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COURT OF APPEALS

STATE OF NEW YORK

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LICCI, et al.,

Appellants,

-against-

No. 183

LEBANESE CANADIAN BANK, SAL,

Respondent.

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27 Madison Avenue  
Albany, New York 10010  
October 10, 2012

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE CARMEN BEAUCHAMP CIPARICK  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE THEODORE T. JONES

Appearances:

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Penina Wolicki  
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Case number 183,  
2 Licci v. Lebanese Canadian Bank.

3 Counselor?

4 MR. TOLCHIN: Good morning, Your Honor.

5 CHIEF JUDGE LIPPMAN: Good morning. Would  
6 you like any rebuttal time, counselor?

7 MR. TOLCHIN: Three minutes, Your Honor.

8 CHIEF JUDGE LIPPMAN: Three minutes. Go  
9 ahead. You're on.

10 MR. TOLCHIN: The more I went over this  
11 case, Your Honor, the less - - - Your Honors, the  
12 less that - - - I'm being rude. Robert Tolchin for  
13 the appellants. The less difficult it got every time  
14 I read it over. We are dealing with a cause of  
15 action that implicitly, just by definition, arises  
16 out of the transactions that are at issue.

17 CHIEF JUDGE LIPPMAN: What about the number  
18 of transactions here? Does - - - these kind of wire  
19 transfers, as a threshold issue, can they be  
20 considered doing business here in New York?

21 MR. TOLCHIN: I think the answer is  
22 definitely yes, Your Honor. We didn't have the  
23 benefit of jurisdictional discovery in the court  
24 below. But what we do know is the relationship  
25 between Lebanese Canadian Bank and AmEx Bank, it's

1 not - - - when we say a correspondent account, it's  
2 not like you can just call from Lebanon and over the  
3 phone say hey, I want to send a wire transfer and  
4 have it - - -

5 CHIEF JUDGE LIPPMAN: But we know letters  
6 of credit are not enough, right?

7 MR. TOLCHIN: No, but there's a - - -

8 CHIEF JUDGE LIPPMAN: What's the differ - -  
9 - how does - - - how do the wire transfers relate to  
10 letters of credit?

11 MR. TOLCHIN: A letter - - -

12 CHIEF JUDGE LIPPMAN: What do you have to  
13 have in terms of the actual being here?

14 MR. TOLCHIN: A letter of credit is a one-  
15 time thing. I need to pay you some money for some  
16 deal, and we establish a letter of credit that when  
17 you deliver the goods I give you the merchandise.

18 CHIEF JUDGE LIPPMAN: Okay. So what about  
19 wire transfer?

20 MR. TOLCHIN: This is an ongoing  
21 relationship where a bank in Lebanon wants to have  
22 the capacity of sending - - - of dealing in dollar  
23 transactions, of sending wire transfers and receiving  
24 wire transfers denominated in dollars. Because of  
25 the way the banking system works, it's far more

1 practical for the Lebanese bank to send dollar-  
2 denominated transactions through a bank in the United  
3 States.

4 CHIEF JUDGE LIPPMAN: These kinds of  
5 relationships, are they per se enough to - - - for a  
6 long-arm jurisdiction?

7 MR. TOLCHIN: Well - - -

8 CHIEF JUDGE LIPPMAN: These kinds of - - -

9 MR. TOLCHIN: - - - just - - -

10 CHIEF JUDGE LIPPMAN: - - - banking  
11 relationships - - -

12 MR. TOLCHIN: Okay, so - - -

13 CHIEF JUDGE LIPPMAN: - - - with AmEx in  
14 this case?

15 MR. TOLCHIN: - - - when you say a  
16 corresponding bank relationship per se, so you mean  
17 that a bank in Lebanon comes to New York, negotiates  
18 a correspondent banking agreement - - -

19 CHIEF JUDGE LIPPMAN: Is that per se  
20 enough?

21 MR. TOLCHIN: And just that, there's no  
22 transaction?

23 CHIEF JUDGE LIPPMAN: Well - - -

24 MR. TOLCHIN: I'm trying to define - - -

25 CHIEF JUDGE LIPPMAN: - - - of course there

1 are going to be transactions.

2 MR. TOLCHIN: Well, so now there's a  
3 transaction?

4 CHIEF JUDGE LIPPMAN: But if you're a  
5 correspondent bank relationship, does that general  
6 framework do it?

7 MR. TOLCHIN: Well, it depends what. I  
8 don't think anyone would have a hard time thinking  
9 about if the Lebanese bank sent a wire transfer, and  
10 there was a problem with that transfer - - - let's  
11 say AmEx Bank in New York didn't clear the  
12 transaction or the funds turned out to be stolen - -  
13 -

14 CHIEF JUDGE LIPPMAN: There were no  
15 employees here in New York, right?

16 MR. TOLCHIN: No. They had a - - - they  
17 had a long - - - consistent, constant, ongoing  
18 relationship that was larger than just the  
19 transactions at issue in this case.

20 JUDGE CIPARICK: So what makes this do it  
21 for us? Why should - - -

22 MR. TOLCHIN: I can't - - -

23 JUDGE CIPARICK: I'm sorry, I'm not talking  
24 into the microphone. How is this different than  
25 others? Why would jurisdiction attach here? Why

1 would personal jurisdiction attach?

2 MR. TOLCHIN: Because the transactions that  
3 we're suing about are the transactions that came  
4 through this corresponding banking account. Unlike  
5 other cases where people try to say because you have  
6 this corresponding banking account, then we can sue  
7 you about something else, or something that didn't  
8 arise out of those transactions - - -

9 JUDGE SMITH: Can you - - - that's what's  
10 sort of bothering me. Can you spell out as  
11 specifically as you can the relationship between the  
12 wire transfers and the rocket attacks that hurt your  
13 clients?

14 MR. TOLCHIN: The cause of act - - - the  
15 cause of action that we're alleging in the underlying  
16 case is - - - and that - - - whether we state a cause  
17 of action and what the contours of that cause of  
18 action are, are not before this court today, although  
19 they may be some other time - - - but the claim as  
20 asserted in the complaint is that because these  
21 transactions - - - because these wire transfers were  
22 sent, the plaintiffs are entitled to recover from  
23 Lebanese Canadian Bank.

24 JUDGE SMITH: And I can see the point that  
25 if the bank gives money to Hizballah, and Hizballah

1 uses it to essentially to finance an attack in which  
2 your people are injured, I can see - - - I can  
3 certainly assume, and we have to assume for the sake  
4 of the argument, that the bank is liable. The  
5 question is whether they can be sued in New York.  
6 How does New York relate to - - - what role exactly  
7 does New York play in the financing?

8 MR. TOLCHIN: New York allows - - - New  
9 York banks facilitate the Lebanese Canadian Bank  
10 being able to send and receive dollar transactions.  
11 New York - - - if there's no jurisdiction - - -

12 JUDGE GRAFFEO: Does the - - - does the  
13 record indicate that the American bank knew what  
14 these wired funds were being used for?

