FREEPLAY MUSIC

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OPINION AND ORDER

Freeplay Music, Inc. ("Freeplay"), the owner of copyrights incertain musical compositions and sound recordings, brings thisaction against defendants, corporate owners of various radiostations, charging violations of copyright and related claims. Ina separate opinion issued this day, the Court grants in part anddenies in part a motion to dismiss for failure to state a claimby all defendants. This opinion addresses the motion to dismissfor lack of personal jurisdiction by one defendant, BeasleyBroadcast Group, Inc. ("Beasley"). Freeplay alleges thatBeasley's contacts with New York are sufficient to supportpersonal jurisdiction over it. Beasley argues that Freeplay'sconclusory allegations merely parrot the relevant statutorylanguage, and that the actual facts alleged in the complaint are faciallyinsufficient to support jurisdiction.[1] For the reasonsthat follow, Beasley's motion will be granted. Freeplay's requestfor jurisdictional discovery regarding Beasley's contacts withNew York is denied.

BACKGROUND

Freeplay is a New York corporation which creates musicalcompositions and sound recordings. Freeplay alleges that Beasley"produced, exploited and distributed in interstate commercecertain radio programming containing certain of [Freeplay's][c]ompositions and [s]ound [r]ecordings," when Beasley broadcastFreeplay's musical works "synchronized" with other audio works.(Compl. ¶ 17; P. 12(b)(6) Mem. at 3.) Freeplay holds thecopyright registrations for the 155 musical compositions andsound recordings at issue in this action. (Compl. ¶ 15; seeCompl. Exs. 1-9.) Freeplay contracted with Broadcast Music, Inc.("BMI"), a performing rights society, to license permission toperform these compositions and recordings on Freeplay's behalf.(P. 12(b)(6) Mem. at 6.) Freeplay argues that although Beasley islicensed by BMI to perform the Freeplay musical works inquestion, that license does not grant Beasley the necessary"synchronization rights" that would allow Beasley to useFreeplay's musical works in the manner alleged. (P. 12(b)(6) Mem.at 3; Fischbarg 12(b)(6) Decl. ¶ 3, Ex. B.) See generallyFreeplay Music, Inc. v. Cox Radio, Inc., No. 04 Civ. 5238(GEL), 2005 WL _____ (S.D.N.Y. June 22, 2005). Beasley is a Delaware corporation with its principal place ofbusiness in Naples, Florida. (Compl. ¶ 8.) Beasley "produc[es],distribut[es], sell[s] and otherwise commercially exploit[s]radio programming" at its 41 radio stations. (Compl. ¶ 8;Fischbarg 12(b)(6) Decl. Ex. F.) Beasley alleges, and Freeplaydoes not dispute, that it does not have an office or employees inNew York, that it does not own or operate a radio station in NewYork, and that none of its stations' over-the-air broadcastsignals can reach New York. (Beasley Decl. ¶ 7.) Several ofBeasley's radio stations, however, have websites accessible inNew York through which the stations simulcast their

radiobroadcasts. (P. Mem. 3; Fischbarg Decl. ¶ 6, Ex. E.)

In addition to Beasley's websites, Freeplay alleges thatBeasley has several other forms of contact with New York. Beasleyradio stations syndicate radio programming produced in New Yorksuch as "The Howard Stern Radio Show," "Imus in the Morning,""ABC News," and "Bloomberg Radio News." (Fischbarg Decl. ¶ 3, Ex.B.) Beasley executives travel to New York approximately fourtimes per year to meet with investment bankers. (P. Mem. 1.)Beasley executives have also spoken at radio industry conferencesand seminars in New York at least six times since 2002. (Id. at2.) New York companies purchase advertising time on Beasley radiostations. (Id.) Beasley also makes payments to performingrights societies based in New York, such as BMI and the AmericanSociety of Composers, Authors, and Publishers, for licenses toperform certain musical works. (Id.) Beasley has contractedwith the New York investment bank Harris Nesbitt in connectionwith a $25 million stock buy-back scheduled to be completedwithin the next year. (Id. at 1-2, citing D. Mem. 4.) In March2004, Beasley announced the completion of a $225 millionrevolving credit facility, funded by a consortium of lenders, andjointly arranged by two New York banks, Harris Nesbitt and Bankof New York. (Id.)
DISCUSSION

I. Legal Standard

On a motion to dismiss for lack of personal jurisdictionpursuant to Federal Rule of Civil Procedure 12(b)(2), theplaintiff bears the burden to establish jurisdiction. In reMagnetic Audiotape Antitrust Litig., 334 F.3d 204, 206 (2d Cir.2003). Where no jurisdictional discovery has been conducted, theplaintiff need only establish a prima facie case, and allegationsof jurisdictional fact must be construed in the light mostfavorable to the plaintiff. CutCo Indus. Inc. v. Naughton,806 F.2d 361, 365 (2d Cir. 1986). The motion must be denied if thoseallegations suffice as a matter of law. Magnetic Audiotape,334 F.3d at 206.

