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American Electric

v.

Wuhan Precision Parts

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American Electric v. Wuhan Precision Parts

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ATKINSON & CARLTON LLP
Attorneys at Law
3 Civic Center Plaza
Franklin City, Franklin 33812

To: Examinee
From: Alexandra Carlton
Date: July 30, 2019
Re: American Electric v. Wuhan Precision Parts Ltd.

Our client Wuhan Precision Parts Ltd. (WPP), a Chinese manufacturing company, seeks help in vacating a federal default judgment entered by the U.S. District Court for the District of Franklin. These court proceedings arise from an earlier arbitration between American Electric Distribution Inc. (AE) and WPP, which took place in Franklin.

WPP lost the arbitration and has paid the bulk of the monetary relief awarded to AE by the arbitrators. But because WPP did not fully comply with the arbitrators' award, AE filed a complaint in federal court to "confirm" or convert the award into a court judgment. Before WPP appreciated what was happening in federal court, AE obtained a default judgment (which converted the arbitration award into a federal court judgment) and was awarded an additional $90,000 in attorney's fees tied to the court proceedings.

WPP accepts the arbitration award but contests the court's default judgment. WPP contends that it was not properly served in the federal court action in accordance with the international service of process provisions of the Hague Convention. WPP has asked us whether the default judgment can be vacated.

The Hague Convention is a treaty to which both the United States and China are signatories. It calls for service through governmental channels. However, we expect AE to argue that WPP waived its Hague Convention service protections by agreeing to arbitrate these claims in Franklin, and that WPP should not be able to complain because it received sufficient notice of the Franklin district court proceedings.

The issues presented are ones of first impression in our federal district court of Franklin; however, federal courts in our neighboring districts of Olympia and Columbia have addressed the question, albeit in different ways. Those decisions are attached.

Draft a memorandum to me analyzing the following issues:

1. Will WPP succeed in vacating the default judgment due to improper service under the Federal Rules of Civil Procedure and the Hague Convention? Discuss both the facts that support WPP's motion to vacate and those that undermine it.

2. Are there any grounds to challenge the attorney's fee award?

Your memorandum should focus on the service of process and fee issues. Do not include a separate statement of facts but be sure to integrate the facts into your analysis. Do not address personal jurisdiction. Another lawyer at our firm is assessing WPP's contacts with Franklin and whether the district court has personal jurisdiction over WPP.

Email from Shao Wen "William" Li to Alexandra Carlton

From: William Li (w.li@wuhanprecisionparts.com)
Sent: Tuesday, July 23, 2019, 10:24 p.m.
To: Alexandra Carlton (acarlton@aclaw.com)
Subject: American Electric judgment

Dear Alexandra,

We at WPP very much appreciated the chance to speak with you by Skype yesterday afternoon about our legal problem. As we discussed, the law firm we hired to handle the arbitration ended its work at our request after the arbitration award was issued. We're glad you represent us now.

WPP operates in Wuhan, an industrial city and a principal transportation hub in central China. We do not have offices, registered agents, or employees in the United States. WPP manufactures gear motors for dishwashers designed and assembled by American Electric (AE) for subsequent sale by U.S. Clean Corporation (USCC). AE is based in Franklin.

Here's the chronology of events:

2014 Supplier Agreement: In 2014, USCC asked AE for assurance that replacement gear motors would be available for use in repairing the dishwashers when necessary. Based on that request, on September 21, 2014, WPP and AE entered into a supplier agreement whereby AE authorized WPP to sell replacement gear motors directly to USCC on condition that WPP pay AE a royalty of $50 for each gear motor sold. As part of the supplier agreement, we agreed to arbitrate any dispute in Franklin.

2017 Arbitration: In 2017, AE took us to arbitration, claiming that we had deliberately shipped different motors from the ones that we had agreed to provide in the supplier agreement. AE also claimed that we had sold 900 more replacement motors to USCC than we had reported to AE and therefore owed AE additional royalties. Even though the arbitrators ruled against us, AE did not get all it wanted. The arbitrators decided that we owed $500,000 for shipping nonconforming motors and only $25,000 for unpaid royalties on 500 of the replacement motors we sold directly to USCC. The arbitrators also ordered us to pay AE's attorney's fees in the amount of $110,000.

WPP Partial Payments on the Arbitration Award: After the arbitrators issued their award on December 15, 2017, WPP promptly paid half of the $500,000 damages award for the breach of contract claim on the motors. We have not yet paid the $25,000 award for unpaid royalties or the $110,000 attorney's fee award. We have had to delay payment due to an economic downturn resulting in foreign exchange and cash flow problems.

June 14, 2019 District Court Default Judgment: Our biggest problem is that because we had not fully complied with the arbitration award, a U.S. court has entered a judgment against us that now includes an additional $90,000 in attorney's fees for the court process over and above the $110,000 in fees awarded by the arbitrators. We do not see how additional attorney's fees could be awarded. Here's what we know:

- November 2, 2018 – AE Email of Summons and Complaint: From what you have told us, on November 2, 2018, an email attaching the summons and complaint to enforce the arbitration award was sent to our Vice President of Manufacturing, who had been our designated point of contact during the arbitration. We also understand from you that AE attempted to serve the summons and complaint through Chinese government channels. We did not receive anything from the Chinese government.

- VP Quits on November 9, 2018: We checked, and the VP quit on November 9, 2018. He did not forward the email or notify anyone about it. Just so you know, although the arbitration communications were by email, we normally do business with AE by fax and phone.

- March 8, 2019 – AE Mailing of Default Motion: We now know that AE put its motion for default judgment in the mail to us in March (return receipt requested), thinking mail service was okay because the summons and complaint had been "served" back on November 2, 2018.

- April 15, 2019 – WPP Actually Receives Motion: We did not receive AE's motion for default judgment until April 15, 2019, because the Wuhan government post office delayed delivery. In addition, the motion papers were in English, and following our company policy, they were sent to our in-house translation department. Once we

translated them into Mandarin Chinese, we realized that we needed to contact you. Then we learned from you that the court had already entered a judgment against us.

- June 14, 2019 – Court Orders Entry of Default Judgment: The court's order entering the default judgment mentions that AE attempted formal service under the Hague Convention by delivering the summons and complaint to the Chinese government. All we know is that we did not receive the summons and complaint, or any other legal documents, through government channels.

We need your help. The court entered a judgment without our knowledge. We are especially concerned with the additional $90,000 in attorney's fees. If AE or its lawyers had called us, or used a fax machine, all of this could have been avoided.

Please know that we can pay your bill. Even though we have had some cash flow problems, we have had substantial profits in recent years and have paid a number of much larger judgments entered against WPP.

We appreciate your help.

Thank you,
Shao Wen "William" Li
Director of International Sales

UNITED STATES DISTRICT COURT
DISTRICT OF FRANKLIN

American Electric Distribution Inc.,
Plaintiff/Petitioner,

v.

ORDER ENTERING DEFAULT JUDGMENT

Wuhan Precision Parts Ltd.,
Defendant/Respondent.

Civil No. 13-199-SJK

Plaintiff American Electric Distribution Inc. (AE) petitions for confirmation of an arbitration award and subsequently moves for an award of $90,000 to cover the attorney's fees it incurred in pursuing relief before this court. AE is represented by Alan Richetti of Richetti & Hamill. Wuhan Precision Parts Ltd. (WPP) has made no appearance before this court in this matter.

The September 21, 2014 Supplier Agreement

This court proceeding arises from a Supplier Agreement ("Agreement") effective as of September 21, 2014, between AE and WPP. It reads in relevant part:

> 7. Attorney's Fees. In the event of breach, the prevailing party shall be entitled to recover its costs and expenses (including reasonable attorney's fees) incurred to enforce the terms of this Agreement.
>
> 8. Arbitration. Any controversy or claim arising out of or relating to this Agreement or the breach, termination, or validity thereof shall be settled by arbitration carried on in the English language, using three arbitrators selected as detailed in Paragraph 9 below, and shall be held in Franklin City, Franklin, U.S.A. Judgment upon the award rendered by the arbitration panel may be entered by any court having jurisdiction thereof.