15 MR. TOLCHIN: This record doesn't really  
16 deal with that. That was the case against American  
17 Express Bank, AmEx Bank, which was another part of  
18 this case, which was dismissed and is not on appeal  
19 here.

20 The record certainly indicates that  
21 Lebanese Canadian Bank, our defendant, was fully  
22 aware, couldn't help but be aware. And in fact, its  
23 connections to Hizballah and money laundering  
24 activities for Hizballah, as we discussed in the  
25 reply brief, are far bigger than the transactions

1           that we allege in this case.

2                   JUDGE PIGOTT: How do you allege - - -

3                   JUDGE CIPARICK: What's the - - -

4                   JUDGE PIGOTT: - - - this transaction - - -

5           can you give me an example of what a transaction

6           we're talking about is? I mean, the Shahid (Martyrs)

7           have an account with the LCB? Is that where it

8           starts?

9                   MR. TOLCHIN: I got lost in your question,  
10          Judge.

11                  JUDGE PIGOTT: I'm trying to figure - - -  
12          how does this hap - - - you say that they essentially  
13          launder money through New York, right?

14                  MR. TOLCHIN: If somebody wants to send  
15          Hizballah money - - -

16                  JUDGE PIGOTT: Right. Now, let's - - - can  
17          you walk me through how it is that the Lebanese  
18          Canadian Bank does something in New York that then  
19          ends up in the Lebanese Canadian Bank in Beirut?

20                  MR. TOLCHIN: Transactions work both ways.  
21          They can either be sending or receiving money.

22                  JUDGE PIGOTT: Make one up. Just - - -

23                  MR. TOLCHIN: Well, it just - - -

24                  JUDGE PIGOTT: - - - I'm just trying to get  
25          down the road.

1 MR. TOLCHIN: - - - there's two  
2 possibilities. If they're sending money, you know -  
3 - -

4 JUDGE PIGOTT: When you say "they", who are  
5 you talking about?

6 MR. TOLCHIN: Shahid Foundation, Hizballah.

7 JUDGE PIGOTT: All right. Just pick one.  
8 So the Shahid (Martyrs) say we got to get some money  
9 to Beirut, and the only way we can do it is to get it  
10 into American dollars, or the only way we can do  
11 something is to do something. Can you walk me  
12 through that?

13 MR. TOLCHIN: We need to get some dollars -  
14 - -

15 JUDGE PIGOTT: We, Shahid (Martyrs).

16 MR. TOLCHIN: We, Shahid (Martyrs) - - -

17 JUDGE PIGOTT: Are sitting in Lebanon.

18 MR. TOLCHIN: - - - need to get - - - are  
19 sitting in Lebanon, and we need to get some dollars  
20 to somebody who's - - - in connection with our  
21 terrorist activities.

22 JUDGE SMITH: And that guy is also in  
23 Lebanon?

24 MR. TOLCHIN: He could be in Lebanon, or he  
25 could be anywhere. He could be in Syria. He could -

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JUDGE PIGOTT: This is the used car stuff,  
for example?

MR. TOLCHIN: I'm sorry?

JUDGE PIGOTT: Is this where the used cars  
came in?

MR. TOLCHIN: Used cars is another way to  
launder money.

JUDGE PIGOTT: All right. So - - -

MR. TOLCHIN: I mean, people used to roll  
up carpets and ship them - - -

JUDGE PIGOTT: All right, so the people  
sitting in Beirut, the bad guys, say we need American  
dollars.

MR. TOLCHIN: Well, they can say we need to  
buy some guns.

JUDGE PIGOTT: All right. So take it from  
there.

MR. TOLCHIN: We want to finance a suicide  
bomber.

JUDGE PIGOTT: Okay. Take it from there.

MR. TOLCHIN: He needs to buy - - - he  
needs to buy a bomb belt.

JUDGE PIGOTT: Okay.

MR. TOLCHIN: Or there could be somebody

1 sitting in Saudi Arabia who says - - -

2 JUDGE PIGOTT: Okay.

3 MR. TOLCHIN: - - - I'd really - - -

4 JUDGE PIGOTT: Okay.

5 MR. TOLCHIN: - - - like to send money - -

6 -

7 JUDGE PIGOTT: Okay, we're going to finance

8 a suicide bomber. Here's - - - we've got Beirut

9 money. We can go do that.

10 MR. TOLCHIN: Right. But if you're both in

11 Beirut, you can just hand over the money.

12 JUDGE PIGOTT: Right, but where does the

13 New York - - -

14 MR. TOLCHIN: So if the suicide bomber - -

15 -

16 JUDGE PIGOTT: - - - I'm trying to get you

17 to New York so that you can say this is what we're

18 talking about and this is how it happens.

19 MR. TOLCHIN: Okay.

20 JUDGE PIGOTT: It's very pedestrian, but I

21 need to know.

22 MR. TOLCHIN: The connection to New York is

23 that if you want to send dollars from point A to

24 point B - - -

25 JUDGE PIGOTT: Can you make something up

1           like you're doing that? In other words, you've got  
2           somebody in Beirut, right - - -

3                     MR. TOLCHIN: Okay.

4                     JUDGE PIGOTT: - - - who is going to do bad  
5           things.

6                     MR. TOLCHIN: I'm going to tell you that we  
7           have somebody in Saudi Arabia.

8                     JUDGE PIGOTT: Okay.

9                     MR. TOLCHIN: And he's a multi-  
10          gazillionaire. And he likes to fund suicide bombers.

11                    JUDGE PIGOTT: Right, okay.

12                    MR. TOLCHIN: So he's got this hundred  
13          million dollars that he wants to send to Beirut.  
14          How's he going to do it? He can't put it in  
15          suitcases. They tried that in Gaza. They're  
16          carrying suitcases of money through tunnels. There's  
17          only so much you can carry.

18                    JUDGE PIGOTT: Okay.

19                    MR. TOLCHIN: It gets stolen. It gets  
20          confiscated. You need to be able to do it more  
21          reliably and quicker. So how can he transfer those  
22          dollars to Beirut? Well, he can go into his local  
23          branch of whatever bank he uses, wire it to Lebanese  
24          Canadian Bank. And the way the - - -

25                    JUDGE PIGOTT: In New York?

1 MR. TOLCHIN: - - - no, Lebanese Canadian  
2 Bank in Beirut is the ultimate beneficiary. He's the  
3 originator. Where does the money go? It couldn't go  
4 directly, because they're denominated - - -

5 JUDGE SMITH: So it has to go through New  
6 York on the way to the bank in Beirut?

7 MR. TOLCHIN: It has to go through  
8 someplace. It doesn't necessa - - - theoretically,  
9 it could go through anywhere in the world that does a  
10 business of clearing dollar transactions.