A federal court sitting in diversity may exercise jurisdictionover a foreign defendant if the defendant is amenable to processunder the law of the forum state. Omni Capital Int'l Ltd. v.Rudolf Wolff & Co., 484 U.S. 97, 105 (1987); Metro. Life Ins.Co. v. Robertson-Ceco Corp., 84 F.3d 560, 567 (2d Cir. 1996). InNew York, a court may exercise general jurisdiction over anondomiciliary under New York Civil Practice Laws and Rules("C.P.L.R.") § 301, and long-arm jurisdiction under C.P.L.R. §302. The exercise of personal jurisdiction must also comport withconstitutional due process requirements under International ShoeCo. v. Washington, 326 U.S. 310 (1945). Mario ValenteCollezioni, Ltd. v. Confezioni Semeraro Paolo, S.R.L.,264 F.3d 32, 37 (2d Cir. 2001).

II. General Jurisdiction in New York: C.P.L.R. § 301

Under C.P.L.R. § 301, a New York court may exercisejurisdiction over a defendant "engaged in such a continuous andsystematic course of `doing business' in New York as to warrant afinding of its presence in the state." Jazini v. Nissan MotorCo., Ltd., 148 F.3d 181, 184 (2d Cir. 1998). "A defendant

is doing business such thatjurisdiction pursuant to § 301 is appropriate if it does businessin New York `not occasionally or casually, but with a fairmeasure of permanence and continuity.'" Mantello v. Hall,947 F. Supp. 92, 97 (S.D.N.Y. 1996), quoting Landoil Resources Corp.v. Alexander & Alexander Servs., Inc., 918 F.2d 1039, 1043 (2dCir. 1990). This standard has been described as "stringent,"because a defendant who is found to be doing business in New Yorkin a permanent and continuous manner "may be sued in New York oncauses of action wholly unrelated to acts done in New York."Jacobs v. Felix Bloch Erben Verlag fur Buhne Film und Funk KG,160 F. Supp. 2d 722, 731 (S.D.N.Y. 2001), quoting Ball v.Metallurgie Hoboken-Overpelt, S.A., 902 F.2d 194, 198 (2d Cir.1990).

Courts have relied on the following "traditional indicia" when"deciding whether a foreign corporation is doing business in NewYork . . .: (1) the existence of an office in New York; (2) thesolicitation of business in New York; (3) the existence of bankaccounts or other property in New York; and (4) presence ofemployees of the foreign defendant in New York." Mantello,947 F. Supp. at 97, citing Hoffritz for Cutlery, Inc. v. Amajac,Ltd., 763 F.2d 55, 58 (2d Cir. 1985). Freeplay contends that itsallegations regarding Beasley's activity demonstrate Beasley'slegal presence in New York, even though Beasley has no office inNew York, and no employees working on a regular basis in NewYork. Freeplay's allegations, however, do not show that Beasleyhas a permanent or continuous presence in New York sufficient tojustify a finding of general jurisdiction.

Beasley's licenses and radio programming purchases from NewYork corporations are insubstantial activity to warrant generaljurisdiction in New York. New York courts have held that"obtaining licenses is not `doing business'" for the purposes ofgeneral jurisdiction. Mantello, 947 F. Supp. at 98. Further, "the purchase of goodsfrom New York by a [d]efendant, even if on large scale, wouldnot, in an of itself, amount to `doing business' within thestate." Agency Rent A Car System, Inc v. Grand Rent A CarCorp., 916 F. Supp. 224, 229 (E.D.N.Y. 1996), rev'd onother grounds, 98 F.3d 25 (2d Cir. 1996). Therefore,Beasley's purchases of programming and licenses to broadcastcopyrighted materials are insufficient to justify generaljurisdiction.

