

## U.S. Supreme Court Clarifies Service by Mail on Foreign Parties - International Asset Recovery

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On May 22, 2017, in *Water Splash Inc. v. Menon*, The United States Supreme Court addressed the issue whether under the Hague Service Convention service by mail was prohibited. At issue was Article 10 of the Convention that provided if the country of destination does not object, the Convention shall not interfere with "(a) the freedom to send judicial documents, by postal channels, directly to persons abroad." Article 10 does not expressly refer to "service." The question before the Court was whether the Article 10(a) phrase "send judicial documents" encompasses sending documents for purposes of service.

The Court recognized the scope of the Convention is limited to service of documents. Therefore, "it would be quite strange" if Article 10 (a) didn't concern service of documents. Otherwise, Article 10 (a) would be superfluous. "In order for Article 10 (a) to do any work, it *must* pertain to sending documents for the purposes of service." The Court looked the history of the treaty, the negotiations and the construction adopted in other countries. These traditional tools of treaty interpretation resulted in the same conclusion-- Article 10 permits direct service by mail unless the receiving country objects to such service.

Therefore, in cases governed by the Hague Service Convention, service by mail is permissible if (1) the receiving country has not objected to service by mail and 2) service by mail is authorized under otherwise applicable law.

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