

NY Court of Appeals Finds Personal Jurisdiction Based on Use of NY Correspondent Bank Accounts

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A sharply divided *New York Court of Appeals* recently held that defendants who allegedly made intentional and repeated use of New York correspondent bank accounts for money laundering thereby purposefully transacted business related to the plaintiffs' claims, and thus were subject to the personal jurisdiction of the New York courts. According to the three-judge dissent, the decision, [*Rushaid v. Pictet & Cie*](#), broke with 40 years of precedent, expanding the reach of the state's long arm statute to encompass individuals who performed no acts directed at New York. Because correspondent bank accounts enable foreign banks to facilitate transactions in U.S. currency and the U.S. market, and New York is the home of many correspondent banks, any expansion of personal jurisdiction in New York based on correspondent banking relationships could have a significant impact. Courts and practitioners may have to reconsider their assumptions about personal jurisdiction in future cases.

In *Rushaid*, the plaintiffs were Saudi companies that had a contract to build oil rigs in Saudi Arabia. Some of their employees allegedly accepted bribes and kickbacks from vendors. Defendants were Pictet & Cie ("Pictet"), a Swiss bank, its general partners, and one of its executives. One of the individual defendants allegedly set up an offshore "bogus" company to receive the bribes. The vendors wired funds to Pictet's New York correspondent bank accounts, and the funds were then transferred to the "bogus" company's Swiss account prior to being distributed to the employees. Plaintiffs sued, alleging that the defendants aided and abetted the employees' breaches of fiduciary duty and conspired with them. The defendants moved to dismiss on multiple grounds, and the motion court dismissed for lack of personal jurisdiction. The intermediate appellate court affirmed, holding that the defendants merely carried out their clients' instructions, without purposefully availing themselves of the privilege of conducting business in New York. The Court of Appeals reversed.

Under [CPLR 302\(a\)\(1\)](#), the relevant part of New York's long arm statute, to be subject to personal jurisdiction, a defendant must have conducted sufficient activities to have transacted business in state, and the claims must arise from the transactions. Reviewing its precedents regarding defendants with correspondent banking relationships in New York, the four-judge majority observed that repeated, deliberate use of New York correspondent banks by a foreign bank demonstrates volitional activity constituting the transaction of business in state and satisfying the first prong of the test. Applying the test to the allegations in the complaint and evidence the plaintiffs presented in opposition to the motion to dismiss, the court concluded that the first prong was satisfied here. The

court noted that the vendors sent millions of dollars of bribes to New York banks in multiple transfers over a period of years, and that the defendants knew of these transfers, knew they were the proceeds of an illegal scheme – indeed, were orchestrating the scheme – and credited the funds to the “bogus” company as an essential part of the scheme. The court further held (and the dissent did not contest) that the allegations easily satisfied the second prong in that they demonstrated a sufficient nexus between the transactions and the claims the plaintiff pled.

The dissent would have dismissed on the ground that the plaintiffs had not identified any volitional act by the defendants that was directed at New York. It saw no actual allegation that the defendants “orchestrated,” in the majority’s words, the laundering of funds to Pictet’s New York correspondent bank account. Instead, in the dissent’s view, only the vendors took actions directed at New York. The dissent concluded that the majority’s decision therefore upset 40 years of precedent under which maintenance of a New York correspondent account, standing alone, has not been enough to confer personal jurisdiction.

The mission of the Court of Appeals is to settle and declare the law. Divided decisions can be disturbing because they create doubt as to whether the legal standards are clear. In this case, a concurrence by Judge Garcia, which emphasized the key facts, may provide some reassurance. As the concurrence pointed out, the complaint alleged that one of the defendants knew the corrupt Saudi employees, knew they were accepting bribes, set up their Pictet account, helped set up the “bogus” company – in short, was intimately involved in every aspect of the scheme. In light of this conduct, the fact that the defendants did not specifically direct funds into the New York correspondent bank accounts – although it troubled the dissent and the lower court, and differentiates the case from others in which personal jurisdiction has been found – was not dispositive. Only time will tell whether *Rushaid* has opened floodgates or was merely the result of exceptional facts.

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