December 15, 2017 Arbitration Award

A dispute arose, with AE eventually taking WPP to arbitration before an arbitration panel of the Franklin Center for International Dispute Resolution. The panel awarded AE the following:

First, due to WPP's sale of nonconforming motors, an award of damages of $500,000.

Second, due to WPP's failure to properly account for its replacement motor sales to U.S. Clean Corporation, the panel concluded that WPP owed back royalties on the sale of 500 replacement motors, resulting in an additional award of $25,000.

Third, the panel granted AE's request for attorney's fees tied to the arbitration proceeding, but only in the sum of $110,000—one-third of the amount requested. The panel concluded that AE had overstated its case in several material respects that caused both sides to incur unnecessary fees and costs. The panel noted, however, that its ruling did not deny or limit AE's right to recover attorney's fees, if any, that might be incurred in enforcing its rights to future accountings and/or royalties.

The Court Proceedings to Confirm the Award and Motion for Default Judgment

AE served its original complaint seeking to confirm the arbitration award by email to the Vice President of Manufacturing for WPP. Email service was used during the arbitration pursuant to the procedural rules governing the arbitration. AE's subsequent motion for a default judgment, which added a request for $90,000 in attorney's fees, was served upon WPP by mail. The complaint was served on November 2, 2018, and the default motion was served on March 8, 2019. WPP failed to respond. Almost eight months have elapsed since service of the complaint, and over 90 days have elapsed since the date of the service by mail of the motion for default judgment. The court notes that unlike the summons and complaint, the default motion was not translated into Mandarin Chinese, although those pleadings were short and straightforward. Moreover, the record establishes that WPP regularly conducted its international business in English, including the arbitration proceedings at issue.

AE also attempted formal Hague Convention service of its pleadings via the Chinese Central Authority but received no communication in return.

Accordingly, it is hereby ordered that the plaintiff's motion for default judgment is GRANTED, and judgment is entered as follows:

1. Confirming the arbitration award of December 15, 2017, with the arbitration relief now converted to a judgment of this court; and
2. An additional award of $90,000 in attorney's fees.

Dated: June 14, 2019

Georgia York

Georgia York
United States District Judge

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EXCERPTS FROM THE FEDERAL RULES OF CIVIL PROCEDURE

Rule 4 [Summons and Complaint]

. . .

(f) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States

> (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

. . .

(h) Serving a Corporation, Partnership, or Association. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation . . . must be served . . .

> (2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery . . . .

Rule 5 [Post-Complaint Pleadings]

(a) Service: When Required . . . .

> (2) *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a [subsequent] pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

Pennsylvania Coal Co. v. Bulgaria Trading & Transport Co., Ltd.
United States District Court for the District of Olympia (2001)

Before the court is the motion of defendant Bulgaria Trading & Transport Co., Ltd. (BTT) to vacate a default judgment. BTT makes a limited appearance, arguing that it had not been properly served under the Hague Convention and therefore the default judgment is void for lack of proper service.

Background

Plaintiff Pennsylvania Coal Co. (Penn Coal) contracted for the sale of used coal processing equipment to BTT, a trading company headquartered in Sofia, Bulgaria. The parties agreed to arbitration of all disputes in San Andrea, Olympia.

After a contentious and prolonged arbitration proceeding, the arbitrators awarded Penn Coal $4.5 million due to BTT's refusal to take delivery of approximately half of the equipment it had purchased. The panel also awarded $300,000 in attorney's fees to Penn Coal pursuant to a term of the contract providing for the award of attorney's fees to the prevailing party.

BTT refused all requests by Penn Coal for payment of the $4.8 million award. Penn Coal has presented evidence that BTT has since moved assets and has persisted in its contention that the Penn Coal equipment proved defective, notwithstanding the arbitration ruling to the contrary.

