

Court Rules That Multinational Financial Institutions May Be Required To Turn Over Customer's Assets Held Outside Of The United States To Satisfy Judgment Against Customer

In a case that will undoubtedly have a significant impact on multinational financial institutions around the world, the New York Court of Appeals issued a ruling that requires multinational financial institutions to deliver the assets of its customers – wherever located throughout the world -- into New York to satisfy a judgment that has been entered against the institution's customer. For example, if a customer has accounts in the Middle East at a financial institution over which New York has personal jurisdiction, the financial institution may be ordered to turn over the assets in the Middle East to satisfy the judgment in New York. This is true even if the customer does not have any relationship with New York but merely holds accounts with a financial institution that is present in New York. Enforcement in New York can also take place even when the judgment was obtained in another state in the United States. In light of this broad ruling, it is likely that financial institutions with operations in New York will find themselves embroiled in enforcement proceedings as judgment creditors seek to collect on judgments against world-wide accounts.

The case is entitled *Koehler v. Bank of Bermuda*, 12 N.Y.3d 533, 833 N.Y.S.2d 763 (2009). The plaintiff in the case obtained a default judgment in the State of Maryland for approximately \$2 million against a former business partner who resided in Bermuda. The defendant had deposited assets (specifically stock certificates as collateral for a loan from the bank) with the Bank of Bermuda in Bermuda. Plaintiff proceeded to ask the New York courts to order the Bank of Bermuda to turn over the assets being held for defendant, even though the assets were located in Bermuda. Defendant did not have any other assets in New York and did not have any accounts with the Bank of Bermuda in New York. However, the Bank of Bermuda did transact business in New York and was subject to the personal jurisdiction of the New York courts. The New York Court of Appeals (which is the highest court in New York) ultimately held that the courts have authority to order assets located outside of the United States be turned over to satisfy a judgment against one of its customers.

The implications of *Koehler* are potentially far reaching. Judgment creditors will undoubtedly use the *Koehler* decision as an additional weapon to secure enforcement of judgments that might otherwise go unsatisfied because of the difficulty getting foreign courts outside of the United States to recognize and enforce the judgment. This is particularly true where, as in the *Koehler* case, the judgment was obtained by default. The risk of enforcement against world-wide accounts and assets in New York makes it risky for defendants to ignore litigation in the United States if they hold accounts and assets with financial institutions that do business in New York, even if they do not believe that a U.S. court has personal jurisdiction over them. Although the *Koehler* decision is limited to enforcement procedures under New York law, other state courts that have similar enforcement provisions may look to the *Koehler* decision as persuasive precedent for similar enforcement mechanisms in their courts. For this reason, it is important to defend litigation claims aggressively by appropriately challenging the jurisdiction and venue of such claims before they proceed to judgment; otherwise, the risk of enforcement against world-wide assets is a serious one in light of the *Koehler* decision.

For Further Information, Please Contact:

Nicholas P. Connon, Co-Managing Partner; Chair, Middle East Practice Group

Tel: +1.626.638.1757

Middle East Practice Group

Nicholas P. Connon, +1.626.638.1757, nconnon@connonwood.com
Paro Astourian, +1.626.371.0338, pastourian@connonwood.com

David R. Scheidemantle, +1.626.638.1752, dscheidemantle@connonwood.com
Robert A. de By, +1.626.638.1762 / +44.203.328.9010, rdeby@connonwood.com

www.connonwood.com