Similarly, Freeplay's allegation that Beasely solicitsadvertising for its radio stations from New York companiesreflects a mere business relationship insufficient to confergeneral jurisdiction. Reers v. Deutsche Bahn AG,320 F. Supp. 2d 140, 155 (S.D.N.Y. 2004). Solicitation of business contractscan reach a level sufficient to support general jurisdiction onlythrough "extensive conduct directed toward or occurring in NewYork." Id. at 150. Even actual advertising within New York isnot considered to reach the level of substantial solicitationthat would suffice for general jurisdiction. See, e.g.Muollo v. Crestwood Vill. Inc., 547 N.Y.S.2d 87, 88 (2d Dept.1989) (finding defendant's advertisements in the New York Timesand on the radio insufficient to support personal jurisdiction);see also Holness v. Maritime Overseas Corp.,676 N.Y.S.2d 540, 543 (1st Dept. 1998) ("New York has no jurisdiction over aforeign defendant company whose only contacts with New York areadvertising and marketing activities plus representatives'occasional visits to New York."). Freeplay's allegations do notsuggest that Beasley solicited advertising from local New Yorkbusinesses, or advertising that was directed toward a New Yorkaudience, as opposed to

advertising from national companiesincorporated or headquartered in New York. Freeplay's allegationthat Beasley solicits business from New York companies does notshow that Beasley solicited that business in New York, or thatthe solicitation was extensive or substantial. Thus, Beasley'sadvertising contracts with New York companies are insufficient tojustify general jurisdiction.

Freeplay also alleges (and Beasley acknowledges) that Beasleyhas a contract with the New York bank Harris Nesbitt for thepurposes of a $25 million stock buy-back. Regarding the stockbuy-back, New York courts "accord? foreign corporationssubstantial latitude" in connection with management of theirsecurities on New York-based stock exchanges without subjectingthemselves to New York jurisdiction for unrelated occurrences.Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88, 97 (2d. Cir.2000); see also Reers, 320 F. Supp. 2d at 156 ("[T]he factthat [defendant's] stock may be purchased in New York, and that[defendant] retains New York-based market makers to assist in itssales of stock, is another important factor but is insufficientto confer general jurisdiction."). Beasley's stock buy-backventure is limited in purpose and temporary in duration such thatit does not create legal presence in New York.

Bank accounts can be grounds for general jurisdiction becausethey are a permanent locus of property or assets within thestate. However, a "bank account? standing alone cannot createjurisdiction unless [it is] used for `substantially all' of [thedefendant's] business." Id.[2] Freeplay alleges in aconclusory manner that Beasley runs its "day-to-day operations"through a revolving credit facility jointly administered byHarris Nesbitt and the Bank of New York (P. Mem. 2), but fails tomake any specific allegations as to the role the credit facilityplays in Beasley's business. By definition, however, a "creditfacility" is a financing arrangement, not an operational bank account. See generally GE Commercial Finance CorporateLending, Frequently Asked Questions, athttp://www.gelending.com/Clg/Resources/lendingFAQs.html.Plaintiff's allegation thus appears to assert, at most, thatBeasley's "day-to-day operations" are financed entirely byborrowing through this credit facility, and not that its ordinarypayroll and checking transactions are performed through thecredit facility. Generally, "[a] single financing arrangement,such as [a] credit facility, is insufficient to constitute thecontinuous and systematic activity required to warrant theexercise of general personal jurisdiction." Int'l Telecom, Inc.v. Generadora Electrica del Oriente S.A., No. 00 Civ. 8695(WHP), 2002 WL 465291, at *2 (S.D.N.Y. 2002). Therefore,Freeplay's allegation regarding Beasley' credit facility isinsufficient to support a finding of generaljurisdiction.[3]

Freeplay also alleges that Beasley's radio broadcasts areavailable in New York via their websites. However, "the fact thata foreign corporation has a website accessible to New York isinsufficient to confer jurisdiction under C.P.L.R. § 301."Spencer Trask Ventures, Inc. v. Archos S.A., No. 01 Civ. 1169(LAP), 2002 WL 417192, at *6 (S.D.N.Y. Mar. 18, 2002). Unlike aconventional radio station that requires a nearby physicalpresence in order to broadcast to a given geographical region, awebcast can be transmitted to a distant state without any furtherindicia of permanence in that state such as an office oremployees. "Moreover, even if such an exercise of jurisdictionwere proper under § 301, it

would not be permissible under theDue Process Clause [of the Fourteenth Amendment to theU.S. Constitution] absent, at a minimum, an allegation that . . . thewebsite was purposefully directed toward New York." DruckerCornell v. Assicurazioni Generali S.p.A. Conso., No. 97 Civ.2262 (MBM), 2000 WL 284222, at *2 (S.D.N.Y. Mar. 16, 2000).