11 JUDGE SMITH: But you say - - - but you say  
12 that it does in fact, go through New York?

13 MR. TOLCHIN: It goes through New York,  
14 because - - -

15 CHIEF JUDGE LIPPMAN: Why does it go  
16 through New York in particular?

17 MR. TOLCHIN: Because Hiz - - -

18 CHIEF JUDGE LIPPMAN: Why do you think?

19 MR. TOLCHIN: Because Hizballah's bank in  
20 Lebanon has a standing relationship, a contractual  
21 relationship, with AmEx Bank in New York, pursuant to  
22 which - - -

23 CHIEF JUDGE LIPPMAN: That's just easiest  
24 for them - - -

25 MR. TOLCHIN: It's easiest - - -

1 CHIEF JUDGE LIPPMAN: - - - because they  
2 have the correspondent bank - - -

3 MR. TOLCHIN: - - - for them. And - - -

4 CHIEF JUDGE LIPPMAN: - - - relationship.

5 MR. TOLCHIN: - - - AmEx - - - and it's an  
6 ongoing business that AmEx Bank in New York makes  
7 money from. It's expedient for them. If we stamped  
8 it out, they might set up a clearinghouse - - -

9 CHIEF JUDGE LIPPMAN: Is this - - - is this  
10 the link in the chain, in this particular - - - what  
11 you're saying, where your clients were injured, is  
12 this the link that made it happen? Or is it a link  
13 among many?

14 MR. TOLCHIN: It is a major link among  
15 many. You know, you need - - - for that suicide  
16 bomber, you need suppliers, you need willing  
17 participants, you need planners. You also - - -

18 JUDGE GRAFFEO: Do you need the wire  
19 transfer to establish that they're doing business in  
20 New York?

21 MR. TOLCHIN: Do we need the wire trans - -  
22 - yes. Because the cases that have come before - -  
23 -

24 JUDGE GRAFFEO: That's why I asked if you  
25 if the American bank was aware of what these funds

1           were being used for. Because if we agree with you,  
2           doesn't this have some major ramifications for the  
3           banking industry in New York?

4                       MR. TOLCHIN: Well, our case here, Judge,  
5           is about the Lebanese bank. And I can understand - -  
6           -

7                       JUDGE GRAFFEO: I understand that. But if  
8           we say the wire transfers here supply a sufficient  
9           basis for jurisdiction under the CPLR - - -

10                      MR. TOLCHIN: Yes.

11                      JUDGE GRAFFEO: - - - then aren't some  
12           banks going to be - - -

13                      MR. TOLCHIN: More hesitant about - - -

14                      JUDGE GRAFFEO: - - - more hesitant - - -

15                      MR. TOLCHIN: Yes, and thankfully, I don't  
16           think there's a benefit - - -

17                      CHIEF JUDGE LIPPMAN: Won't you - - -

18                      JUDGE GRAFFEO: - - - to make wire  
19           transfers?

20                      CHIEF JUDGE LIPPMAN: - - - won't you be  
21           impacted greatly in this whole idea of this  
22           correspondent bank relationship? In other words - -  
23           -

24                      MR. TOLCHIN: This correspondent - - -

25                      CHIEF JUDGE LIPPMAN: - - - can this system

1 continue to exist?

2 MR. TOLCHIN: Yes. But this correspondent  
3 banking rel - - -

4 CHIEF JUDGE LIPPMAN: What makes this  
5 different than all the other correspondent bank  
6 relationships?

7 MR. TOLCHIN: Okay. All the other cases  
8 where the court has repeated the Amigo Foods - - -

9 CHIEF JUDGE LIPPMAN: That's - - -

10 MR. TOLCHIN: - - - language saying - - -

11 CHIEF JUDGE LIPPMAN: - - - that's the  
12 point.

13 MR. TOLCHIN: - - - merely maintaining a  
14 correspondent banking relationship is not enough.  
15 We're saying there's something more here than merely.

16 JUDGE CIPARICK: Well, what is that - - -

17 MR. TOLCHIN: If all Lebanese - - -

18 JUDGE CIPARICK: - - - something else?

19 MR. TOLCHIN: - - - Canadian Bank did was  
20 set up a relationship with a bank in New York just in  
21 case they ever need it, but they never actually did  
22 any transactions - - -

23 JUDGE READ: So it's the volume - - -

24 CHIEF JUDGE LIPPMAN: So what - - -

25 JUDGE READ: - - - it's the volume of

1 transactions that distinguishes this?

2 MR. TOLCHIN: It's number one, the volume;  
3 it wasn't just an incidental one-shot deal, and  
4 number two, the fact that our claims - - - our claim  
5 is based on these transactions.

6 JUDGE READ: And did - - -

7 CHIEF JUDGE LIPPMAN: What about Judge  
8 Graffeo's question, though. Do they have to know  
9 that that's what the money is being used for?

10 MR. TOLCHIN: Does who have to know? The  
11 difficulty I have with her question - - -

12 CHIEF JUDGE LIPPMAN: AmEx.

13 JUDGE CIPARICK: AmEx.

14 CHIEF JUDGE LIPPMAN: Does AmEx have to  
15 know?

16 MR. TOLCHIN: No. What AmEx knew is not  
17 relevant to this case. That's why I think we  
18 disconnected a little bit, Judge. It's the - - -

19 JUDGE GRAFFEO: Well, no. But other - - -

20 MR. TOLCHIN: - - - Lebanese bank knew.  
21 They're the ones who - - -

22 JUDGE GRAFFEO: - - - but the banking - - -  
23 the New York banking industry may be more reticent to  
24 engage in these wire transfers with foreign banks.

25 MR. TOLCHIN: Well, the Second Circuit's

1 decision in this case - - -

2 JUDGE CIPARICK: Right, Court - - -

3 MR. TOLCHIN: - - - said that dismiss the  
4 case against American Express Bank.

5 JUDGE CIPARICK: Wasn't that a - - -

6 MR. TOLCHIN: That's the New York bank.

7 JUDGE CIPARICK: - - - subject matter  
8 jurisdiction case?

9 JUDGE GRAFFEO: Right. But they still were  
10 initially a party in some litigation.

11 MR. TOLCHIN: Well, that's true.

12 JUDGE GRAFFEO: So there's some - - -  
13 there's some - - -

14 MR. TOLCHIN: That's true.

15 JUDGE GRAFFEO: - - - exposure.

16 MR. TOLCHIN: But I guess they can - - -  
17 they can take solace in the fact that the case  
18 against them was dismissed.

19 JUDGE GRAFFEO: So are the banks now going  
20 to have to ask what are you using these monies for  
21 before they wire the funds?

22 MR. TOLCHIN: They may. And I don't think  
23 that's a bad thing as a policy matter. For New York  
24 to become, let's call it, the Liberian port of  
25 correspondent banking, there's no benefit to that.