Penn Coal petitioned this court to confirm the award. When a court confirms an arbitration award, the arbitration award becomes a court judgment. In this way, a plaintiff can benefit from all the collection tools flowing from a court judgment. To confirm an arbitration award, the plaintiff files a complaint (or petition) in federal court and serves the defendant with a summons and complaint.

Penn Coal attempted formal Hague Convention service by delivering its pleadings to the appropriate Bulgarian governmental authority, but all subsequent governmental efforts to serve BTT were unsuccessful. Undaunted, Penn Coal took it upon itself to personally serve the summons and complaint at BTT's headquarters in Sofia, Bulgaria. Penn Coal also arranged for delivery through government postal channels (return receipt received), and it emailed a copy of the complaint to the BTT executive who had entered into the Penn Coal contract, using the same email address the parties had agreed to use for the arbitration proceeding.

Because BTT did not respond to Penn Coal's complaint or otherwise object over the nine months that followed, Penn Coal moved for, and this court granted, a default judgment for $4.8

million as awarded by the arbitrators, plus an additional $75,000 in attorney's fees tied to this proceeding.

Three weeks after this court issued its judgment, BTT appeared before this court to vacate that judgment. BTT acknowledges Penn Coal's evidence that BTT received actual notice but insists that the judgment is void because Penn Coal did not serve BTT in compliance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (Hague Convention). The Hague Convention requires service upon a governmental authority, which in turn will effectuate service upon its own citizens and entities such as BTT. BTT challenges the fees awarded on the same basis.

Service Abroad Under the Hague Convention and Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure state that service on international parties must occur in compliance with the Hague Convention. *See* FED. R. CIV. P. 4(f)(1). Both Bulgaria and the United States are parties to the Hague Convention. Formal Hague Convention service calls for service by the Bulgarian authorities upon BTT. Penn Coal did not properly serve BTT under the Hague Convention. BTT relies on case law holding that if a party was never properly served, subsequent judgments founded upon that improper service are void and must be vacated. *See, e.g., In re Int'l Media Services Inc.* (15th Cir. 1998) (civil litigation, not arbitration).

The Enforcement of Arbitration Awards

Our circuit court has held that entry into an agreement to arbitrate in a particular jurisdiction constitutes consent to personal jurisdiction and to venue. *Auto Dealers Ass'n v. Pearson* (15th Cir. 1996). However, it is an issue of first impression as to whether a consent to arbitrate in Olympia also relaxes the service of process requirements of the Hague Convention. When a foreign corporation, such as BTT, agrees to participate in an arbitration proceeding in the United States, it cannot expect that it can consent to an Olympia arbitration, participate in it, and then, in the event that it loses, seek refuge in the protections of the Hague Convention to avoid facing any consequences in Olympia. At the same time, this court recognizes that judicial proceedings are different from arbitration proceedings and that the expectation of parties to an arbitration must be balanced against the right of fair notice.

The service-related provisions of the Federal Arbitration Act (FAA) do not resolve the issue. Given this silence, this court will follow the line of authority holding that in cases arising

from arbitration proceedings, defects in service of process may be excused where considerations of fairness so require. Where parties have consented to arbitration, actual notice of the proceedings can be sufficient as long as it is fair and no injustice results.

This court acknowledges the Supreme Court's admonition that compliance with the Hague Convention is "mandatory in all cases to which it applies." *Volkswagonwerk AG v. Schlunk*, 486 U.S. 694, 705 (1988). Here, however, Penn Coal tried in good faith to comply by delivering its pleadings to the Bulgarian authorities. More fundamentally, BTT consented to, and then participated in, an Olympia arbitration pursuant to an agreement contemplating the award's confirmation in court. In that circumstance, strict adherence to the Hague Convention is not required; actual notice and fairness are the standards. The Hague Convention is not designed to be a roadblock to those who act in good faith.