It is undisputed that Beasley's radio stations, businesspremises, and employees are all located outside New York, andthat the broadcast signals from none of its stations are heard inNew York. The occasional and insubstantial contacts alleged byplaintiff, taken singly or together, are insufficient to amountto "doing business" in New York. Accordingly, Freeplay fails toallege any facts that justify general jurisdiction over Beasley.

III. New York's Long-Arm Statute: C.P.L.R. § 302

A. Transacting Business in New York: C.P.L.R. § 302(a)(1)

Under C.P.L.R. § 302(a)(1), New York courts have specificjurisdiction over "any nondomiciliary [who] transacts anybusiness within the state or contracts anywhere to supply goodsor services in the state." "A nondomiciliary `transacts business'under C.P.L.R. § 302(a)(1) when he purposefully avails [himself]of the privilege of conducting activities within [New York], thusinvoking the benefits and protections of its laws." CutCo,806 F.2d at 365 (internal citations omitted). The "ultimatedetermination" as to whether a foreign defendant "transactsbusiness" in New York is made based on the totality of thecircumstances. Agency Rent A Car, 98 F.3d at 29. The SecondCircuit has said that a "variety of factors" may be considered inmaking this determination, including: (1) whether the defendanthas an on-going contractual relationship with a New Yorkcorporation, (2) whether the contract was negotiated or executedin New York, and whether, after executing a contract with a NewYork business, the defendant has visited New York for the purpose of meeting with parties to thecontract relationship; (3) what the choice-of-law clause is inany such contract; and (4) whether the contract requiresfranchises to send notices and payments into the forum state orsubjects them to supervision by the corporation in the forumstate. Id. "Cumulative minor activities that, individually, maybe insufficient, may suffice . . . as long as the cumulativeeffect creates a significant presence within the state." O'Brienv. Hackensack Univ. Med. Ctr., 760 N.Y.S.2d 425, 427 (1st Dept.2003). Jurisdiction is only proper under this statutory provisionwhere the cause of action "arises out of the subject matter ofthe business transacted." Citigroup Inc. v. City Holding Co.,97 F. Supp. 2d 549, 564 (S.D.N.Y. 2000). "A suit will be deemedto have arisen out of a party's activities in New York if thereis an `articulable nexus,' or `substantial relationship,' betweenthe claims asserted and the actions that occurred in New York."Henderson v. I.N.S., 157 F.3d 106, 123 (2d Cir. 1998) (internalcitations omitted).

Individually, each of Freeplay's allegations with respect toBeasley's relationships with New York enterprises might notnecessarily be sufficient to support a finding that Beasleytransacts business in New York. See, e.g., J.L.B. Equities,Inc. v. Ocwen Fin. Corp., 131 F. Supp. 2d 544, 551 n. 3(S.D.N.Y.

2001) (finding that defendant did not transact businessin New York even though defendant held a New York bank accountand had various other business communications with New Yorkparties). Taken together, however, Freeplay's allegations couldshow that Beasley has "on-going contractual relationship[s] withNew York corporation[s]," and could therefore support a findingthat Beasley transacts business in New York. Agency Rent A Car,98 F.3d at 29. Nevertheless, jurisdiction fails under § 302(a)(1) because theinfringing conduct in question cannot be said to have arisen outof these business transactions. "For a tort claim to arise out oftransaction of business in New York, the connection between thetransaction and the claim must be direct." Mantello,947 F. Supp. at 100. No relationship exists between Beasley's businesstransactions in New York and the alleged copyright infringement.Therefore, Beasley's contractual contacts with New York are not aproper basis for jurisdiction under C.P.L.R. § 302(a)(1).

The case is different with respect to Beasley's maintenance ofa website through which internet users in New York could accessthe programming of at least of some of Beasley's radio stations.Freeplay's claims arise from the production and broadcast of suchprogramming. Accordingly, if the maintenance of such websitesconstitute their transaction of business in New York, Freeplay'sclaims would have a significant nexus with those transactions.

