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SECTION 632: AN EXPANDED BASIS OF FEDERAL JURISDICTION FOR NATIONAL BANKS

STEVEN M. DAVIDOFF

The author explains how national banks can invoke Section 632 jurisdiction more readily than in the past, thus providing a wider avenue for them to gain access to a federal forum.

The traditional statutory bases of original jurisdiction in the federal courts — diversity and federal question jurisdiction — are familiar even to a first-year law student. Woven into the United States Code, however, are other, more obscure and less frequently invoked statutes that also provide a basis for federal jurisdiction. One such provision is 12 U.S.C. § 632.¹ This section provides the federal courts original jurisdiction in any action in which a national bank is a defendant and which arises out of transactions involving international or foreign banking or other international or foreign financial operations.²

The increasing complexity and international focus of the work per-

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formed by United States banks makes it ever more important that national banks have this access to the federal courts that Section 632 was intended to provide. As the global nature of their work increases, United States banks need the assurance that the transactions they engage in will be subject in measure to a uniform law, and that disputes arising from their international work will be adjudicated in a timely and efficient way in a competent judicial system. By providing a gateway into the federal courts, Section 632 assists national banks in achieving this uniformity and certainty and ensures that they will obtain the acknowledged benefits of litigating in the federal system.

Unfortunately, this far-reaching potential of Section 632 has yet to be fully realized. The primary reasons for this appear to be two-fold. First, there is a seeming lack of awareness of Section 632 evidenced by the fact that it is invoked infrequently and there is a relative paucity of cases interpreting the statute. Second, the reported cases interpreting the statute have been marked by a divergence of judicial opinion as to the proper scope of the statute and, more particularly, the types of factual situations it was meant to encompass. The result has been historical confusion among parties and practitioners over the appropriate circumstances for the invocation of Section 632 jurisdiction.

However, there is hope. Three district court opinions in the Southern District of New York (collectively, the “Lloyd’s Cases”) — all of them handed down in litigation involving the Lloyd’s insurance market — have addressed this judicial disagreement, synthesized the prior case law and endorsed a broad reading of Section 632.⁴ A review of these opinions finds that the scope of national banks’ ability to access federal courts by invoking Section 632 is clearer, and perhaps more broader, than ever. National banks should acquaint themselves and make use of this open doorway to fulfil Section 632’s potential for the more effective resolution of international or foreign banking and financial disputes.

THE HISTORY OF SECTION 632

Section 632 was incorporated into the Edge Act of 1919⁴ (itself an addition to the Federal Reserve Act of 1913) by the Banking Act of 1933,⁵ popularly known as the Glass-Steagall Act — the comprehensive overhaul of the

national banking system enacted amidst the Great Depression.⁶ Section 632 states:

[A]ll suits of a civil nature...to which any corporation organized under the laws of the United States shall be a party, arising out of transactions involving international or foreign banking...or out of other international or foreign financial operations...shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such suits.

The statute goes on to state that:

[A]ny defendant in any such suit may, at any time before the trial thereof, remove such suits from a state court into the district court of the United States for the proper district by following the procedure for the removal of causes otherwise provided by law.⁸

Despite the wealth of legislative history on the Glass-Steagall Act in general, relatively little legislative history is available on Section 632 itself. The available legislative history does suggest an absence of any definitive congressional intent concerning this section. Typical are the remarks, on the floor of the Senate, of Senator Glass, one of the two main sponsors of the Glass-Steagall Act:

[I am] not so familiar with the technicalities of [Section 632]. I was rather inclined to object to [this section], having gotten some faint idea that when lawyers in this or any other body begin a discussion of jurisdictional matters they consume a great deal of time, and I wanted to get the bill through. But the Senators who are lawyers can determine whether or not that provision of the bill shall remain in it.⁹

In the absence of a clear congressional intent, the purpose behind Section 632 can be surmised by looking to the overall objectives of the Edge and Glass-Steagall Acts: to establish and strengthen a national banking system and provide a comprehensive national regulatory apparatus.¹⁰

Inferentially, then, the role of Section 632 is to permit the establishment of a uniform body of law for national banks and provide a federal forum for disputes in which national banks are involved in international or foreign transactions, thereby lending an added measure of certainty, reliability and enhanced scrutiny to the banks' interactions with their customers throughout the world. Indeed, those few federal courts that have analyzed the legislative history of Section 632 have made just this point. As one court has stated:

[O]ne can divine the likely reasons for the grant of federal jurisdiction . . . [t]he Edge Act called forth a new type of federally controlled institution intended to increase the stability of, and the public's confidence in, international markets. . . . Federal supervision of these financial institutions was seen as essential if they were ever to succeed in the international marketplace. . . . We infer, therefore, that the substantive federal regulations that the Congress placed upon Edge Act corporations. . . are intended to facilitate and stimulate international trade by providing the uniformity of federal law.¹¹

SECTION 632 IN THE FEDERAL COURTS

In the absence of authoritative explication of Section 632 in the legislative history, two readings of the statute have emerged in the case law. The majority of federal courts, in keeping with the words of the statute itself, have read Section 632 as providing a broad basis for federal jurisdiction. Some courts, however, have insisted on a narrower reading. In order to understand this split, and the reasoning on which it is based, it is necessary to review the principal cases that have put forth these two divergent viewpoints.

