

UNITED STATES

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INTERNATIONAL FRAUD & ASSET TRACING
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1. LEGAL FRAMEWORK AND CAUSES OF ACTION

1.1 What are the principal civil causes of action available in cases of fraud?

Principal causes of actions include fraud, breach of contract, tort claims, civil conspiracy, conversion and other property-based claims, unjust enrichment, and fraudulent conveyance:

- **Fraud.** Fraud, under common law and statute, is among the most common causes of action in asset recovery. It arises when a defendant intentionally makes a material misrepresentation or omission on which the victim justifiably relies in acting or refraining from acting. Fraud must be pleaded with particularity under federal and state law, except for matters solely within the wrongdoer's knowledge such as intent.
- **Breach of contract.** Where a perpetrator breaches a contractual obligation, the victim may bring a breach of contract claim to recover damages from the breach.
- **Tort claims.** Where a perpetrator owed a duty of care not arising under contract, the victim may bring a claim for breach of that duty, including breach of fiduciary duty, negligence, and gross negligence.
- **Aiding and abetting, and civil conspiracy.** Most jurisdictions permit claims against those who knowingly and dishonestly assist a fraud.
- **Conversion, replevin, and property-based claims.** Where a perpetrator wrongfully exercises dominion over property, the victim may assert claims such as conversion (for the property's value) and replevin (for the property's return).
- **Unjust enrichment and money had and received.** Equitable claims arise where a party has retained a benefit at the victim's expense and equity requires that the benefit be returned to the victim.

1.2 Are there specific statutory regimes addressing fraud, dishonesty or financial crime?

There are several federal and state statutes that create civil remedies for fraud.

Racketeer Influenced and Corrupt Organizations Act (RICO)

RICO imposes civil and criminal liability where a defendant conducts an enterprise through a pattern of racketeering activity, including repeated fraud-based predicate acts. It allows aggregation of related misconduct, extends liability to enterprise participants, and provides for treble damages.

Fraudulent conveyance

Most states have adopted and incorporated provisions from the Uniform Fraudulent Transfer Act. Fraudulent conveyance claims arise when a debtor transfers assets for insufficient value or in bad faith, typically to frustrate creditors. Creditors can bring claims against third-party transferees that received assets from a debtor through a fraudulent transfer.

2. JURISDICTION AND APPLICABLE LAW

2.1 When will the local courts accept jurisdiction over international fraud claims?

Federal courts will exercise jurisdiction in a civil case where they have personal jurisdiction over the defendant and subject-matter jurisdiction over the action.

A defendant can object to the court's jurisdiction under rule 12(b) of the Federal Rules of Civil Procedure. Failure to raise a personal jurisdiction defense at an early stage can result in waiver. Subject-matter jurisdiction can be raised at any time.

2.2 What connecting factors are relevant?

Courts may exercise personal jurisdiction over a defendant based on the:

- location of assets;
- location of the transactions;
- defendant's residence or citizenship, or both;
- defendant's contacts with the jurisdiction; or
- choice of forum clauses in related contracts.

Federal courts can only exercise subject-matter jurisdiction in two scenarios – either where diversity jurisdiction exists, that is, the amount in controversy exceeds USD 75,000 and the plaintiffs' citizenship is different from the defendants'; or where the dispute arises under federal law. All bankruptcy cases in the United States are governed by federal law in specialized federal bankruptcy courts.

State courts may have overlapping jurisdiction but many cases subject to federal jurisdiction may be "removed" from state to federal court.

2.3 How do courts approach conflicts of law in fraud and asset tracing cases?

Federal courts typically apply the choice-of-law rules of the forum state to determine the governing substantive law. Usually, this means that federal courts will assess a conflict of laws under the "most significant relationship" test, which considers:

- where an injury occurred;
- where the conduct causing the injury occurred;
- domicile, residence, nationality, place of incorporation and place of business of the parties; and
- where the relationship, if any of the parties, is centered.

State court practice varies from state to state but is broadly similar.