1 We close our eyes and we want to protect banks that  
2 don't ask which terrorist group - - -

3 CHIEF JUDGE LIPPMAN: Is that - - -

4 MR. TOLCHIN: - - - they're wiring millions  
5 of dollars to.

6 CHIEF JUDGE LIPPMAN: - - - is that - - -

7 MR. TOLCHIN: This is the group that blew  
8 up the marine barracks, I mean - - -

9 CHIEF JUDGE LIPPMAN: Counselor, is - - -

10 MR. TOLCHIN: - - - these are not nice  
11 people.

12 CHIEF JUDGE LIPPMAN: - - - is that  
13 consistent with the whole nature of banking  
14 relationships, that if in every bank relationship you  
15 ask, gee, you're putting that money in; what's it  
16 being used for, it really has tremendous  
17 implications?

18 MR. TOLCHIN: You know, when I - - - I know  
19 from my personal experience in the last ten years, if  
20 I send a wire to - - - I send - - - when I distribute  
21 money to a client, I get a call from the bank saying  
22 we have this check here, what is it? They ask. And  
23 it's not a bad thing. And when I've had cases  
24 dealing with wire transfers, you get a little report  
25 from the bank that's written in code, nobody knows

1 really who it came from, who it's going to. All the  
2 names are misspelled. I don't think there's any  
3 benefit to that.

4 CHIEF JUDGE LIPPMAN: Okay, counselor.

5 You'll have - - -

6 MR. TOLCHIN: It's not the jurisdictional  
7 issue, but it's - - -

8 CHIEF JUDGE LIPPMAN: Okay. You'll have  
9 some - - -

10 MR. TOLCHIN: - - - not something to be  
11 proud of.

12 CHIEF JUDGE LIPPMAN: - - - you'll have  
13 some rebuttal time. Let's hear from your adversary.

14 MR. SIEGFRIED: Good morning, Your Honors.  
15 Jonathan Siegfried for Lebanese Canadian Bank.

16 JUDGE CIPARICK: Can I just ask you about  
17 the Second Circuit case which counsel alluded to, the  
18 Kiobel case v. Royal Dutch Petroleum Company.

19 MR. SIEGFRIED: The Kiobel case. Yes.

20 JUDGE CIPARICK: What's happening with that  
21 case, and how does this impact this at all? And that  
22 was a subject matter jurisdiction case, right, as  
23 opposed to a personal jurisdiction?

24 MR. SIEGFRIED: In - - -

25 JUDGE CIPARICK: What's the connection?

1 MR. SIEGFRIED: In - - - well, first of  
2 all, there is a claim in this case under the Alien  
3 Tort Claims Act - - -

4 JUDGE CIPARICK: Um-hum.

5 MR. SIEGFRIED: - - - which is the issue  
6 that's before the Supreme Court in Kiobel.

7 JUDGE CIPARICK: Right.

8 MR. SIEGFRIED: And what the Supreme Court  
9 has done - - - Dennis - - - Judge Jacobs in the  
10 Second Circuit wrote the lead decision saying that  
11 there is no claim under international law against  
12 corporations and dismissed the cause of action. That  
13 went up to the Supreme Court. The Supreme Court - -  
14 - you know, it's always dangerous to predict what the  
15 Supreme Court will do.

16 JUDGE CIPARICK: Right.

17 MR. SIEGFRIED: But the Supreme Court, in  
18 its argument, in its initial argument last year,  
19 raised a further question. It not only seemed to be  
20 agreeing with Judge Jacobs, but it basically asked  
21 for a rebriefing on whether there was even  
22 jurisdiction in the courts for this kind of a case.

23 JUDGE SMITH: But does that really - - - I  
24 mean, that's just a question of whether we have three  
25 claims before us or two, isn't it?

1                   MR. SIEGFRIED: Yes. In other words, the  
2 Alien Tort Claims Act would go out. That would - - -

3                   JUDGE SMITH: But that - - - the issue we  
4 would have to decide is going to be the same,  
5 whichever way that case comes out?

6                   MR. SIEGFRIED: I think that's correct. I  
7 think that's correct.

8                   JUDGE GRAFFEO: Why isn't the course of  
9 dealings here and the extensive amount of money  
10 that's been passing through this corresponding bank,  
11 why isn't that enough to meet the test in Amigo Foods  
12 that this is more than merely a correspondent bank  
13 relationship?

14                   MR. SIEGFRIED: Well, I think it is - - -  
15 it depends on how we look at the two prongs of the  
16 test under 302(a)(1). But what I would say is, that  
17 it is the nature and quality of the act rather than  
18 a) the amount of money that goes through and there -  
19 - -

20                   CHIEF JUDGE LIPPMAN: What if the nature of  
21 the act is that this is money laundering?

22                   MR. SIEGFRIED: Actually I don't think he  
23 said - - - that they allege - - -

24                   CHIEF JUDGE LIPPMAN: Assume this is money  
25 laundering. Is that enough, when there's large

1 amounts of money going through? Or that we - - -

2 MR. SIEGFRIED: I think - - -

3 CHIEF JUDGE LIPPMAN: - - - or I guess in  
4 your adversary's words, or that we look the other  
5 way, and say well, that's not our business; it's just  
6 a pass-through? How should we be looking at this?

7 MR. SIEGFRIED: Well, I think we have to  
8 look at a few things, actually, here. You know,  
9 let's just step back for one moment, if we can, and  
10 let's take the word "terrorism" or even  
11 "correspondent bank" out of this case for a moment.

12 CHIEF JUDGE LIPPMAN: Yes.

13 MR. SIEGFRIED: What we would be looking at  
14 is a jurisdictional question, is whether a claim  
15 belongs here, where there's no claim of injury to a  
16 New York plaintiff; where there's no New York  
17 defendant; where there's no intentional act or tort  
18 directed at the U.S., where there's no dealings  
19 between the plaintiff and - - -

20 JUDGE SMITH: Well, suppose what you had -  
21 - - suppose they had alleged not a lot of  
22 transactions, but one. His Saudi gazillionaire had a  
23 phone conversation with someone in Beirut and they  
24 agreed to transmit the money, and they said okay,  
25 what we're going to do - - - yeah, I'll tell you what

1 we do. We've got - - - our front organization has an  
2 account. You wire to their correspondent bank in New  
3 York, and they'll wire the money to us, and we'll use  
4 that to attack an Israeli village tomorrow. Is that  
5 - - - can the lawsuit be brought in New York on those  
6 facts, against the bank?

7 MR. SIEGFRIED: Actually, I would say - - -  
8 I would say no. But not, Your Honor, because of the  
9 issue of one versus twelve. I would say that - - -  
10 let me go for a moment, if I might to - - -

11 JUDGE SMITH: Well, I guess what I'm saying  
12 is it's one, but on those facts, it's a little  
13 clearer that you've got one.