The Broad Interpretation

Those courts that have interpreted Section 632 broadly have read the requirement that the suit "aris[e] out of transactions involving international or foreign banking. . . or out of other international or foreign financial opera-

tions”¹² to mean only that the suit must bear some connection, even if tangential, to an international or foreign banking transaction in order to support jurisdiction under Section 632. In other words, the suit does not have to focus on banking issues, but must simply arise from a banking transaction. The two leading cases espousing this view are the Second Circuit’s decision in *Corporación Venezolana de Fomento v. Vintero Sales Corp.*,¹³ and the First Circuit’s decision in *Conjugal Soc’y Composed of Juvenal Rosa v. Chicago Title Ins. Co.*¹⁴

In *CVF*, the plaintiff, an entity of the Venezuelan government, sought a declaration that its guarantee of notes issued and defaulted on by *Venezolana de Cruceros del Caribe, C.A.* (“Cariven”), a Venezuelan corporation, was void because it had been fraudulently obtained by several defendants, including the Swiss corporation that had purchased the notes, several of its officers, and two New York corporations. Also named as a defendant was Security Pacific International Bank, a federally chartered bank — that is, a “corporation organized under the laws of the United States” — that had issued a letter of credit for Cariven’s account in connection with the transaction. Six U.S. and Canadian banks that purchased some of the notes from the Swiss corporation, including two federally chartered banks, intervened. The district court (Sweet, J.) found that the presence of the two intervening banks sufficed to confer jurisdiction under Section 632.¹⁵

On appeal, the Second Circuit rejected the district court’s analysis, but nevertheless sustained jurisdiction on the basis of Section 632. The purchase of the notes by the intervening banks, said the Second Circuit, did not constitute foreign banking since it was, in essence, a private placement of the notes with a financing firm, but not a banking transaction since no actual bank was involved in the transaction.¹⁶

The *CVF* court, however, went on to ground Section 632 jurisdiction in the role played by Security Pacific in providing the letter of credit. As the court stated, “[Security Pacific] is a federally chartered bank, and the transaction in which [the New York corporation], in New York, drew on a letter of credit on the account of a Venezuelan corporation, Cariven, was one involving ‘international or foreign banking.’”¹⁷ By the time the case reached the Second Circuit, Security Pacific, alleged in the original complaint to have wrongfully permitted draw downs by the New York corporation, had already

settled and had been dismissed from the case.¹⁸ Yet its role in the action, albeit tangential, sufficed to sustain Section 632 jurisdiction.

In *Juvenal Rosa*, the plaintiffs sold a parcel of land to Torre de Caparra Corp., receiving as consideration cash and a first mortgage. According to the allegations of the complaint, Torre also mortgaged the property to Chicago Title Insurance Co., which guaranteed the completion of construction on the land and issued a performance bond in favor of the plaintiffs. On the basis of Chicago Title's guarantees, the plaintiffs subordinated their mortgage to that of Chicago Title. Torre then entered into a refinancing agreement with First Federal Savings and Loan Association of Puerto Rico. Plaintiffs subordinated their mortgage to First Federal as well on the condition that the performance bond and guarantees of completion by Chicago Title would remain in effect. Chicago Title, however, cancelled the bond and guarantees and First Federal foreclosed on the property. The plaintiffs received nothing and sued in federal court. The district court, however, rejected their attempt to invoke Section 632 because, said the court, their cause of action — fraud — sounded in tort and did not fall within the ambit of “traditional banking activities.”¹⁹

The First Circuit reversed on appeal.²⁰ The appellate court, like the district court, said that, in order to meet the test for jurisdiction under Section 632, the transaction had to involve “traditional banking activities.”²¹ But it rejected the notion that, just because the claims were based on the defendants' alleged fraud (as well as negligence), the suit did not involve banking activities.²² As the court held, “[w]hether defendants' acts are viewed as ones in tort or contract, plaintiffs' rights are alleged to have arisen out of defendants' mortgage agreements and thus out of a transaction involving banking within the meaning of Section 632.”²³

Taken together, *CVF* and *Juvenal Rosa* establish the proposition that Section 632 is so broad in scope that the banking transaction upon which Section 632 jurisdiction is grounded need not be central to the suit.²⁴ In *CVF*, the Second Circuit upheld federal jurisdiction under Section 632, even though (1) the federally chartered bank that provided the predicate for jurisdiction was no longer a defendant in the action; (2) the banking transaction on which Section 632 jurisdiction was premised — namely, the draw-downs of the letters of credit by the New York corporation — took place entirely in

the United States; and (3) the lawsuit focused on the actions of defendants other than the federally chartered bank. Similarly, in *Juvenal Rosa*, the court found the action to have arisen out of transactions involving banking within the meaning of Section 632 even though the core of the plaintiffs' claims consisted of allegations of fraud and negligence.

