

**JP Morgan Chase Bank v. Access Healthsource, Inc.**

No. 05-15528, 2007 U.S. App. LEXIS 7002 (9th Cir. March 21, 2007)  
(Not selected for publication in the Federal Reporter) [USA]

**Topics:** Applicable Law; Injunction, Effect of; Court Order; Due Process

**Type of Lawsuit:** Issuer sued Beneficiary for declaratory judgment regarding the propriety of the payment of LC proceeds into a state court registry.

**Parties:** Plaintiff/Appellee/Issuer- JP Morgan Chase Bank  
(Counsel: Richard A. Halloran, Lawrence A. Kasten, David Daniel  
Weinzweig, and Kimberly Jackson Kaufmann of Lewis & Roca LLP,  
Phoenix, AZ)

Defendant/Appellant/Beneficiary/Judgment Creditor- Tamarack Capital  
LLC and Tamarack Insurance, LLC  
(Jack Klausner and J. Brent Walker of Warner, Angle Hallam, Jackson,  
Phoenix, AZ)

Cross-claimant/Appellant/Applicant/Judgment Debtor- Access  
Healthsource, Inc.

**Underlying Transaction:** Standby as payment bond security pending an appeal of damages award in Beneficiary's favor.

**LC:** Standby LC for US\$1,108,032. Silent as to governing rules.

**Decision:** US Court of Appeals for the 9th Circuit, Wallace, D.W. Nelson, McKeown, JJ in a per curiam opinion applying Arizona and Florida Revised UCC Article 5, affirmed the dismissal and entry of judgment on the pleadings in favor of Issuer by the US District Court for the District of Arizona, Campbell, J.

**Rationale:** An issuer is required to make payment against a complying drawing on an LC into a court registry where so ordered by a court to whose jurisdiction it is subject and such a payment does not constitute wrongful dishonor, in part because payment into the court registry constitutes honor and not dishonor.

**Prior History:** *JP Morgan Chase Bank v. Tamarack Capital, LLC*, No. CV 04-1397-PHX-DGC, 2005 U.S. Dist. LEXIS 23920 (D. Ariz. Oct. 12, 2005) abstracted at *2006 Annual Survey* 365.

**Factual Summary:** In separate litigation in the US federal district court in Texas, Judgment Creditor was awarded US\$1,108,032 in damages. Judgment Debtor obtained a standby LC from Bank/Issuer in favor of Judgment Creditor/Beneficiary as security pending Judgment Debtor's appeal. In an unrelated civil action in the Texas state courts, a third party was awarded a US\$10,000,000 default judgment against Judgment

Creditor/Beneficiary. The state court ordered that in the event that Creditor/Beneficiary drew on the LC, the proceeds should be paid into the registry of the Texas state court pending resolution of the third party matter.

When Judgment Debtor's appeal was subsequently denied, the Texas trial court authorized Judgment Creditor/Beneficiary to draw on the LC. Issuer then paid LC proceeds into Texas state court registry, consistent with the Texas court's order. Issuer sued for declaratory judgment in the US federal district court in Arizona that its payment of LC proceeds into the Texas registry would not constitute wrongful dishonor or a breach of its obligation. The court granted summary judgment in favor of Issuer, finding that Issuer had not breached its duties under the LC. On appeal, affirmed.

### **Legal Analysis:**

- 1. Conflict of Law:** Although the parties disputed whether Arizona or Florida law applied, the court affirmed, stating that under either law the complaint failed to show any facts indicating that Issuer had breached its LC obligations.
- 2. Injunction, Effect of:** Beneficiary argued that the trial court erred in finding that the counter-complaint failed to show that Issuer wrongfully dishonored the LC. The court ruled that under Revised UCC Article 5 the Texas state court injunction "suspend[ed] the issuer's obligation to honor or dishonor the drafts during the pendency of the legal restraint."
- 3. Jurisdiction:** Beneficiary further argued the Arizona Superior Court Order voided the turnover order of the Texas state court, obviating Issuer's duty to pay the LC proceeds into the Texas state court registry. The appellate court disagreed, ruling that the Arizona order only precluded enforcement of the default judgment in Arizona. The court noted that Arizona state courts have limited jurisdiction and have no authority to invalidate another state's judgment.
- 4. Due Process:** Beneficiary also argued that Issuer should have recognized that the Texas order was entered in violation of Beneficiary's due process rights. The appellate court, however, ruled that the Issuer had a duty to comply with the valid Texas order to turn over the proceeds of the LC and thus did not violate Beneficiary's due process rights. The appellate court stated the "settled principle of the law of civil contempt which requires a party to comply with a court order that is both specific and valid," therefore Issuer did not wrongfully dishonor the LC.

[JEB/mdg]