14 MR. SIEGFRIED: Well, what I would say in  
15 that regard is with respect to the issue of  
16 jurisdiction, the question as it's been posed in the  
17 due process - - - there's a case that's actually very  
18 close to this, although it's on the federal due  
19 process. And it first starts with the Supreme Court  
20 decision in U.S. v. Calder, and then in the Terrorist  
21 case decided by the Second Circuit. In the Second  
22 Circuit, in the Terrorist case, the allegations were  
23 that four Saudi princes had funded alleged Al Qaeda  
24 fronts, charities, and that those charities then gave  
25 the money to Al Qaeda, and that Al Qaeda then

1 attacked, obviously, the World Trade Center.

2 And what the Second Circuit said in the  
3 Terrorist case, which is 538 F.3d 371 (sic), "It may  
4 be the case that acts of violence committed against  
5 residents of the United States were a foreseeable  
6 consequence of the princes' alleged indirect funding  
7 of Al Qaeda, but foreseeability is not the standard  
8 for recognizing personal jurisdiction. Rather  
9 plaintiffs must establish that the four princes  
10 expressly aimed intentional tortious acts at  
11 residents of the United States. Providing indirect  
12 funding to an organization does not constitute this  
13 kind of conduct." So - - -

14 JUDGE SMITH: But isn't - - - don't we have  
15 a different question? Don't we have to assume for  
16 our purposes that a valid claim is pleaded on the - -  
17 - that is, these claims are not substantively subject  
18 to dismissal? The Lebanese bank has to be assumed to  
19 be liable to your adversa - - - to Mr. Tolchin's  
20 clients.

21 MR. SIEGFRIED: And that was true - - - it  
22 would have been true of the four Saudi princes. So  
23 if we take a look and we say what is, in the context  
24 of the intentional tort or intentional act that is  
25 directed at the United States for purposes of saying

1 in this context - - - I mean, we have a tort. The  
2 ATA is a tort claim. So what's the intentional tort  
3 directed at New York - - -

4 JUDGE READ: So you're talking - - -

5 MR. SIEGFRIED: - - - in this case?

6 JUDGE READ: - - - you're talking about the  
7 second prong, now?

8 MR. SIEGFRIED: I'm sorry?

9 JUDGE READ: You're talking about the  
10 second prong, now?

11 MR. SIEGFRIED: Well, I think, you know,  
12 sometimes this language moves between, but I - - -

13 JUDGE READ: I know.

14 MR. SIEGFRIED: - - - because I think that  
15 what you can say transaction - - - in the cases you  
16 see under the language of transaction, you see the  
17 use of the term "purposeful availment" and projecting  
18 yourself into New York - - -

19 JUDGE READ: So what do you - - -

20 MR. SIEGFRIED: - - - because it's where  
21 that arises from.

22 JUDGE READ: - - - what do you say we need,  
23 or what needs to be shown? Are you arguing there has  
24 to be some causation?

25 MR. SIEGFRIED: Okay, so what I would say -

1 - - no. I would say, first of all, if we're talking  
2 about an intentional tort case, which is what this  
3 is, we would be talking about the fact of an  
4 intentional tort directed at re - - -

5 JUDGE SMITH: Well, no one says it's  
6 directed at New York. It was obviously directed at  
7 Israel. The - - -

8 MR. SIEGFRIED: And that's - - -

9 JUDGE SMITH: - - - but the claim is - - -

10 MR. SIEGFRIED: - - - that's one of the - -  
11 -

12 JUDGE SMITH: - - - that it arose out of a  
13 New York transaction.

14 MR. SIEGFRIED: But the first part of the  
15 transaction, whether there was a purposeful availment  
16 of the laws of New York in order to - - -

17 CHIEF JUDGE LIPPMAN: But what if New York  
18 is used as the conduit? What if - - -

19 MR. SIEGFRIED: But New - - -

20 CHIEF JUDGE LIPPMAN: - - - what if there's  
21 an intention to hurt Israeli citizens, and New York  
22 banking is used as the conduit to make that happen as  
23 a direct link? Is that enough?

24 MR. SIEGFRIED: I think not. That is - - -

25 CHIEF JUDGE LIPPMAN: Why not?

1 MR. SIEGFRIED: Because - - -

2 CHIEF JUDGE LIPPMAN: Why isn't it?

3 MR. SIEGFRIED: - - - because I think that  
4 in the context of international banking, and  
5 correspondent bank relationships, what that opens the  
6 door to, clearly, is a situation where any third-  
7 party stranger to a foreign bank can claim - - - who  
8 claims an injury at the hands of a customer of that  
9 foreign bank, can then bring an action in New York  
10 based upon - - -

11 CHIEF JUDGE LIPPMAN: What if - - -

12 MR. SIEGFRIED: - - - the allegation that  
13 there's a wire transfer through New York.

14 CHIEF JUDGE LIPPMAN: - - - what if  
15 everyone knows that that's what's being done? What  
16 if it goes through AmEx, they know - - - remember  
17 Judge Graffeo asked a question of your adversary,  
18 does it matter whether they know? Let's say  
19 everybody knows that's what it's being used for.  
20 Still no connection - - - not enough of a connection  
21 to New York?

22 MR. SIEGFRIED: I think it is - - - well,  
23 if the - - - you know, if AmEx Bank - - - it's  
24 interesting. You know, in the case here what they  
25 argued was not even that the AmEx Bank claim was a

1 violation of New York law. Their claim against AmEx  
2 was it's a violation of Israeli law. So you really  
3 are constantly stretching to say we now have a claim  
4 against the correspondent bank that isn't even based  
5 on New York law.

6 CHIEF JUDGE LIPPMAN: Is correspondent  
7 banking all exempt from this kind of thing? It  
8 doesn't matter what the transactions are, by its  
9 nature, correspondent banking can't be subject to - -  
10 - if there are no employees here and the money - - -  
11 it's just a pass-through, by its nature can't be a  
12 jurisdiction?

13 MR. SIEGFRIED: I think the difference,  
14 which has been correctly identified as the difference  
15 by the court before, is what is it - - - what is the  
16 involvement of the foreign bank in New York or - - -

17 JUDGE PIGOTT: Well - - -

18 MR. SIEGFRIED: - - - in the U.S.

19 JUDGE PIGOTT: - - - it's an interesting  
20 argument. But don't we get to the point where we're  
21 saying, okay, we see this stream of money going  
22 through New York and we know why it's going, we know  
23 what it's going for, and we say well, you know, it's  
24 really sad that LCB is sending millions of dollars to  
25 Hizballah through our correspondent banks, but gee,

1 not much we can do about that?