The Narrow Interpretation

The broad reading of Section 632 has been rejected in two district court opinions — *Telecredit Service Center v. First National Bank of the Florida Keys*,²⁵ and *Bank of New York v. Bank of America*.²⁶ In these cases, the courts concluded that Section 632 should be strictly construed, and that, accordingly, Section 632 jurisdiction must be founded upon a case centered upon a “traditional banking transaction” or “banking law issues.”

Telecredit arose from an apparent fraud involving the sale of “travel club” memberships in a facility in the Bahamas. Large numbers of these memberships were charged to Visa or Master Card. After an exceptionally high percentage of the purported buyers of these memberships refused to pay the charges, a dispute arose, as to who would bear the loss resulting from the alleged fraud, between Telecredit Service Center, which processed the credit card charges, and First National Bank of the Florida Keys, which had accepted for deposit credit card invoices from the sellers of the travel club memberships. Telecredit sued First National, which removed the action and asserted Section 632 as a basis for jurisdiction.²⁷ In support of its position, the bank claimed that the credit card transactions in question involved the purchase of memberships in a club in the Bahamas and, as such, involved international financial operations.²⁸

The court in *Telecredit* rejected this argument and granted the plaintiff's motion to remand.²⁹ In order to ascertain whether Section 632 applies, said the court, the “court must determine the true nature of the transaction at issue.”³⁰ The court then held that “the nature of the transaction at issue” was a “contractual dispute between the parties” not a banking transaction.³¹ Although the defendant bank sought to ground jurisdiction on the “international or foreign financial operations” language in Section 632, the court's decision ignored this prong of the statute altogether, and instead read into

the statute the requirement that the suit not only arise out of transactions “involving international or foreign banking,” but involve a “traditional banking activity.”³² The court also concluded that the transactions at issue did not involve international or foreign banking “merely because the service being purchased was to be consumed in a foreign land.”³³

Bank of New York expanded on the ruling in *Telecredit*. The dispute in *Bank of New York* grew out of negotiations between BNY Australia Limited and Bank of America Australia Limited (“BOAA”) — Australian corporations wholly owned by the Bank of New York (“BNY”) and the Bank of America (“BOA”), respectively — concerning the sale of BNYA’s interest in certain loans to a group of Australian companies. BOAA and BOA contended that they had an agreement to buy BNYA’s interest and brought an action in an Australian court to enforce it. BNYA and BNY then filed an action in New York seeking a declaratory judgment that they did not have any obligation to sell. Amid a flurry of legal maneuvers by both sides in Australia and New York, BOAA and BOA, invoking Section 632, removed the action to federal court.³⁴

Like the court in *Telecredit*, the *Bank of New York* court remanded because it saw the case as “essentially contractual” in nature.³⁵ Although the dispute centered on the sale of an interest in loans — which, the court acknowledged, at least appeared to involve “traditional banking activities” — the court ruled that Section 632 was not applicable because the case presented “no banking law issues.”³⁶ Without specific authority in either the text or legislative history of Section 632, the *Bank of New York* court held that “the banking aspect of the jurisdictional transaction must be legally significant in the case” in order to be within the scope of the statute.³⁷

Both *Telecredit* and *Bank of New York* looked to the “true nature of the dispute” to assess the applicability of Section 632.³⁸ As a result, these decisions offer a constricted interpretation of Section 632 that stands at odds with *CVF*, *Juvenal Rosa* and the bulk of the case law interpreting Section 632. Indeed, to the extent that these decisions impose additional requirements for establishing jurisdiction under Section 632 (such as the presence in the case of “banking law issues”), they also appear to stand at odds with the statute itself.

The Missing Interpretation

Notable in both strands is the absence of any judicial discussion or recognition of the potential applicability of the second prong of Section 632, which endows federal courts with jurisdiction over suits “arising...out of other international or foreign operations.”⁴⁰ This is a judicial attention deficit that extends beyond the above four cases. Until the Lloyd’s Cases, discussed below, the federal courts, with one exception, focused exclusively on the first prong of Section 632, which gives the federal courts jurisdiction over suits “arising out of transactions involving international or foreign banking.”⁴⁰ That one exception was *Travis v. National City Bank of New York*.⁴¹ *Travis* was decided in 1938, and, while it found federal jurisdiction of the issue under Section 632’s second prong, it did not engage in a close analysis of the issue.⁴² This wholesale judicial failure (and failure of parties and practitioners as well) is quite striking given the broad potential to sustain federal jurisdiction embodied in even the strictest reading of Section 632’s second prong.

THE LLOYD’S CASES

The three Lloyd’s Cases, all of them in the Southern District of New York, explore the limits of jurisdiction under Section 632. The most significant of these decisions, and the one on which the others built, was Judge Sweet’s decision in *In re Lloyd’s American Trust Fund Litigation* (the “LATF Litigation”).⁴³

In the LATF Litigation, several individual underwriters in the Lloyd’s insurance market (generally known as “Names”) brought a putative class action in New York state court against Citibank, N.A., a federally chartered bank that served as trustee of the Lloyd’s American Trust Fund, for breach of fiduciary duty and breach of contract in connection with its administration of the Fund. The Fund, administered under the direction of the Names’ agents in the United Kingdom, held premiums paid in United States dollars by policyholders in the Lloyd’s market, no matter where the property or risks being insured were located.⁴⁴

Soon after the suit was filed, Citibank removed the action to federal court.⁴⁵ In doing so, Citibank cited Section 632 as the sole basis for federal jurisdiction, but invoked both the provision authorizing the removal of suits

arising “out of transactions involving international or foreign banking” and the provision authorizing the removal of suits arising “out of other international or foreign financial operations.”⁴⁶ The plaintiffs then moved to remand. Relying on *Telecredit* and *Bank of New York* — that is, the narrow view of Section 632 jurisdiction described above — the plaintiffs argued that Section 632 jurisdiction was absent because the case did not present any “banking law claims” and because the most legally significant aspect of the dispute was not banking, but the propriety of Citibank’s actions as trustee under New York trust law. Moreover, the plaintiffs contended, Citibank’s activities were not international in nature because they essentially concerned the administration of a trust situated in New York.

The district court rejected the plaintiffs’ arguments and denied the motion to remand.⁴⁷ First, citing *CVF* and *Juvenal Rosa*, the court held that the jurisdictional requirement that the transaction be “international or foreign” in nature is satisfied “if any part of it arises out of transactions involving international or foreign banking.”⁴⁸ The transactions at issue in the *LATF Litigation* met this test because, among other reasons, the money in the Fund was held in trust for policyholders around the world, the premiums forwarded to the Fund and the claims paid from it were processed through London, and Citibank received directions from the Names’ agents in London as to how the trust fund was to be managed.⁴⁹

Turning to Section 632’s requirement that the suit arise out of transactions involving banking (or financial operations), the court rejected the holding in *Bank of New York* that the claims must involve banking law issues. The court stated that Section 632 jurisdiction had repeatedly been sustained by prior courts in cases where “the international or foreign banking activity was not central to the case.”⁵⁰ *Bank of New York*, to the extent it conflicted, was “inconsistent with the text of Section 632 and with other federal court decisions that have routinely applied Section 632, even in cases based on state law causes of action and containing only an incidental connection to banking law.”⁵¹ Accordingly, the court held that the banking activities performed by Citibank as trustee of the Fund provided a sufficient predicate for jurisdiction under Section 632.⁵²

The court then went on to state pointedly that “[e]ven if the transactions in question here do not constitute banking proper, they are so close that they

surely fall within the ambit of the ‘financial operations’ contemplated by the statute.”⁵³ This is a key point, for it draws attention to the second prong of Section 632, which, as discussed *supra*, has been largely ignored by other federal courts. As the court’s comment shows, this second prong, properly understood, should transform what might otherwise be a close case — like *Telecredit*, where the court was called upon to determine whether the credit card transactions at issue constituted “banking” for purposes of the statute — into one in which “international or foreign financial operations” are clearly involved, and Section 632 therefore should apply.

The other two Lloyd’s Cases arose out of the same action, *Stamm v. Barclays Bank of New York et al.*⁵⁴ In *Stamm* several Names from the United States sued Lloyd’s,⁵⁵ as well as certain agents and syndicates operating in the Lloyd’s insurance market, for common law and statutory fraud under New York law on the theory that the defendant’s had fraudulently induced them to become Names at Lloyd’s. As Names, the plaintiffs had provided security for their obligations to Lloyd’s by depositing shares of stock with Barclays Bank of New York, and then arranging for Barclays Bank Plc to issue guarantees to Lloyd’s. Lloyd’s removed the action to federal court on the basis of Section 632. The plaintiffs moved to remand.⁵⁶

In the first of her two decisions (*Stamm I*),⁵⁷ Judge Shira Scheindlin, relying heavily on Judge Sweet’s opinion in the LATF Litigation, denied plaintiffs’ motion and found federal jurisdiction under both prongs of Section 632. First, the court held that, in light of the involvement of Lloyd’s and Barclays, both foreign organizations, and the agreements between the U.S. plaintiffs and Lloyd’s, it was beyond dispute that the transaction at the heart of the dispute was “international in nature.”⁵⁸ The court then held that “the guarantees issued by Barclays, an English Bank, as security for plaintiffs’ underwriting activities at Lloyd’s in London, serve the identical banking functions as an international letter of credit.”⁵⁹ Barclays’ guarantees therefore fit under the “rubric of ‘banking’ activities” intended to be covered by Section 632.⁶⁰ Finally, and perhaps most interestingly, the court also found jurisdiction to be present under Section 632’s second prong. The court concluded that, even if the “parties’ transactions do not constitute ‘international or foreign banking’, they undoubtedly fall into the general statutory category of ‘financial operations.’”⁶¹

Plaintiffs then moved to certify an appeal of the court's ruling to the Second Circuit pursuant to 28 U.S.C. § 1292(b).⁶² Plaintiffs' based their motion for certification primarily on the theory that the Second Circuit, in *CVF*, had rejected the proposition that Section 632 jurisdiction could be based upon non-banking international financial operations.⁶³

In the second *Stamm* decision (*Stamm II*),⁶⁴ Judge Scheindlin explicitly rejected this argument, and thus reconfirmed the vitality of the second prong of the statute. *CVF*, the court said, "merely held that intervention by nationally chartered banks cannot serve as a basis for Section 632 jurisdiction."⁶⁵ Although the Second Circuit in *CVF* rejected the district court's attempt to ground Section 632 jurisdiction on the role of the defending banks, it nevertheless upheld Section 632 jurisdiction and did not purport to interpret the meaning of "international or foreign operations."⁶⁶ Relying on the opinion in the *LATF Litigation* (and Black's Law Dictionary), the court stated that "financial operations' are commonly understood as those operations that 'provide capital or loan money as needed to carry on business.'"⁶⁷ The plaintiffs' pledges of capital to Lloyd's were, said the court, equivalent to the purchase of a security, and that the sale of securities "for the purposes of raising capital [was] a kind of financial operation...." sufficient to establish jurisdiction under Section 632's second prong.⁶⁸

The *Stamm* decisions not only reaffirm the *LATF Litigation's* broad reading of Section 632's first prong, but add further definition to the scope of Section 632's second prong. *Stamm II's* holding that financial operations includes the raising of capital, and in particular the issuance of securities, provides support for a broad reading of Section 632's second prong as encompassing a wide array of transactions conducted in today's international and financial market-place.⁶⁹ At a minimum, *Stamm II* provides unequivocal support for the proposition that the plain meaning of the statutory phrase "other international or foreign financial operations" is "international or foreign financial operations" other than banking.⁷⁰

CONCLUSION

The Lloyd's Cases illuminate the proper scope of federal jurisdiction under Section 632. Although these decisions were all issued by district

courts, the *LATF Litigation* goes further than any other case in analyzing and making sense of the two competing views described above: the broad view represented by *CVF* and *Juvenal Rosa*, and the narrow view expressed in *Telecredit* and *Bank of New York*. Ultimately, the *LATF Litigation* and its two-related Lloyd's Cases, stands for the proposition that, under the language of the statute, the banking transactions on which Section 632 jurisdiction is predicated need not be any more than tangential to the claims asserted and need not involve banking law issues. The Lloyd's Cases also show that Section 632 jurisdiction may be invoked even when no party is foreign.

I believe that the broader reading adopted in the Lloyd's Cases is appropriate. This interpretation is in greater harmony with the Edge and Glass-Steagall Acts' general statutory intent: to provide a national and regulatory framework for the efficient conduct of national and international and foreign banking and financial operations. It also comports in larger measure with today's reality of increasing globalization and more frequent and complex international and foreign transactions. A federal forum established by Section 632 provides the appropriate apparatus to adjudicate disputes arising at a global level and a measure of uniform federal "common law" by which to measure future conduct.¹ The alternative — piecemeal adjudication in the fifty states — will simply not produce the quality of judicial supervision and access presumably desired by Congress in the enactment of Section 632.

Perhaps the greater significance of the Lloyd's Cases, though, is the expanding recognition of the second prong of Section 632, which provides that jurisdiction may be premised not only on transactions arising out of "international or foreign banking," but also "international or foreign financial operations." This recognition should enable national banks to invoke Section 632 jurisdiction more readily than in the past, and thus provide a wider avenue for national banks to gain access to a federal forum.²

NOTES

¹ 12 U.S.C. § 632 (2006).

² *Id.*

³ The cases are: *Stamm v. Barclays Bank of New York*, 960 F.Supp. 724 (S.D.N.Y. 1997); *In re Lloyd's Am. Trust Fund Litig'n*, 928 F.Supp. 333 (S.D.N.Y. 1996); *Stamm*

v. Barclays Bank of New York et al., 1996 WL 614087 (S.D.N.Y. Oct. 24, 1996).