3. ASSET TRACING PRINCIPLES

3.1 What assets can be traced?

A party can trace cash and bank accounts, securities, real property, corporate assets and interests, and digital assets. United States state and federal courts have powerful discovery procedures.

3.2 Is tracing possible through mixed funds?

Yes. US courts generally permit tracing through commingled or mixed funds in both civil and criminal matters. Where tainted and untainted funds are held in the same account, courts may apply various tracing methodologies, including the Lowest Intermediate Balance Rule and other equitable tracing principles. In criminal forfeiture proceedings, the government generally must establish the requisite nexus between the property sought and the underlying offense.

3.3 Are proprietary claims recognized in fraud cases?

Yes. Victims may assert interests in specific property or its proceeds through remedies such as constructive trusts, equitable liens, tracing, and subrogation, and *in rem* actions. These mechanisms allow claims against third parties and may provide priority over unsecured creditors.

3.4 How do courts deal with tracing into substituted assets?

Under federal law, courts may order confiscation of substitute assets that are equal in value to original property. Substitution is allowed where the original property has been dissipated, commingled, or placed beyond the court's jurisdiction.

4. INTERIM AND PROTECTIVE REMEDIES

4.1 What interim remedies are available to preserve assets?

Interim remedies are available from state and federal courts. While state law varies by jurisdiction, generally, it allows for arrest, attachment, garnishment, replevin, sequestration, and other remedies. Federal courts provide similar remedies and apply the law of the forum state.

A party can seek equitable relief to prevent dissipation by making a substantial showing that:

- it is likely to succeed on the merits;
- a judgment will be rendered ineffective without relief;
- its claims are greater than any potential counterclaims; and
- the public interest will be best served by the remedy.

Although US courts do not enforce foreign freezing orders, they do grant injunctions preventing parties subject to their jurisdiction from transferring assets over which they have custody or control, regardless of location. Such injunctions can be issued during litigation or at its conclusion.

5. DISCLOSURE AND INFORMATION GATHERING

5.1 What disclosure tools are available to identify assets and wrongdoers?

The Federal Rules of Civil Procedure, and state law equivalents, allow for broad discovery into assets and wrongdoers through document requests, interrogatories, and depositions. A party may object to such requests on grounds including relevance and proportionality or privilege. The requesting party may then ask a court to compel production. If a motion to compel succeeds, the objecting party may be required to pay associated fees and subject to other sanctions, including striking of pleadings, adverse inferences, and contempt.

5.2 Is pre-action disclosure available?

Pre-action disclosure is available under certain circumstances. Some states allow discovery by prospective plaintiffs. For example, in New York, discovery is allowed "to aid in bringing an action, to preserve information or to aid in arbitration" but must be obtained by court order. Other states have similar statutes. Most require the party to show that it has a meritorious cause of action and that the disclosure sought is material and necessary and to obtain court approval.

6. CROSS-BORDER COOPERATION AND JUDICIAL ASSISTANCE

6.1 Can local courts assist foreign proceedings involving fraud and asset recovery?

A party may seek such assistance either through an application to a federal district court for discovery under 28 U.S.C. section 1782 or through a letter rogatory issued by a non-US tribunal and delivered directly to the district court under 28 U.S.C. section 1781.

A section 1782 application requires:

- personal jurisdiction over the discovery target;
- that the discovery be for use in an actual or contemplated proceeding before a foreign or international tribunal;
- that the application be made by that tribunal or an interested person; and
- that the balance of public and private interest factor favors granting discovery.

See generally *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004). A successful applicant may access the entire panoply of US discovery practice to obtain evidence for use in the foreign proceeding.

A foreign tribunal may also send a letter rogatory to the US Department of State to facilitate the request under section 1781. The requesting party will be permitted to seek the same scope of discovery under section 1781 as is allowed under section 1782.

Other avenues for local court assistance include Federal Rule of Civil Procedure 69(2), which allows a party to seek discovery in aid of an existing money judgment or execution of such judgment, or equivalent state laws.

