

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA Ex
Rel, et al.,

v.

THE PUBLIC WAREHOUSING
COMPANY K.S.C.
also known as
Agility, et al.,

Defendants.

CIVIL ACTION FILE
NO. 1:05-CV-2968-TWT

ORDER

This is a qui tam action. It is before the Court on the Plaintiff's Motion for Service by Alternative Means on Defendants Residing in Kuwait [Doc. 132]. Rule 4(f)(3) provides for service "by other means not prohibited by international agreement, as the court orders." The United States seeks service on PWC by serving its domestic counsel and by publication, and seeks service on The Sultan Center by email and by publication. These methods of service are not prohibited by international agreement, and PWC in its Opposition does not contest this fact. Further, these methods of service meet due process requirements because they are reasonably

calculated to apprise defendants of the pendency of the action. PWC raised no challenge to the assertion that there exists adequate communication between PWC and domestic counsel to ensure that PWC would receive adequate notice, nor did PWC contest that service via publication would provide adequate notice. March of 2016 will mark the five-year anniversary of the Government's first attempt to serve the original complaint pursuant to the Hague Convention. Yet in the five years the Government has attempted to serve its complaints in intervention, the Kuwait Central Authority has never responded to the United States Government's repeated requests to serve The Sultan Center, and responded to the Government's repeated requests to serve the PWC defendants only by returning the original complaint unserved because the PWC defendants denied they were properly named. More recent attempts to communicate with the Kuwait Central Authority have been met with a literal locked door, as the Kuwait Central Authority has refused to even accept delivery of the U.S. Central Authority's communications. PWC's claim that the parties are engaged in an ongoing "bilateral process" is incorrect.

As noted in the 1993 Advisory Committee notes for Rule 4(f), while the Hague Convention does not specify a time frame within which a foreign country's central authority must complete service, Article 15 provides for alternative methods if the central authority does not respond to a service request within six months. The

Advisory Committee expressly noted that on “occasions when the signatory state was dilatory or refused to cooperate for substantive reasons . . . resort may be had to the provision set forth in subdivision (f)(3).” Five years of attempting to work with the Kuwait Central Authority is long enough. The methods proposed by the Government seek to comport with the requirements of Rule 4(f), in a situation where the foreign central authority has failed to effectuate a Hague service request, and refuses to acknowledge communications from the requesting country, while also seeking to minimize any offense to Kuwaiti law. See Prewitt Enterprises, Inc. v. Organization of Petroleum Exporting Countries, 353 F.3d 916, 927 (11th Cir. 2003) The Plaintiff’s Motion for Service by Alternative Means on Defendants Residing in Kuwait [Doc. 132] is GRANTED.

SO ORDERED, this 4 day of February, 2016.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge