

The Professional Liability Law Blog

BRINGING PROFESSIONAL LIABILITY INFORMATION TO CALIFORNIA ATTORNEYS,
INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



[California Law Firm Subject to Personal Jurisdiction in New York, but Entitled to Binding Arbitration of Legal Malpractice Claim](#)

Wednesday, October 13th, 2010

A Los Angeles law firm spent two years prosecuting an action in California on behalf of its client, a New York venture capital firm. The client then fired the firm and brought a claim for legal malpractice against it in New York for having allegedly failed to include a claim for breach of fiduciary duty in the California action. The law firm moved to dismiss the complaint for lack of personal jurisdiction.

On September 14, 2010, the New York County Supreme Court found specific jurisdiction over the law firm under New York's long arm statute, which specifies that jurisdiction exists if a non-resident "[T]ransacts any business within the state or contracts anywhere to supply goods or services in the state" Although the court acknowledged that most of the law firm's representation of the client occurred remotely, minimum contacts existed because a partner of the law firm made one trip to the client's New York office to solicit business and to negotiate the firm's representation in the California action. The law firm also maintained communications with the client in New York via phone, fax, email and regular mail.

Although the law firm lost on the issue of personal jurisdiction, it did not end up having to defend the malpractice claim in New York. This is because it made an alternative motion seeking enforcement of a binding arbitration clause contained in its retainer agreement which applied to "all disputes [that] arise between [client] and the Firm." Under the arbitration clause, arbitration was to be conducted in Los Angeles. The court ruled that the arbitration clause was enforceable. Citing *Schatz v. Allen Matkins Leck Gamble & Mallory LLP*, 45 Cal.4th 557 (2009), the court found that by passing on the opportunity to go to non-binding fee arbitration under the California Mandatory Fee Arbitration Act, the client had waived its right to do so. This meant that the terms of the binding arbitration clause in the retainer agreement came into effect, requiring arbitration in Los Angeles. The decision is [Sands Bros. Venture Capital, LLC v. Burriss, Schoenberg & Walden, LLP](#), 2010 NY Slip Op 51619; 28 Misc 3d 1263.