6.2 How effective is cooperation with foreign courts and regulators?

US courts effectively cooperate with foreign courts and regulators through international judicial assistance mechanisms including section 1782, mutual legal assistance treaties, bilateral memorandums of understanding, and other international treaties to which the United States is a party. Some US state and federal courts have relatively greater experience than others with transnational procedures.

6.3 Are there treaties or international conventions commonly relied upon?

Parties can use the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Evidence Convention”), to which 69 countries including the United States are contracting parties, or the Inter-American Convention on Letters Rogatory. Under the Hague Evidence Convention, a litigant can ask the court for a “letter of request” for documents or witness testimony to a foreign jurisdiction’s central authority. Whether their relief is granted and the scope of the relief is dependent on the foreign jurisdiction’s laws and procedures. When a Hague Evidence Convention request is made, all parties will be notified, and the request will be publicly docketed.

Where a jurisdiction is not a party to the Hague Evidence Convention, a litigant may have access to other international treaties, such as the Inter-American Convention on Letters Rogatory, or may ask the court to issue a letter rogatory directly to the foreign court.

7. ENFORCEMENT OF FOREIGN JUDGMENTS AND ORDERS

7.1 Can foreign judgments in fraud cases be recognized and enforced?

Foreign money judgments, including those arising from fraud, are routinely recognized and enforced in the United States. Most states have adopted the 1962 Uniform Foreign Money-Judgments Recognition Act or the 2005 Uniform Foreign-Country Money Judgments Recognition Act, under which a judgment must be final, conclusive, and enforceable. Courts recognize foreign judgments if the foreign court had jurisdiction and provided procedures consistent with due process. Once recognized, the judgment is enforced like a domestic judgment. Recognition may be denied for lack of jurisdiction or due process or if notice or service was improper.

7.2 What is the process for enforcing foreign freezing or confiscation orders?

Foreign freezing or confiscation orders are not automatically enforceable in the United States. A party generally must first obtain recognition of the foreign judgment or order or seek equivalent relief from a US court. Once recognized, enforcement proceeds through applicable federal or state post-judgment procedures. Creditors may execute against assets via a writ of execution, directing a sheriff or marshal to seize and sell non-exempt property. See generally N.Y. C.P.L.R. 52; Fed. R. Civ. P. 69. Creditors may also serve restraining notices, seek turnover orders, or pursue garnishment and other proceedings to reach assets held by third parties.

8. INSOLVENCY AND FRAUD

8.1 How does insolvency law interact with fraud and asset recovery claims?

Fraud frequently culminates in insolvency proceedings in federal bankruptcy court. Once a debtor files for bankruptcy, an automatic stay halts individual actions by victims. A trustee is appointed to marshal and distribute assets according to statutory priorities. Insolvency thus shifts recovery from individual litigation to a centralized, court-supervised framework.

8.2 Can insolvency office holders bring fraud or recovery actions?

Yes. Trustees have broad powers to pursue fraud-related recovery actions on behalf of the estate.

8.3 Can assets dissipated through fraud be clawed back in insolvency?

The Bankruptcy Code and related statutes permit claw-back of assets transferred before insolvency. Trustees may avoid preferential transfers made within 90 days (or one year for insiders) and fraudulent transfers made within two years, including those intended to hinder creditors. Trustees can also recover assets from subsequent transferees (subject to various defenses). See 11 U.S.C. section 550. Statutes such as the Uniform Fraudulent Transfer Act extend the reach-back period and may enable broader recovery of dissipated assets for equitable distribution.

9. CRIMINAL PROCEEDINGS AND CIVIL RECOVERY

9.1 Can criminal proceedings and civil recovery run in parallel?

Yes, but courts may stay civil cases while criminal proceedings are pending. Managing parallel actions can be difficult, particularly where witnesses invoke the privilege against self-incrimination. If simultaneous adjudication is impractical, the civil case will typically be postponed.

