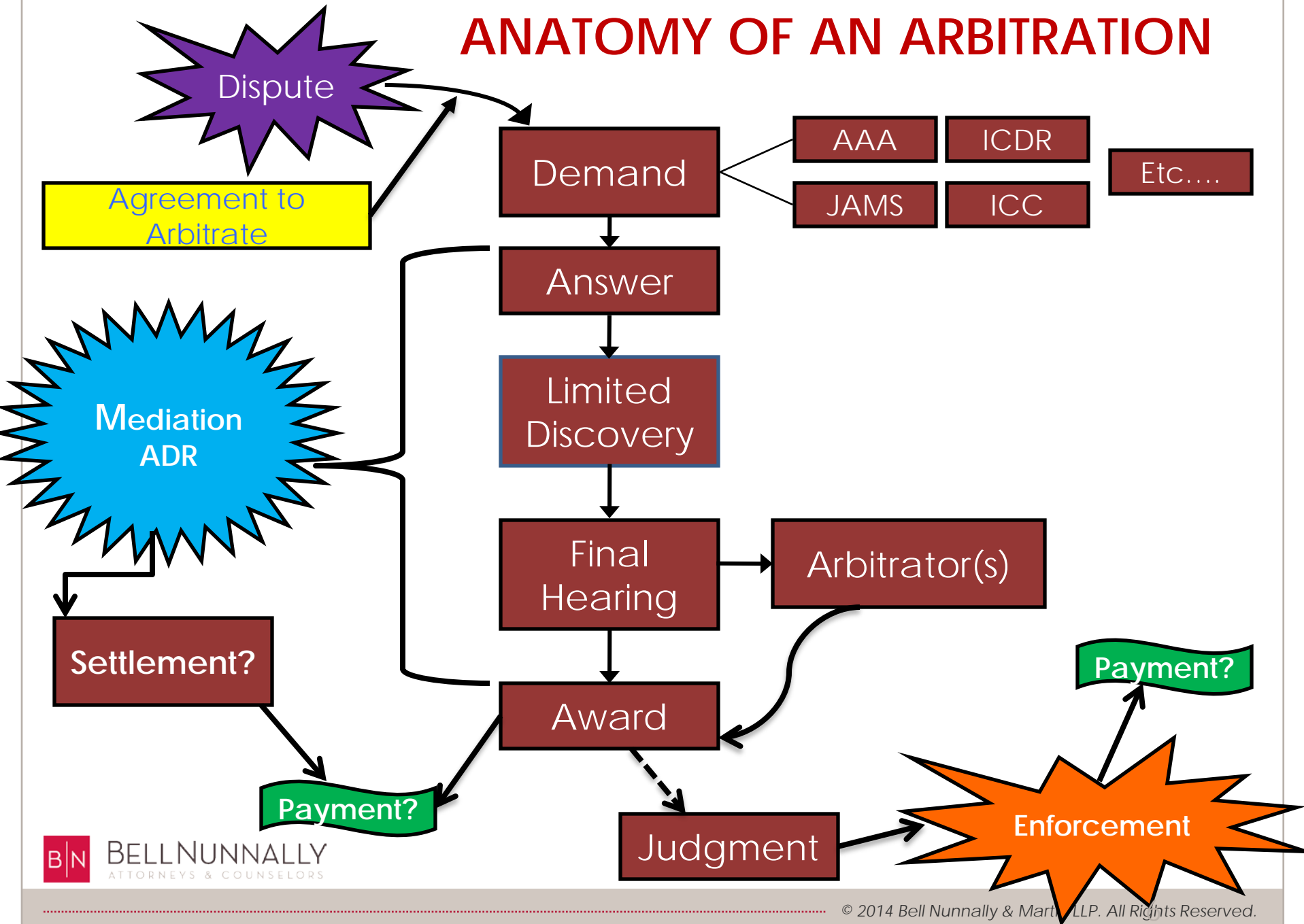
## State Court (e.g., Texas)