The internet has complicated questions of personaljurisdiction. Although Second Circuit case law provides littleguidance on this subject, Judge Sweet has aptly summarized thestate of the law as it has developed around the country: [T]he courts have identified a spectrum of cases involving a defendant's use of the internet. At one end are cases where the defendant makes information available on what is essentially a `passive' web site. This use of the internet has been analogized to an advertisement in a nationally-available magazine or newspaper, and does not without more justify the exercise of jurisdiction over the defendant. At the other end of the spectrum are cases in which the defendant clearly does business over the internet, such as where it knowingly and repeatedly transmits computer files to customers in other states. Finally, occupying the middle ground are cases in which the defendant maintains an interactive web site which permits the exchange of information between users in another state and the defendant, which depending on the level and nature of the exchange may be a basis for jurisdiction.Citigroup, 97 F. Supp. 2d at 565 (citations omitted). Althoughthis "sliding scale" model provides a useful guide to how courtshave approached such claims in the recent past, it does notamount to a separate framework for analyzing internet-basedjurisdiction, and traditional statutory and constitutionalprinciples remain the touchstone of the inquiry. See Hy CiteCorp. v. Badbusinessbureau.com, L.L.C., 297 F. Supp. 2d 1154,1160-61 (W.D. Wisc. 2004) (rejecting notion that sliding scaleframework represents a "specialized test" for internetjurisdiction, but finding that "[t]he website's level ofinteractivity may be one component of a determination whether adefendant has availed itself purposefully of the benefits orprivileges of the forum state"); Winfield Collection, Ltd. v.McCauley, 105 F. Supp. 2d 746, 750 (E.D. Mich. 2000) ("[T]heultimate question can still as readily be answered by determiningwhether the defendant did, or did not, have sufficient `minimumcontacts' in the forum state.").

Beasley's alleged broadcast of sound compositions over itsstations' websites cannot serve as a basis for jurisdiction under§ 302(a)(1). Although there may be interactive elements to thewebsites, the simulcasts of the radio broadcasts are as passivean enterprise as are the radio broadcasts themselves. SeeRealuyo v. Villa Abrille, No. 01 Civ. 10158 (JGK), 2003 WL21537754, at *6 (S.D.N.Y. July 8, 2003) (finding that the "sheeravailability" of an allegedly defamatory article on thedefendant's website, "where it can be downloaded in New York atno cost" could not be considered a transaction of businesssufficient to sustain jurisdiction under either C.P.L.R. §302(a)(1) or due process). Freeplay also fails to allege that NewYork residents ever accessed Beasley websites for the purposes oflistening to Beasley radio station simulcasts. It stretches themeaning of "transacting business" too far to subject defendantsto personal jurisdiction in any state merely for operating a website, howevercommercial in nature, that is capable of reaching customers inthat state, without some evidence or allegation that commercialactivity in that state actually occurred or was actively sought.Cf. Citigroup, 97 F. Supp. 2d at 566 (finding personaljurisdiction where bank not only maintained website equipped totake loan applications and provide online chat with bankrepresentatives, but also engaged in direct mail solicitation ofNew York businesses). Therefore, Beasley does not transactbusiness in New York when it simulcasts its radio programming viaits websites, and is not subject to jurisdiction under §302(a)(1).

B. Tortious Action Within New York: C.P.L.R. § 302(a)(2)

Alternatively, under C.P.L.R. § 302(a)(2), a foreign defendantmay be subject to personal jurisdiction in New York if he"commits a tortious act within the state." New York courts haveinterpreted the statutory language "within the state" literally,such that jurisdiction is only proper over a defendant whocommits a tortious act when the defendant is physically presentin the state. See Bensusan Restaurant Corp. v. King,126 F.3d 25, 28 (2d. Cir. 1997) ("The official Practice Commentary toC.P.L.R. § 302 explains that `if a New Jersey domiciliary were tolob a bazooka shell across the Hudson River at Grant's tomb, [NewYork case law] would appear to bar the New York courts fromasserting personal jurisdiction over the New Jersey domiciliaryin an action by an injured New York plaintiff.'"). In copyrightclaims, § 302(a)(2) jurisdiction exists only when the allegedlyinfringing work is offered, displayed or sold in New York.Mantello, 947 F. Supp. at 101.