Nevertheless, litigants should not delay filing civil claims or rely on outcomes of the criminal case. Doing so risks the statute of limitations expiring, and criminal restitution, if ordered, may not fully compensate victims. Differing burdens of proof means that civil claims may succeed even where criminal prosecutions fail.

9.2 Are there civil confiscation or non-conviction-based forfeiture regimes?

Yes. Administrative and civil forfeitures do not require criminal conviction. In administrative forfeitures, the government seizes property and provides notice of its intent to seek confiscation. If a claimant contests confiscation, the government must return the property and commence a civil forfeiture or include the property in a criminal indictment.

Civil forfeiture actions are *in rem*. The government must connect the property and crime only by a preponderance of evidence, while the property owner must affirmatively challenge the forfeiture. The property owner may also petition for a reduction in the amount of property forfeited. Several state and federal statutes authorize civil forfeiture.

9.3 Can victims participate in, or benefit from, criminal confiscation?

Victims may not directly participate in criminal confiscations but may benefit from such confiscations. In particular, victims may apply for and receive confiscated assets.

9.4 How are recovered assets distributed to victims?

There are a variety of government programs that work to return civilly and criminally forfeited assets to victims. These exist separately from fraud victims' own civil causes of action.

10. LIMITATION PERIODS AND DEFENSES

10.1 What limitation periods apply to fraud claims?

Time limitations for commencing civil proceedings vary depending on the claim asserted and the jurisdiction where the action is brought. By way of example, the statute of limitations for fraud in New York requires an action to be commenced within six years of the event or within two years of its discovery. Florida, by contrast, applies a four-year statute of limitations. Parties should consult local practitioners for guidance.

10.2 Does fraud suspend or extend limitation periods?

The limitations period for fraud claims varies across states but is generally tolled until the fraud is discovered. A court may also equitably toll the commencement of

the limitations period, particularly where the defendant's misconduct prevented the plaintiff from filing suit.

10.3 What common defenses are raised in fraud and tracing cases?

One common defense is that the plaintiff's claims are time barred. Another is the plaintiff's failure to meet the pleading burden. Federal law requires a party to "state with particularity the circumstances constituting fraud." See Fed. R. Civ. P. 8, 9(b). State laws require this heightened pleading standard as well. This means that the facts constituting the fraud must be specifically alleged, and every element of the cause of action must be alleged factually and with particularity. If a fraud claim survives the threshold defenses, the specifically pleaded elements can also be attacked on the merits. Defendants may also contest whether the plaintiff's damage can be directly linked to the alleged fraud.

11. REMEDIES AND RECOVERY TOOLS

11.1 What remedies are available upon a successful claim?

Claimants may recover actual and consequential damages. Exemplary damages may be available for common law tort claims where the defendant's acts are sufficiently egregious.

Where money damages alone are insufficient or assets are being wasted, state and federal courts have broad discretion to award equitable remedies such as, without limitation:

- an accounting of assets;
- attachment, seizure, and turnover of assets;
- a constructive trust;
- rescission and reformation of a contract; and
- injunctions and other equitable relief to ensure the claimant's compensation.

11.2 Can constructive trusts or equitable liens be imposed?

See Question 11.1, above, and Question 11.3, below.

11.3 How are recovered assets realized and distributed?

Recovered assets can generally be realized and distributed through the following methods:

- execution;
- seizure;
- constructive trusts;
- turnover orders; and
- receivership.

See Question 7.2, above (discussing enforcement of foreign money judgments).

11.4 Are interest and costs recoverable?

Typically, each party must bear its own litigation costs, including counsel fees. If a statute or contract contains a fee-shifting clause, a court will award reasonable fees as appropriate.

12. PRACTICAL AND STRATEGIC CONSIDERATIONS

12.1 How claimant friendly is the jurisdiction for fraud and asset recovery?

The United States is a claimant-friendly jurisdiction, with procedural rules allowing for broad discovery. Courts effectively cooperate with foreign jurisdictions through federal statutes, mutual legal assistance treaties, bilateral memorandums of understanding, and other international treaties to which the United States is a party. The United States also has fewer bank secrecy and data privacy laws that may narrow disclosure in other countries.

