

Indiana Court Rejects Jurisdiction Over NY Firm

BY LAZAR EMANUEL

Richards & O'Neil, a New York law firm, represented client Cullman Ventures, Inc., a New York corporation, in the purchase of the stock of Day Dream, Inc., an Indiana corporation. As part of the transaction, a Richards & O'Neill partner (Wittlin) signed and delivered an opinion letter to the stockholders of Day Dream. The opinion letter assured the stockholders of Day Dream that the law firm had "investigated such questions of law for the purpose of rendering this opinion [as it] had deemed appropriate" and that the Stock Purchase Agreement "constitutes the valid and binding obligation of the Buyer enforceable against it in accordance with its terms."

Several of the Day Dream stockholders, including Edward Conk, agreed to indemnify Cullman against any losses caused by inaccuracies in the representations made by Day Dream in the purchase agreement. After the sale, Cullman asserted claims against the Day Dream shareholders under these indemnities and brought an arbitration proceeding in New York. All the shareholders except Conk agreed to a settlement of all claims. Conk began an action in Indiana against Richards & O'Neill for breach of contract, professional negligence, and violation of the Indiana Securities Act. The law firm moved to dismiss Conk's complaint. The matter ultimately reached the Indiana Court of Appeals, which considered de novo whether the Indiana courts had jurisdiction over the New York law firm. *Richards & O'Neill LLP v. Conk, Ind. Ct. App., No. 49A02-0105-CV-293, August 2002.*

The following facts appear from the record:

- Richards & O'Neill is a New York limited partnership
- The firm does not maintain an office in Indiana or advertise its services there
- No lawyer employed by the firm is licensed in Indiana
- The Richards & O'Neill partner who signed the opinion letter has never been in Indiana on business
- Some Richards & O'Neill attorneys did travel to Indiana in connection with the transaction
- Two of the Richards & O'Neill lawyers spent two days in Indiana reviewing documents relating to the transaction
- Several Richards & O'Neill lawyers communicated by telephone, fax and mail with the Indiana lawyers for Day Dream
- Richards & O'Neill appeared pro hac vice in the Indiana courts on two occasions in litigation arising out of the transaction
- Several Richards & O'Neill lawyers traveled to Indiana to review documents and interview witnesses in connection with the New York arbitration
- Plaintiff Conk was a resident of Texas, not Indiana.

The Indiana court found these factors "insufficient to subject Richards & O'Neill or Wittlin [the partner who signed the opinion letter] to jurisdiction in Indiana." The court pointed out that the law firm's contacts with Indiana were not initiated by it but by its client, which happened to be a New York corporation buying an Indiana corporation. The firm's Indiana contacts were to gather information for its client and were minimal.

© Copyright 2008 –The New York Professional Responsibility Report (NYPRR)