2 MR. SIEGFRIED: Actually not true. Because  
3 I think that - - - I think it depends upon - - -  
4 again, upon the case. We're here on a case where the  
5 plaintiff is alleging jurisdiction under 302(a)(1).  
6 We're not here - - -

7 CHIEF JUDGE LIPPMAN: Isn't AmEx the bank's  
8 agent?

9 MR. SIEGFRIED: I'm sorry?

10 CHIEF JUDGE LIPPMAN: Isn't AmEx the bank's  
11 agent?

12 MR. SIEGFRIED: I don't believe, Your  
13 Honor, that correspondent banks have ever been held  
14 to be agents.

15 CHIEF JUDGE LIPPMAN: What are they?  
16 What's the nature of that relationship?

17 MR. SIEGFRIED: It is an arm's-length  
18 business transaction. It's not even an independent  
19 contractor. Literally, they are two - - -

20 CHIEF JUDGE LIPPMAN: So what's happening  
21 in New York; nothing?

22 MR. SIEGFRIED: Actually, if I would  
23 diverge for a second as to what's happening in New  
24 York, actually very, very little does happen in New  
25 York.

1 CHIEF JUDGE LIPPMAN: Tell us what - - -

2 MR. SIEGFRIED: In the trans - - -

3 CHIEF JUDGE LIPPMAN: - - - tell us in your

4 - - -

5 MR. SIEGFRIED: - - - in the trans - - -

6 CHIEF JUDGE LIPPMAN: - - - from your  
7 perspective, what New York's involvement in this is?

8 MR. SIEGFRIED: Yes. In the actual world  
9 of correspondent banking, international banking,  
10 there's actually none of this - - - none of this wire  
11 transfer, actually, that my adversary is talking  
12 about. What you have is a - - - you have an account  
13 in the U.S. You have an account in your foreign  
14 country. And usually what you have is literally a  
15 debit and credit book entry - - -

16 JUDGE PIGOTT: But isn't that because - - -

17 MR. SIEGFRIED: - - - in the respective  
18 countries, in terms of dollars - - -

19 JUDGE PIGOTT: Isn't - - -

20 MR. SIEGFRIED: - - - and francs, or  
21 dollars and euros.

22 JUDGE PIGOTT: Isn't that because of  
23 computers, though? I mean, if we went back fifty  
24 years, his Saudi prince would have to give money to  
25 LCB, who would then deposit it in their account.

1           They would fill out a form, and they'd take their  
2           stacks of money, and they'd give it to AmEx and say  
3           put this in my account. And then they would write a  
4           check to - - - or transfer to - - - say send that to  
5           our bank down in Beirut, because that's where our  
6           depositors want to use it. And there really would be  
7           a physical presence. But because through the miracle  
8           of the Internet and everything, as you point out,  
9           it's just all in the - - -

10                   MR. SIEGFRIED: Sure. So then, but in this  
11           case, so then what are you - - - where is the center  
12           of gravity of this case? If we say it's a link in  
13           the chain, and we talk about - - -

14                   JUDGE SMITH: Well, doesn't - - - suppose  
15           you had - - - suppose the Saudi billionaire is not  
16           going to give him money, he's going to give him guns,  
17           and he's going to buy the guns in New York. Any  
18           question that the claim against the billionaire  
19           arises out of the transaction of business in New  
20           York?

21                   MR. SIEGFRIED: I'm sorry, the Saudi comes  
22           into New York, buys the guns from New York?

23                   JUDGE SMITH: Well, he buys it on the - - -  
24           even if he calls the New York gun store and says ship  
25           some guns to my friends in Beirut. Does that arise

1 out of - - - does the crime against him arise out of  
2 transacting business in New York?

3 MR. SIEGFRIED: I think if he calls into  
4 New York and he buys the guns from a New York dealer  
5 - - -

6 JUDGE SMITH: Okay. So they're saying he  
7 didn't buy the guns, he bought the dollars. What's  
8 the difference?

9 MR. SIEGFRIED: I don't think he buys the  
10 dollars in New York. I think what he does is he - -  
11 - actually, again, we have steps along the way here.  
12 We have - - - in your example, you have somebody who  
13 goes to a bank in a foreign country. The foreign  
14 bank actually distributes the dollars to him. The  
15 foreign bank might get those dollars, as Judge Keenan  
16 pointed out in the Tamam case which was exactly the  
17 same kind of case as this. The dollars may come from  
18 the Central Bank of Beirut. The dollars may come  
19 from - - - U.S. dollars are available - - -

20 CHIEF JUDGE LIPPMAN: Why is the - - - why  
21 is the bank going through New York, in your view?  
22 Why is this happening through New York? What's  
23 essential about New York to make this work?

24 MR. SIEGFRIED: I think - - -

25 CHIEF JUDGE LIPPMAN: It could be anywhere?

1 It just happens that AmEx is here?

2 MR. SIEGFRIED: I think virtually, as I  
3 understand it, Your Honor, virtually every major  
4 foreign bank has a correspondent banking relationship  
5 in New York. It doesn't mean - - -

6 CHIEF JUDGE LIPPMAN: By doing so - - -

7 MR. SIEGFRIED: - - - it does not  
8 necessarily mean that the dollars - - -

9 CHIEF JUDGE LIPPMAN: - - - aren't they  
10 availing - - -

11 MR. SIEGFRIED: - - - had to come from this  
12 one.

13 CHIEF JUDGE LIPPMAN: By doing so, are they  
14 availing themselves of the privilege of doing  
15 business in New York?

16 MR. SIEGFRIED: But I think Your Honor  
17 asked the question before, which is does a  
18 correspondent bank, then, mean per se that there is -  
19 - - that you've met the transaction of business test.

20 CHIEF JUDGE LIPPMAN: What if it's a  
21 correspondent bank and you have a dozen transactions?

22 MR. SIEGFRIED: And they do all - - -

23 CHIEF JUDGE LIPPMAN: Ongoing, let's say?

24 MR. SIEGFRIED: - - - and they do all the  
25 time. Even in those letters of credit cases, of

1 course, in Amigo and all of those, there were those  
2 tran - - - there were dozens of transactions. I  
3 mean, I want to come back to if we look at the  
4 jurisprudence from this court and other courts and we  
5 take a look at where you found in the past a  
6 correspondent bank relationship giving rise or being  
7 correspondent-plus, what we see, for example, like in  
8 the Indosuez case, you see a foreign bank entering  
9 into fourteen contracts - - -

10 JUDGE CIPARICK: Well, those were - - -

11 MR. SIEGFRIED: - - - in New York - - -

12 JUDGE CIPARICK: - - - purposeful acts, and  
13 those were very substantial acts in that case. These  
14 are not - - - you claim these are not purposeful and  
15 substantial.

16 MR. SIEGFRIED: Well, what I'm saying is  
17 that the plaintiff actually comes into New York with  
18 the defendant in New York and transacts business here  
19 with the defendant here for its own account. That's  
20 a very different situation than when a correspondent  
21 bank, at the instruction of a customer, does this  
22 computerized transaction in which there are book  
23 entries being made.

24 CHIEF JUDGE LIPPMAN: But can't you just  
25 push a button and yet it have a great deal of

1           significance in terms of causation and making  
2           something terrible happen? It could be just by  
3           taking a finger and putting - - - you know, hitting  
4           the computer key that the place where that is done  
5           could conceivably have a tremendous impact.