12.2 How quickly can urgent relief be obtained?

The timeframe for obtaining relief varies widely across state and federal courts.

12.3 What are the typical costs and funding options (including litigation funding)?

Costs vary based on jurisdiction, types of claims, case complexity and sophistication of counsel, experts, and vendors. Courts also control costs to prevent undue burden and expense by imposing reasonable limits on discovery, motion practice, and the length of hearings and trials.

Though many cases proceed based on traditional hourly fee arrangements, alternative fee arrangements (AFAs) are increasingly common. The most common is a contingency fee agreement, under which an attorney's compensation comes from a percentage of any recovery. AFAs can be fully contingent, partially contingent, or based on estimates with a cap on each stage of the case.

Third-party litigation funding is increasingly common. Third-party funding can help an underfunded claimant bring a meritorious claim by paying a portion of counsel fees and expenses. Third-party funding terms vary but are typically on a non-recourse basis where a funder pays all or some of a claimant's fees and costs in exchange for participation in any recovery.

12.4 Are there any local procedural pitfalls practitioners should be aware of?

The United States has 94 federal district courts, 90 separate federal bankruptcy courts, 13 federal courts of appeal and a federal Supreme Court, as well as 50 states, each with its own multitiered judicial system. Both state and federal courts routinely apply both state and federal law. Foreign practitioners should be mindful of the interplay of state and federal law and procedure.

13. RECENT DEVELOPMENTS AND TRENDS

13.1 Have there been any significant recent cases or legislative reforms?

Collectively, recent legislative reforms and cases reflect a shift toward formal regulation of digital assets combined with aggressive enforcement aimed at tracing, freezing, and confiscating illicit proceeds. An increasing proportion of fraud and asset recovery cases will involve digital assets.

- In 2025, the federal government enacted the GENIUS (Guiding and Establishing National Innovation for US Stablecoins) Act, establishing the first comprehensive federal regulation for stablecoins. It requires full reserve backing, imposes disclosure obligations, and subjects issuers to the Bank Secrecy Act and anti-money laundering requirements.

- Federal agencies continue to target cryptocurrency fraud and laundering schemes. Recent prosecutions include the dismantling of a cryptocurrency laundering service that processed approximately USD 389 million in illicit digital assets and a multijurisdictional enforcement action resulting in the seizure of more than USD 8 billion in cryptocurrency.

13.2 Are courts expanding or restricting asset tracing or recovery tools?

Courts continue to support asset tracing and recovery efforts. However, as the use of digital assets and artificial intelligence increases, practitioners should remain vigilant to shifts in the courts' attitude towards these technologies.

13.3 Are there emerging trends in international fraud litigation in this jurisdiction?

- Increased fraud involving digital assets, including investment scams, laundering services, and cross-border frauds that exploit decentralized financial infrastructure.
- Increased use of artificial intelligence, blockchain analytics, and digital identity tools to detect illicit activity and support asset recovery efforts in cross-border cases.
- Increased regulation of digital assets.

Fraud litigation in the United States, as elsewhere, is increasingly shaped by digital asset markets, cross-border enforcement cooperation, and evolving regulatory frameworks.

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Marco Molina is the leader of Baker & Hostetler's International Commercial Arbitration practice and a senior member of the Global Asset Tracing and Recovery and Latin America practices, where he represents sovereign states, multinational corporations and private investors in complex cross-border disputes. He has extensive experience in high-stakes international arbitrations under the ICSID, SIAC, UNCITRAL, HKIAC, LCIA, ICC, ICDR, CPR and AAA rules, as well as in related litigation before US federal and state courts. Marco's practice spans investor-state and commercial arbitration, cross-border judgment and award enforcement, global asset tracing and the rapidly evolving digital assets and blockchain sector.



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