⁴ The Edge Act of 1919 provides for federally chartered corporations "which have the power to engage only in international banking or financing activities. Any activities carried on in the U.S. by an Edge corporation must be 'incidental to its international or foreign business.'" P. Nicholas Kourides, *United States Regulation of International Banking Activities*, in *BANKING AND REGULATION 1988*, 524-25 (PLI Comm. Law and Practice, Course Handbook Series No. A4-4239, 1988). The purpose of the Edge Act was remarked upon by Senator Edge on the floor of the Senate:

When an American producer or manufacturer sells a bill of goods abroad under present conditions,...the credit demanded is practically impossible, so far as the individual producer or manufacturer is concerned. That situation will be relieved through the incorporation of these banks....These banks will then be in a position to take the securities offered to the American manufacturer or producer, so that the can turn the securities into the bank under regular ordinary banking conditions and form. On those securities he receives the amount of the bills that would otherwise be paid him abroad if credit conditions were anything like normal. The bank in turn,...will hold the securities of various kinds...under supervision of the Federal Reserve Board...to issue bonds or debentures to the American public....Our banks at the present time are not in a position to finance foreign sales, and it is necessary... that we supplement the banking system in this carefully protected manner.

58 Cong. Rec. at parts 5 and 8 (1919).

⁵ 41 Stat. 378, 66th Cong., 2d Sess. (Dec. 24, 1919), as added 48 Stat. 162, 184, 73rd Cong., 1st Sess. § 15 (June 16, 1933).

⁶ The Glass-Steagall Act is popularly known for its legislative separation of the businesses of commercial and investment banking. A number of the provisions of the Glass-Steagall Act of 1933, including the separation provisions, were subsequently repealed by the Gramm-Leach-Bliley Financial Modernization Act of 1999 which relaxed regulatory restrictions on banks and other financial services organizations. 113 Stat. 1338, 106th Cong. 1st Sess. (Nov. 12, 1999).

12 U.S.C. § 632.

^{*} *Id.*

⁷ 75 Cong. Rec. at 9889 (1919). Representative Luce, summarizing the bill in the House of Representatives, made similar remarks:

Then there is a page or more that only a lawyer can understand, and not having been actively engaged in the practice of law for a long time, I dare not try and explain it to you. It is something about taking Federal Reserve bank business into the United States district courts. I suppose it is desirable. You will have to take that for granted so far as I go.

77 Cong. Rec. at 3916 (1919).

¹⁰ The Edge Act, for example, created a new form of federally chartered international institution designed to further international commerce. In the words of Representative Platt, the Edge Act “furnishes...machinery for financing foreign trade, a trade more essential to our prosperity than ever before, and more essential also to the war-torn countries of Europe.” 59 Cong. Rec. at 50 (1919). Creation and supervision of this federally-chartered banking entity supervised by the federal government, and not the states, would further enable the Edge Act’s purpose. A Governor of the Federal Reserve Board would accordingly testify during hearings on the Edge Act that “[t]he time will probably come when the conflict of the dual control exercised by the Federal Reserve Board and by the banking department of a State may be a matter of embarrassment or operate to restrict the activities of the banking corporation[, and] the benefits and protection of a Federal charter...would be of great value in competing for business in foreign countries.” S.Rep. No. 108, 66th Cong., 1st Sess. 2 (July 25, 1919). Similarly, the Glass-Steagall Act, enacted amidst the Great Depression, was an attempt to restore confidence in the national banking system through federal oversight of these institutions and by, among other things, creation of the federal deposit insurance corporation and the separation of commercial and investment banking. See generally H. PARKER WILLIS & J. CHAPMAN, THE BANKING SITUATION (1934) (historical account of Glass-Steagall Act by principal advisor to Senator Glass); R. MOLEY, THE FIRST NEW DEAL (1966) (historical account of Glass-Steagall Act by Franklin Roosevelt’s advisor). Section 632 naturally falls in with this trend of federal oversight premised upon establishing smooth and confident trade and conduct among national and international actors.

¹¹ *A.I. Trade Finance, Inc. v. Petra Int’l Banking Corp.*, 62 F.3d 1454, 1462 (D.C. Cir. 1995). See also *Pujals v. First Nat’l City Bank*, 440 F.Supp. 731, 732 (D.P.R. 1977) (stating “in cases of foreign banking, [Section 632’s] purpose is to guarantee the foreign party a real or presumed higher level of judicial consideration — at the national level — and the application of a uniform ‘federal common law’ as compared with lower level state courts and the application of varied state law”).

¹² 12 U.S.C. § 632.

¹³ 629 F.2d 786 (2d Cir. 1980).

¹⁴ 690 F.2d 1 (1st Cir. 1982).

¹⁵ *Corporación Venezolana de Fomento v. Vintero Sales Corp.*, 477 F.Supp. 615 (S.D.N.Y. 1979).

¹⁶ CVF, 629 F.2d at 791-92.

¹⁷ *Id.* at 792.

¹⁸ *Id.* at 793.