6                   MR. SIEGFRIED: And it is why, Your Honor,  
7           for sure, there - - - nobody is arguing here today  
8           about the issue of liability, although - - -

9                   CHIEF JUDGE LIPPMAN: Right.

10                   MR. SIEGFRIED: - - - that's obviously in  
11           another court. But the issue is, where should that  
12           suit be brought. And let me just - - - I see I'm out  
13           of time, but - - -

14                   CHIEF JUDGE LIPPMAN: Go ahead.

15                   MR. SIEGFRIED: - - - let me simply point  
16           out that to the extent that you have a federal act,  
17           even though here we don't have, apparently, New York  
18           plaintiffs or people injured by New York, or again,  
19           if they had been injured, there are other provisions  
20           or other - - - (a)(2) and (a)(3) that might have  
21           applied. Here we're on 302(a)(1).

22                   But even by nonresidents, bringing a claim  
23           on a federal cause of action that might not be  
24           subject to this state's long arm, there is  
25           availability in federal court to a claim under

1 4(k)(2), which is the minimum contacts due process  
2 argument. And you could see in the Second Circuit's  
3 decision referring this to you that they said this  
4 may come back to us and then we'll decide that.

5 So the real question for us really is, are  
6 the contacts here, is the involvement here, and do  
7 the facts here show that this is appropriate under  
8 New York's long-arm jurisdiction - - -

9 CHIEF JUDGE LIPPMAN: Okay, counselor.

10 MR. SIEGFRIED: - - - and that's really, I  
11 think - - -

12 CHIEF JUDGE LIPPMAN: Thanks, counselor.

13 MR. SIEGFRIED: - - - the key point. Thank  
14 you very much.

15 CHIEF JUDGE LIPPMAN: Thank you.  
16 Appreciate it.

17 Counselor, rebuttal.

18 MR. TOLCHIN: Thank you, Your Honor.

19 Where should the suit be brought, the  
20 counselor just asked.

21 CHIEF JUDGE LIPPMAN: Talk in a common  
22 sense way, counsel. What is - - - what's the  
23 relationship to New York? Why should New York have  
24 jurisdiction over?

25 MR. TOLCHIN: Number one, Lebanese Canadian

1 Bank, for its own purposes, did not go and make a  
2 correspondent banking relationship with a bank in  
3 Mozambique or in some other - - - in Montevideo.  
4 They came to New York because it's good for them to  
5 be in New York. The relationship is not - - -

6 CHIEF JUDGE LIPPMAN: It's good for them to  
7 be in New York - - -

8 MR. TOLCHIN: It's good for them - - -

9 CHIEF JUDGE LIPPMAN: - - - because New  
10 York is the commercial center?

11 MR. TOLCHIN: Because it's a commercial  
12 center, and they derive commercial benefit from  
13 maintaining this correspondent banking relationship.  
14 It's not random. That relationship is undoubtedly -  
15 - - there was no discovery, but it was un - - - it's  
16 undoubtedly defined by a contract with all sorts of  
17 terms and conditions. I've seen it another case; the  
18 contract was like a phone book with I don't know what  
19 it is in it.

20 CHIEF JUDGE LIPPMAN: Did they go to AmEx  
21 for a specific reason?

22 MR. TOLCHIN: Why AmEx and not Chase  
23 Manhattan Bank - - -

24 CHIEF JUDGE LIPPMAN: Yes.

25 MR. TOLCHIN: - - - or JPMorgan?

1 CHIEF JUDGE LIPPMAN: Why AmEx?

2 MR. TOLCHIN: I don't know. I don't know.  
3 There's a handful of banks such as Citibank, JPMorgan  
4 Chase, HSBC, that does a lot of business with  
5 clearing foreign transactions. I don't know why they  
6 went to AmEx. It could be that they have other  
7 relations with them. I'd be speculating. It could  
8 be AmEx was just offering better terms. It could be  
9 that JPMorgan is a little more scrupulous - - -

10 JUDGE SMITH: Is it - - -

11 MR. TOLCHIN: - - - who it does business  
12 with and couldn't - - - and wouldn't - - - and the  
13 Lebanese Canadian Bank perhaps wouldn't pass their  
14 due diligence.

15 JUDGE SMITH: Because you've had no  
16 discovery, it's hard for you to be at all specific  
17 about what happened here.

18 MR. TOLCHIN: That's a hundred percent  
19 correct.

20 JUDGE SMITH: Is that a problem? I mean,  
21 we don't have the power to give you discovery. Do  
22 you have to say something more specific - - - I mean  
23 - - -

24 MR. TOLCHIN: Well - - -

25 JUDGE SMITH: - - - as I read it, all

1           you're really saying is Hizballah can't function  
2           without money, and it gets its money from - - -  
3           through its front organization's account at this  
4           bank. And it couldn't get - - - and it couldn't  
5           finance itself nearly as easily if it didn't use New  
6           York to do it. Is that a fair summary?

7                         MR. TOLCHIN: It's a fair summary. But the  
8           reason I keep coming back to we didn't have discovery  
9           is that the standard for a motion to dismiss for lack  
10          of jurisdiction is different depending whether you  
11          had jurisdictional discovery or not. Because we  
12          didn't have jurisdictional discovery, the court has  
13          to take our allegations - - - it has to accept them  
14          as true.

15                        If we had had jurisdictional discovery, we  
16          might have had a hearing and we would have had a  
17          burden of proving it. It wouldn't just go based on  
18          the pleading.

19                        JUDGE SMITH: Well, okay. But the  
20          allegations that we have to take as true are the ones  
21          I just summarized. I mean, don't - - - isn't it a -  
22          - - I mean, you'd have a much stronger case if you  
23          could say on the 18th of October there was a rocket  
24          attack that was preceded by this financial  
25          transaction that made it happen.

1                   MR. TOLCHIN:  You're a hundred percent  
2                   correct, Your Honor.  If I could trace a hundred  
3                   dollars went to buy a box of bullets, and that bullet  
4                   shot my client, that's a much stronger case.  But I  
5                   think, Your Honor, you have to be very careful not to  
6                   conflate the chain of proof that we have to prove our  
7                   underlying case, with the issues that are attendant  
8                   to the issue of jurisdiction.

9                   If they had a purposeful connection to New  
10                  York, which is the standard that the Second Circuit  
11                  suggested, or if they had a purposeful connection and  
12                  the claim arose out of the transaction, that's the  
13                  standard that the - - - I don't know how to pronounce  
14                  it - - - that Neewra case suggested, that's enough to  
15                  give rise to jurisdiction.

