

*5 Based on the above well-settled principles, this Court must make the following series of determinations to ascertain whether it can exercise jurisdiction over IC Industries/Whitman 1) did IC Industries/Whitman transact business in New York within the meaning of NYCPLR 302, and 2) did IC Industries/Whitman have the necessary minimum contacts with New York to satisfy constitutional due process requirements?

1 *Transacting Business*

The question for the Court is whether this Court can obtain personal jurisdiction over IC Industries/Whitman in that IC Industries/Whitman "transacted business" pursuant to NYCPLR 302(a)(1) by participating in the 1988 Stock Purchase Agreement

IC Industries/Whitman asserts that its activity leading to the successful negotiation and performance of the 1988 Stock Purchase Agreement did not constitute a purposeful availment of the laws of New York. In its motion, IC Industries/Whitman maintains that because the face-to-face negotiations conducted in New York "could just as easily have occurred" in Chicago, they represent "an accommodation" that is of little significance. Whitman Memorandum at 13. IC Industries/Whitman also contends that no weight should be attributed to the provision calling for the application of New York law because "it is inevitable that New York lawyers call for the application of law they are licensed to practice." *Id.* Furthermore, IC Industries/Whitman characterizes its other contact with New York as so isolated and remote that it fails to satisfy the requisite grounds for establishing personal jurisdiction. *Id.* at 10. However, this Court finds that IC Industries/Whitman's activity, viewed in totality, constitutes the purposeful availment of New York law, and thereby satisfies the "transacted business" element of NYCPLR 302(a)(1). Consequently, this Court finds that it has personal jurisdiction over IC Industries/Whitman.

IC Industries/Whitman's attempt to minimize the significance of its physical presence in New York for all the face-to-face negotiations of the 1988 Stock Purchase Agreement is unpersuasive in the absence of any evidence that PA Holdings/Pneumo Abex requested the accommodation of holding the negotiations in New York rather than Chicago. In addition, IC Industries/Whitman's agents, the New York law office of Cravath, Swaine & Moore, transacted business in New York during the entire process of negotiating the 1988 Stock Purchase agreement. *Id.*, Ex. B, ¶ 8.

Although IC Industries/Whitman dismisses the choice of New York law provision as merely the expression of

a New York law firm's affinity for New York law, this Court recognizes that provision a factor to be considered when applying NYCPLR section 302(a). Similarly, IC Industries/Whitman's telephone calls from Chicago to New York must be considered because they both initiated and significantly advanced the negotiation of the 1988 Stock Purchase Agreement.

Further, IC Industries/Whitman performed the closing of the 1988 Stock Purchase Agreement in the offices of their New York law firm, pursuant to section 2(a) of the 1988 Stock Purchase Agreement. What is this, if not transacting business in New York?

*6 IC Industries/Whitman purposefully availed itself of the laws of New York by conducting face-to-face negotiations in New York, negotiating through the agency of its New York law firm, negotiating by telephone from Chicago to New York, including a New York choice of law provision, and by performing the contract in the office of its New York law firm. This purposeful activity clearly satisfies the "transacted business" element of NYCPLR 302(a).

2 *Minimum Contacts*

IC Industries/Whitman's purposeful activity in New York also satisfies the "minimum contacts" due process requirement necessary to subject IC Industries/Whitman to the jurisdiction of New York courts. Specifically, IC Industries/Whitman, as noted above, purposefully availed itself of the laws of New York by conducting face-to-face negotiations in New York, negotiating through the agency of its New York law firm, negotiating by telephone from Chicago to New York, including a New York choice of law provision, and by performing the contract in the office of its New York law firm. Accordingly, as IC Industries/Whitman has transacted business within New York within the meaning of the NYCPLR, and the constitutional requirement of minimum contacts has been satisfied, this Court has personal jurisdiction over IC Industries/Whitman.

CONCLUSION

The motion to dismiss the claims against defendant IC Industries/Whitman for lack of personal jurisdiction is denied. As Magistrate Judge Lee has scheduled the completion of expert discovery for March 1, 1996, the Court schedules a pre-trial conference is scheduled for March 4, 1996 at 10:00 a.m.

SO ORDERED