¹⁹ *Conjugal Soc’y Composed of Juvenal Rosa v. Chicago Title Ins. Co.*, 525 F.Supp. 268,

270 (D.P.R. 1981). Section 632 establishes jurisdiction for “banking in a dependency or insular possession of the United States . . .” in addition to international or foreign banking, 12 U.S.C. § 632. *Juvenal Rosa* involved a transaction allegedly arising out of the former rather than the latter. *Juvenal Rosa*, 525 F.Supp. at 269.

²⁰ *Juvenal Rosa*, 690 F.2d at 5.

²¹ *Id.* at 3-4.

²² *Id.* at 4-5. This was the second time in that action that the First Circuit disagreed with the lower court’s interpretation of Section 632. Previously, the district court had held that the *Juvenal Rosa* plaintiffs could not establish jurisdiction under Section 632 since Puerto Rico was not a “dependency or insular possession of the United States” for purposes relating to national banks. *Conjugal Soc’y Composed of Juvenal Rosa v. Chicago Title Ins. Co.*, 497 F.Supp. 41 (D.P.R. 1979). The First Circuit disagreed and reversed and remanded the action for further district court proceedings. *Conjugal Soc’y Composed of Juvenal Rosa v. Chicago Title Ins. Co.*, 646 F.2d 688 (1st Cir. 1981).

²³ *Juvenal Rosa*, 690 F.2d at 5. See also *Burgos v. Citibank, N.A.*, 432 F.3d 46, 49-50 (1st Cir. 2005) (finding jurisdiction under Section 632 in dispute over contractual agreement between consumer and bank for repayment of loan made by bank to purchase an automobile); *Mercado-Garcia v. Ponce Federal Bank, et al.*, 979 F.2d 890, 890 n.2 (1st Cir. 1992) (noting jurisdiction under Section 632 in wrongful discharge and retaliation action against national bank in which plaintiff alleged inter alia the premature recall of a loan by a national bank); *People of Puerto Rico v. Eastern Sugar Assocs. et al.*, 156 F.2d 316, 320 (1st Cir. 1946) (holding that jurisdiction under Section 632 was “clear” where the government of Puerto Rico condemned 3,000 acres of land upon which a federally chartered bank held a mortgage).

²⁴ Various district court decisions are generally in accord with this reading of Section 632. See inter alia *Bank of Am. Corp. v. Lemgruber*, 385 F.Supp.2d 200 (S.D.N.Y. 2005) (finding Section 632 jurisdiction in action for breach of a stock purchase contract where alleged breach rendered the warranties concerning bank false, concealed the falsity of the re-certified warranties, and which was accomplished in part through various banking transactions); *Hernandez Perez v. Citibank, N.A.*, 328 F.Supp.2d 1374 (S.D.Fla. 2004) (finding Section 632 jurisdiction in action initiated requesting bill of discovery with respect to expropriated funds previously deposited with defendant bank’s Cuban branch); *General Star Indemnity Co. v. Platinum Indemnity Ltd.*, 2001 WL 40763 (S.D.N.Y. Jan. 17, 2001) (finding Section 632 jurisdiction in action involving reinsurance contract where defendant’s rights under contract were assigned to co-defendant pursuant to an international banking transaction); *Wachovia Bank & Trust Co., N.A. v. Bankers Trust Co.*, 1994 WL 75032 (S.D.N.Y. March 4, 1994) (finding Section 632 jurisdiction in breach of presentment warran-

ty of good title claim arising from dispute between domestic banks over forged check payable to foreign entity); *Cosorcio de Fomento Indus. S.A., de C.V. v. First Nat'l Bank of Chicago*, 1993 WL 291706, at *4 (N.D. Ill. Aug. 3, 1993) (stating that "some 'traditional banking' services, as part of a larger transaction, can provide jurisdiction under 12 U.S.C. § 632 is clear."); *Contitrade Services Corp. v. Eddie Bauer, Inc.*, 794 F.Supp. 514 (S.D.N.Y. 1992) (finding Section 632 jurisdiction in disagreement between domestic parties over letter of credit benefiting foreign party); *Rose Hall, Ltd. v. Chase Manhattan Overseas Banking Corp.*, 494 F.Supp. 1139 (D.Del. 1980) (finding Section 632 jurisdiction in claims asserting inter alia breach of fiduciary duty against bank mortgagee plaintiff); *United Technologies Corp. v. Citibank, N.A.*, 469 F.Supp. 473 (S.D.N.Y. 1979) (finding Section 632 jurisdiction in dispute between domestic parties over payment on letter of credit benefiting a foreign defendant party); *Cutler v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 441 F.Supp. 863 (N.D. Cal. 1977) (finding Section 632 jurisdiction in dispute arising out of robbery in foreign office of national bank). See generally Robert M. Brill & James J. Bjorkman, Federal Court Jurisdiction Over International Banking Transactions, 110 BANKING L.J. 118 (1993).

²⁵ 679 F.Supp. 1101 (S.D.Fla. 1988).

²⁶ 861 F.Supp. 225 (S.D.N.Y. 1994).