We now assess the fairness of the notice in this case. BTT clearly received notice, albeit without involvement of the Bulgarian government as the Hague Convention provides. Personal service and U.S. mail service are recognized forms of service under the Federal Rules of Civil Procedure. While email service is not typically authorized, it is the means by which the parties communicated during the arbitration. In this case, service via email was a reliable means of delivering the complaint to BTT and was reasonably calculated to give BTT actual notice. Finally, the lengths to which BTT went to evade its contract obligations and avoid accountability for the arbitrators' award cannot be rewarded. The manner in which BTT conducted its business (e.g., moving assets that could have been used to satisfy the arbitration award and claiming that Penn Coal's equipment was defective) is highly relevant and must be considered. Also, given that BTT has expressed no difficulty in comprehending the English-language documents arising from an American arbitration conducted in English, and given that BTT failed to appear in the nine months preceding this court's judgment, justice requires that this court affirm its earlier judgment confirming the arbitration award. On these facts, the actual notice given was fair.

Attorney's Fees

Even though the court grants the default judgment, the court agrees with BTT that Penn Coal's request for attorney's fees for these court proceedings is on a different footing. The additional $75,000 in attorney's fees is not referenced in the summons and complaint. Accordingly, the court will relieve BTT from the $75,000 attorney's fee judgment.

There are two reasons for denying attorney's fees in this subsequent court action. First, unlike the confirmation of the arbitration award, the request for fees for litigating before this court is a "new claim for relief." A new claim requires service that complies with the Federal Rules of Civil Procedure and the Hague Convention. *See* FED. R. CIV. P. 5(a)(2). Under the Hague Convention, the party raising a new claim must deliver a copy of that claim to the foreign governing authority, which will then deliver it in accordance with local judicial process. Penn Coal did not follow that procedure.

A second and independent ground for denying attorney's fees centers on the role of the arbitration panel versus that of the court. While the FAA contemplates that arbitral parties can turn to courts to confirm the awards themselves, courts are careful to defer all substantive decisions to the arbitrators. Here, the contract between Penn Coal and BTT allows for the prevailing party to obtain attorney's fees but contains no reference to judicial remedies in that regard. Accordingly, Penn Coal's fee request is one that it must pursue by returning to arbitration. That conclusion is especially appropriate given that this court employed "fairness" principles when upholding the judgment confirming the arbitration award. Those principles cannot be used by Penn Coal to open the door to claims, like requests for attorney's fees, that were not previously raised with the arbitrators.

Accordingly, BTT's motion to vacate this court's earlier default judgment is DENIED as to the $4.8 million arbitration award but GRANTED as to this court's judgment for $75,000 in attorney's fees.

EduQuest Digital Corp. v. Galaxy Productions Inc.
United States District Court for the District of Columbia (2005)

Before the court is the petition of EduQuest Digital Corporation (EQ) to confirm a 2003 arbitration award and grant its subsequent motion for an award of attorney's fees tied to this judicial proceeding.

Procedural History

EQ designs educational games and licenses those products for resale by companies across the globe. Galaxy Productions Inc. (Galaxy) is based in Beijing, China. It entered into a licensing contract with EQ covering 422 of EQ's products and authorizing their resale over a five-year period from 2000 through 2004. In the event of breach, the licensing contract called for arbitration in Center City, Columbia. The contract provided that any prevailing party was entitled to attorney's fees. It also stated that "judgment upon the award rendered by the arbitration panel may be entered by any court having jurisdiction thereof."

The arbitrators, after taking 16 days of testimony, concluded that Galaxy had breached its licensing agreement with EQ by failing to remit all licensing fees for products it sold in China, and that Galaxy's sale of counterfeit copies of EQ's games warranted an additional award of lost profits of $750,000. The arbitrators awarded $225,000 in attorney's fees to EQ and directed that Galaxy submit semi-annual reports of all of its licensed sales.

Facing Galaxy's noncompliance with the arbitration award, EQ petitioned this court to convert its arbitration decision into a judgment that it can enforce. EQ initiated formal service following the Hague Convention and provisions of the Federal Rules of Civil Procedure. When Chinese entities are involved, the Hague Convention requires that the serving party translate the documents into Mandarin Chinese and deliver the documents to the Chinese Central Authority, which will effectuate service through its provincial courts. EQ fulfilled its responsibilities. However, after hearing nothing from the Chinese government, EQ opted for self-help via a combination of service by personal delivery upon a Beijing agent of Galaxy and service by international mail, return receipt requested. In light of that, EQ asks this court to deem service to have been proper.