# ANATOMY OF A CIVIL LAWSUIT



# ANATOMY OF AN ARBITRATION



# CONFIRMATION OF ARB. AWARD



- **Federal Arbitration Act (FAA)**
  - Apply to the court specified in the parties' agreement for the entry of a judgment on the award or, if no court is specified in the agreement, to district court within which the award was made or where venue proper
  - One year from the date the award was made
  - Serve notice of the application
  - Summary proceeding
  - Result: Enforceable judgment
- **Check applicable state equivalent statutes to FAA**

# JUDGMENT!



# ENFORCEMENT!

# OPTIONS



- ✓ **Asset investigation**
- ✓ **Post –Judgment Discovery**
- ✓ **Writs of Execution**
- ✓ **Garnishment**
- ✓ **Abstracts and Judgment Liens**
- ✓ **Turnover**
- ✓ **Receivers**
- ✓ **State specific laws/rules/procedures will apply!**



# ASSET INVESTIGATION

- What's Already in Your File?
- Accurint/Westlaw/LexisNexis
- Private Investigator
- Public Records- Appraisal, Real Property, SOS

## Pros

- Control Costs
- Due diligence
- Expedited
- Sneak attack

## Cons

- Limited
- Outdated
- Inaccurate
- Costs can be substantial



# POST- JUDGMENT DISCOVERY

## Pros

- Broad
- Governed by Rules
- Forum to compel
- Pressure on Debtor

## Cons

- Time
- Fees and costs
- Debtor Runaround
- Debtor knows you are coming

- Document requests
- Interrogatories
- Oral depositions
- Subpoenas



# WRITS OF EXECUTION

- Clerk issues
- Sheriff serves
- Seizure
- Sale
- Non-Exempt Property

## Pros

- Sheriff involved
- Relatively Fast
- Pressure on Debtor

## Cons

- Sheriff fees/costs
- Only non-exempt property
- Need to know about substantial property



## ABSTRACTS OF JUDGMENT

- Clerk issues
- Judgment Creditor Files/Records
- Creates judgment lien
- Some states permit personal property liens
- Foreclosure required

### Pros

- Issuance and filing inexpensive
- Fast & Effective
- May apply to property debtor later owns
- Pressure on Debtor

### Cons

- Typically only applies to non-exempt property
- Priority of claims
- Often county by county
- Foreclosure costs
- Additional legal fees



## EXEMPT PROPERTY

- **State specific**
- Homestead
- Certain personal holdings (capped)
- Retirement accounts
- College savings accounts
- Wages (not all states)
- Alimony



## GARNISHMENT!

- Clerk issues Writ
- Writ served on third party "indebted" to Judgment Debtor, namely banks for accounts, safe deposit boxes
- Also applies to storage units
- Once served writ freezes bank account and funds paid to creditor and applied to judgment
- Some states permit wage garnishment

### Pros

- Powerful tool
- Sneak attack
- Relatively fast
- Extremely effective

### Cons

- Additional fees/costs
- May not be recoverable
- Debtor defenses
- Bank offsets





## TURNOVERS

- Application for turnover of property not readily subject to seizure
- Intangibles, such as stock certificates or membership interests
- Property in possession of judgment debtor
- Appointment of receiver often sought
- Accounting also often sought
- Property turned over, typically, to sheriff for sale

### Pros

- Relatively fast
- Court controlled
- Receivership powerful
- Pressure on Debtor
- Pressure on Debtor own companies

### Cons

- Value of intangibles questionable
- No market for closely held companies
- Minority interests of little value on market
- Company agreements/Bylaws control distributions and often craft around turnovers/charging orders
- Receiver fees
- Additional legal fees & costs that may not be recoverable

# MULTI-STATE ENFORCEMENT?



- Follow the assets...
- Judgment entered in one state is generally enforceable in other states in the U.S.
- “Full faith and credit clause” of the U.S. Constitution
- Uniform Enforcement of Foreign Judgments Act
- For example, judgment entered in state court in CA may be “domesticated” in Texas state court

# JUDGMENT LIFE...



- Judgments have a life. . .
  - 10 years in some states
  - 20 years in some states
  - Check applicable state law
- But they can be kept alive forever if they are timely renewed!
- Check applicable state law!!

# Q&A



- Questions?
- Thanks!



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