16                 We may lose the case on the merits.  I  
17                 don't know.  We're not up to that yet.  Our question  
18                 right now is do we have enough contacts with New York  
19                 to get in the door to have a court here - - - a  
20                 federal court here in New York determine whether we  
21                 have a cause of action or not.  And telling us that  
22                 we don't have enough jurisdiction to get in here  
23                 really relegates us to where?  Litigating the case in  
24                 Hizballah-stan?  Where can we sue Lebanese Canadian  
25                 Bank; in the District Court of Beirut?

1                   They're making use of the New York courts  
2                   (sic) for their own commercial benefit, and by the  
3                   arguments they're making today, they're seeking to  
4                   sidestep any accountability for those transactions  
5                   that they choose to enter into.

6                   JUDGE SMITH:   Yes, but the United States  
7                   doesn't - - - can't provide universal accountability.  
8                   There's a lot of evil in the world.  We can't correct  
9                   it all - - -

10                  MR. TOLCHIN:   That's true.

11                  JUDGE SMITH:   - - - in New York.

12                  MR. TOLCHIN:   And I know that Your Honor is  
13                  probably concerned about that slippery slope; won't  
14                  we be bringing every terrorist case into New York?  
15                  That's, I think, what I would be concerned about if I  
16                  were on the other side of the table here.  But it's  
17                  really not.  We are making a claim arising out of the  
18                  transactions that came through New York.  It's not  
19                  every terrorist attack.  It's not every terrorist  
20                  group.

21                  CHIEF JUDGE LIPPMAN:   What about making  
22                  every correspondent bank relationship a subject of a  
23                  lawsuit in New York - - -

24                  MR. TOLCHIN:   It's not every - - -

25                  CHIEF JUDGE LIPPMAN:   - - - no matter how

1 much it's really a pass-through?

2 MR. TOLCHIN: It's not every correspondent  
3 banking relationship. It's - - - the correspondent  
4 banking relationship here - - -

5 CHIEF JUDGE LIPPMAN: Again, what  
6 distinguishes - - -

7 MR. TOLCHIN: - - - sets the stage.

8 CHIEF JUDGE LIPPMAN: - - - what  
9 distinguishes this one from other correspondent  
10 banking relationships?

11 MR. TOLCHIN: The correspondent banking - -  
12 -

13 CHIEF JUDGE LIPPMAN: Is it what happened  
14 as a result of the money? Is it - - - as a result of  
15 the pass-through? Is it the extent of transactions  
16 here? What is it that distinguishes this  
17 correspondent banking relationship?

18 MR. TOLCHIN: It's not the existence of the  
19 correspondent banking relationship.

20 CHIEF JUDGE LIPPMAN: What is it?

21 MR. TOLCHIN: It's the use of that  
22 relationship.

23 CHIEF JUDGE LIPPMAN: It's the purpose that  
24 it's used for.

25 MR. TOLCHIN: The purpose that it's used

1 for.

2 CHIEF JUDGE LIPPMAN: Not the volume of the  
3 transactions but the purpose?

4 MR. TOLCHIN: Exactly. I can build a house  
5 and it's a perfectly fine house. If I start using it  
6 to deal drugs - - -

7 CHIEF JUDGE LIPPMAN: It could be one - - -

8 MR. TOLCHIN: - - - it's a different kind  
9 of situation.

10 CHIEF JUDGE LIPPMAN: - - - it could be one  
11 transaction?

12 MR. TOLCHIN: If the claim arose out of  
13 that one transaction, for sure. Obviously, the more  
14 transactions, the easier it becomes to establish our  
15 underlying case. That's important to have a lot of  
16 transactions.

17 JUDGE SMITH: I'm imposing on the time, but  
18 one more question. Suppose we don't - - - take  
19 terrorism out of it. Suppose you have an ordinary  
20 murder. An Israeli citizen hires a hit man to murder  
21 his mother-in-law for insurance money.

22 MR. TOLCHIN: Okay.

23 JUDGE SMITH: And the payment to the hit  
24 man is financed by a wire transfer to New York. Can  
25 this suit be brought - - -

1 MR. TOLCHIN: Where is the hit man located?

2 JUDGE SMITH: In Israel.

3 MR. TOLCHIN: The hit man's in Israel. He  
4 goes to a bank in Israel, he tells the bank in - - -

5 JUDGE SMITH: Or - - -

6 MR. TOLCHIN: - - - Israel, I'm sending  
7 money to New York to pay the hit man, because - - -

8 JUDGE SMITH: No, or - - -

9 MR. TOLCHIN: - - - that's part of our  
10 allegation.

11 JUDGE SMITH: - - - I need dollars. I need  
12 dollars. Go do a wire transfer to New York and get  
13 me the dollars.

14 MR. TOLCHIN: That's different from our  
15 claim. Because part and parcel of our claim is that  
16 Lebanese Canadian Bank knew who Hizballah is and knew  
17 what they do. They knew that it's a terrorist  
18 organization.

19 JUDGE SMITH: But if I'm - - - suppose I'm  
20 just the guy putting up the money for this operation,  
21 this assassination that I just described, this  
22 nonpolitical event, and I get my money from a New  
23 York account, can the case against me be brought in  
24 New York?

25 MR. TOLCHIN: The fact that the bank knew

1           what kind of transaction it's doing is crucial for  
2           our case.

3                   JUDGE SMITH:   I'm not talking about the  
4           bank.

5                   MR. TOLCHIN:   Every - - -

6                   JUDGE SMITH:   In my hypothetical, the bank  
7           is not the defendant.  It's the financier, the guy  
8           who got the money.

9                   MR. TOLCHIN:   The guy who's sending the  
10          money?

11                  JUDGE SMITH:   Not sending.  He's handing  
12          dollars to a hit man in Jerusalem, but he got the  
13          money by wire transfer from New York.

14                  MR. TOLCHIN:   From somebody who has no idea  
15          what he's sending money for?

16                  JUDGE SMITH:   Yes.

17                  MR. TOLCHIN:   Just somebody says I'm  
18          spending you a stipend to live on and take - - -

19                  JUDGE SMITH:   Yes.  But I'm talking about -  
20          - - the defendant in my suit is the guy who did know,  
21          the Israeli citizen who did know.

22                  MR. TOLCHIN:   Okay.  So he - - - oh, so - -  
23          -

24                  JUDGE SMITH:   Can he be sued in New York?

25                  MR. TOLCHIN:   - - - so somebody in New York

1 sends him money in Israel and then in Israel he takes  
2 the money and goes and pays a hit man?

3 JUDGE SMITH: Yes.

4 MR. TOLCHIN: That's about - - -

5 JUDGE SMITH: Could he be sued in New York?

6 MR. TOLCHIN: That's about three steps more  
7 disconnected than our case. I'd have to give that  
8 thought.

9 CHIEF JUDGE LIPPMAN: Okay. Thank you.

10 MR. TOLCHIN: Thank you.

11 CHIEF JUDGE LIPPMAN: Thank you both.

12 Appreciate it.

13 (Court is adjourned)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of Licci, et al. v. Lebanese Canadian Bank, SAL, No. 183 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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