It appears that Freeplay means to allege that because theinfringing sound compositions were broadcast via Beasleywebsites, they were made available in New York such that jurisdiction under C.P.L.R. § 302(a)(2) is appropriate. However,"[a]lthough it is in the very nature of the internet that theallegedly infringing [material] contained in these web sites canbe viewed anywhere, this does not mean that the infringementoccurred everywhere." Citigroup, 97 F. Supp. 2d at 567."[C]ourts have held that in the case of web sites displayinginfringing [material] the tort is deemed to be committed wherethe web site is created and/or maintained. Id. at 567; seealso Bensusan, 126 F.3d at 29 (holding that a jazz club inMissouri with the same name as a famous jazz club in New York wasnot to be subject to jurisdiction under § 302(a)(2) on ths basisof its website since the website was created and maintained inMissouri). Freeplay makes no assertions that the websites werecreated or maintained

in New York, and thus, Beasley is notsubject to jurisdiction under § 302(a)(2).

C. Tortious Action Outside New York: C.P.L.R. § 302(a)(3)

Under C.P.L.R. § 302(a)(3), a foreign defendant may be subjectto personal jurisdiction in New York if he "commits a tortiousact without the state causing injury to person or property withinthe state . . . if he . . . (ii) expects or should reasonablyexpect the act to have consequences in the state and derivessubstantial revenue from interstate or international commerce.""Courts determining whether there is injury in New Yorksufficient to warrant § 302(a)(3) jurisdiction must generallyapply a `situs-of-injury' test, . . . locat[ing] the `originalevent which caused the injury.'" DiStefano v. Carozzi, Inc.,286 F.3d 81, 84 (2d Cir. 2001). The original event is"distinguished [both] from the initial tort [and] from the finaleconomic injury." Id. For New York courts to have jurisdictionover a tortfeasor outside of New York, the first injury resultingfrom the tort must be felt inside New York. See, e.g.,Hermann v. Sharon Hosp., Inc., 522 N.Y.S.2d 581, 583 (2d Dept.1987) (finding that the first injury was felt outside of New York when a New York plaintiff received negligent medicaltreatment in Connecticut, even though the plaintiff continued tofeel the injury when she returned to New York).

Freeplay has alleged that Beasley used its copyrighted soundrecordings and musical compositions without the requisite"synchronization license." In cases of commercial torts, "theplace of injury will usually be located where the `criticalevents associated with the dispute took place.'" Rolls-RoyceMotors, Inc. v. Charles Schmitt & Co., 657 F. Supp. 1040, 1054.In this case, the "critical events" are Beasley's allegedunlicensed use of Freeplay's recordings and compositions. Yet,Freeplay has not alleged that the Beasley's unlicensed use tookplace in New York, or even that New York residents accessedBeasley's webcasts and listened to the infringing soundperformances. Freeplay claims only economic loss as a result ofthe alleged unlicensed use of their copyrighted material. Anyeconomic loss suffered, however, is only a consequence of theinjurious unlicensed use and is not the injury itself. SeePlunket v. Doyle, No. 99 Civ. 11006 (KMW), 2001 WL 175252, at*3 (S.D.N.Y. Feb. 22, 2001) (finding a New York copyright holderis injured where the infringing use occurred, and "the mere factthat the plaintiff resides in New York and therefore ultimatelyexperiences a financial loss there is not a sufficient basis forjurisdiction under § 302(a)(3)"). Therefore, jurisdiction underC.P.L.R. § 302(a)(3) is not justified.

CONCLUSION

Defendant's motion to dismiss for lack of personal jurisdictionis granted. SO ORDERED.

1. Freeplay's memorandum in opposition to Beasley's motioncontains additional allegations not stated in its complaint.Although a motion to dismiss for lack of personal jurisdiction isnormally decided based on the pleadings, the Court considers theadditional allegations here in the interests of fairness and of afull and efficient consideration of the jurisdictional issues inthis case.

2. Factors that have led courts to conclude that a bankaccount is a "substantial" part of a defendant's businessinclude: (1) receipt and deposit of substantial portion ofcompany revenue, (2) use for payment of employees, (3) use forpayment of expenses, and (4) assistance from bank personnel incarrying out company business. United Rope Distrib., Inc. v.Kimberly Line, 785 F. Supp. 446, 450-451 (S.D.N.Y. 1992).

3. Further, Beasley's relationship to Harris Nesbitt and theBank of New York via the credit facility does not amount to thetype of true principal/agent relationship that, in othercontexts, might serve as a basis for general jurisdiction. To beconsidered an "agent," the banks "must be primarily employed bythe defendant and not engaged in similar services for otherclients." Jacobs, 160 F. Supp. 2d at 737. Neither of theseconditions exist in this case. Hence, the relationship betweenBeasley and the banks cannot serve as a basis for generaljurisdiction.