Despite EQ's efforts at service, Galaxy failed to respond to EQ's initial petition to confirm the award. EQ seeks attorney's fees and costs of $95,000 tied to these judicial proceedings. EQ's

motion for attorney's fees was served by personal delivery and international mail, return receipt confirmed.

Galaxy made a limited appearance that the court agreed would not waive Galaxy's jurisdictional objection. Galaxy appeared after receiving the fee-related motion. Galaxy challenges this court's jurisdiction, arguing that a federal court lacks jurisdiction if a defendant is improperly served, in this case pursuant to the formal governmental service provisions of the Hague Convention.

Confirmation of the Arbitration Award

The Federal Arbitration Act governs the service of petitions to confirm arbitration awards. However, that statute does not provide a method of service for a foreign party who is not a resident of any district in the United States. Some courts, facing circumstances different from those presented here, turn to principles of "fairness" to excuse defects in service of process in cases arising from arbitration proceedings. *See, e.g., Penn. Coal Co. v. Bulgaria Trading & Transport Co., Ltd.* (D. Olympia 2001) (evidence of evasion). The focus tends to be on the good faith of the underlying business conduct, as well as the reasonableness of the notice. There is sufficient evidence here of the counterfeiting of intellectual property and deliberate noncompliance with the arbitration award. From this court's perspective, however, the "fairness" standard of *Penn Coal*, which balances the equities, is too loose to serve as a guide as to when courts can excuse noncompliance with the Hague Convention and Federal Rule of Civil Procedure 4 when confirming arbitration awards.

For this court, at least on these facts, the better rationale is that by agreeing to arbitrate in Columbia and participating in those proceedings, the parties to the underlying contract agreed to the provision allowing court judgments to be entered. This serves as a "deemed waiver" of formal Hague Convention service in connection with confirmation of an arbitration award. Put another way, this court reads the parties' contract as consenting to service by actual notice that satisfies the general principles of due process and the Federal Rules, rather than the strict formality of the Hague Convention—at least in cases where the arbitration takes place in the jurisdiction contemplated in the parties' agreement. Under this analysis, Galaxy's post-award conduct is irrelevant. This court finds that by agreeing to arbitrate, Galaxy is deemed to have waived the right it possesses to formal service. The actual notice Galaxy received here was reasonable and sufficient.

Galaxy objects strongly to the court's "deemed waiver" analysis. It contends that such an approach eviscerates the Hague Convention protections for all arbitrated matters and opens the door to uninvited judicial proceedings. This court does not intend its holding to be so broad. Here, EQ attempted formal Hague Convention service in good faith. In at least those circumstances, the "deemed waiver" approach should be available to protect good-faith litigants like EQ.

Attorney's Fees

While this court does not adopt the "fairness" approach used in the District of Olympia pursuant to *Penn Coal* to assess proper service requirements to confirm arbitration awards against foreign parties, this court does agree with the reasoning of the *Penn Coal* court as to attorney's fees. The fee request is a "new claim for relief," and Rule 5(a)(2) requires formal government service under the Hague Convention. Accordingly, this court will deny EQ's motion for an award of attorney's fees.

EduQuest's petition to confirm the arbitration award is hereby GRANTED, and its motion for attorney's fees is DENIED.

NOTES

NOTES

MULTISTATE PERFORMANCE TEST DIRECTIONS

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin. This test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.

The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

Your response must be written in the answer book provided. If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

Although there are no restrictions on how you apportion your time, you should allocate approximately half your time to reading and digesting the materials and to organizing your answer before you begin writing it. You may make notes anywhere in the test materials; blank pages are provided at the end of the booklet. You may not tear pages from the question booklet.

Do not include your actual name anywhere in the work product required by the task memorandum.

This performance test will be graded on your responsiveness to the instructions regarding the task you are to complete, which are given to you in the first memorandum in the File, and on the content, thoroughness, and organization of your response.