²⁷ *Telecredit*, 679 F.Supp. at 1102. First National also alleged the existence of a federal question, and accordingly asserted a right to remove based on 28 U.S.C. § 1331, but the court rejected that line of argument. *Id.* at 1104-7.

²⁸ *Id.* at 1102-3.

²⁹ *Id.* at 1107.

³⁰ *Id.* at 1103.

³¹ *Id.* at 1104.

³² *Id.* at 1103.

³³ *Id.* at 1104. In focusing on the nature of the dispute at hand and whether the core transaction constituted a "foreign" transaction that was a "traditional banking activity," the *Telecredit* court never addressed the issue of whether credit card transactions charged in a foreign jurisdiction suffice to sustain Section 632 jurisdiction. However, subsequent district courts have so found such transactions to sustain Section 632 jurisdiction. See *Pinto v. Bank One Corp.*, 2003 WL 21297300, at *3 (S.D.N.Y. June 4, 2003) (stating "the issuance of a credit card involves a 'traditional banking function' under the Edge Act") quoting *Clarcken v. Citicorp Diners Club, Inc.*, 2001 WL 1263366, at *3 (N.D.Ill. Oct. 22, 2001).

³⁴ *Bank of New York*, 861 F.Supp. at 227. BOAA and BOA also alleged diversity jurisdiction, a claim the court rejected because of both sides' substantial presence in New York. *Id.* at 228.

³⁵ *Id.* at 233.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *See also Lazard Freres & Co. v. First Nat'l Bank of Maryland*, 1991 WL 221087, at *2 (S.D.N.Y. Oct. 15, 1991) (stating “[w]e take [CVF] to say that a district court cannot find that it has Section 632 jurisdiction merely because there was a federally chartered bank involved, there were banking related activities, and there were foreign parties. The court in that case dissected the claims presented to it in order to see whether any of them really involved a banking arrangement between a federally chartered bank and a foreign party.”).

³⁹ 12 U.S.C. § 632.

⁴⁰ 12 U.S.C. § 632.

⁴¹ 23 F.Supp. 363 (E.D.N.Y. 1938).

⁴² The *Travis* court instead focused upon the issue of whether the defendant could remove under Section 632 even if the transactions involving foreign banking or international financial operations did not involve a party organized under the Edge Act. The court found that such conduct was unnecessary and that Section 632 jurisdiction could be sustained so long as a corporation organized under the United States, though not necessarily under the Edge Act, was a party and the dispute “related” to international or foreign financial operations. *Id.* at 365-67.

⁴³ 928 F.Supp. 333 (S.D.N.Y. 1996).

⁴⁴ *Id.* at 336-37.

⁴⁵ *Id.* at 334.

⁴⁶ *Id.* at 338, 341.

⁴⁷ *Id.* at 336-341.

⁴⁸ *Id.* at 338. *See also Pinto*, 2003 WL 21297300, at *3 (citing the *LATF Litigation* and finding Section 632 jurisdiction where only a small portion of the disputed transactions were of an international or foreign nature).

⁴⁹ 928 F.Supp. at 338-39.

⁵⁰ *Id.* at 340.

⁵¹ *Id.* at 340.

⁵² *Id.* at 341.

⁵³ *Id.* at 341.

⁵⁴ No. 96 Civ. 5158 (SAS).

⁵⁵ For these purpose, Lloyd's here refers to a number of Lloyds of London related parties. These are the Corporation of Lloyd's, Society and Council of Lloyd's, Committee of Lloyd's, and Lloyd's of London. *Stamm*, 1996 WL 614087, at *1 n.1.

⁵⁶ *Id.* at *1.

⁵⁷ *Stamm*, 1996 WL 614087.

⁵⁸ *Id.* at *2.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Stamm*, 960 F.Supp. at 724.

⁶³ *Id.* at 727-28.

⁶⁴ *Stamm*, 960 F.Supp. 724.

⁶⁵ *Id.* at 728.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* Judge Scheindlin also summarily dismissed plaintiffs' argument that non-banking transactions may not serve as a basis for Section 632 jurisdiction as based upon an incorrect interpretation of the statute and controlling case-law. *Id.*

⁶⁹ See also *Warter v. Boston Securities, S.A.*, 2004 WL 691787, *8 (S.D.Fla. Mar 22, 2004) (holding that "[i]nternational financial operations' includes the sale of securities."); *Clarcken*, 2001 WL 1263366, at *2 (holding that "defendants' payment for...purchases in foreign countries and their conversion to U.S. dollars of the amounts they advanced to pay for those purchases...suffice to constitute 'international or foreign financial operations' giving rise to federal jurisdiction under § 632.").

⁷⁰ *Stamm*, 960 F.Supp. at 728.

⁷¹ For a discussion of judicial decisions delineating the extent federal common law and choice of law rules govern Section 632 actions, see generally Albert A. Starkus III, *Federal Courts and Choice of Law: Should State or Federal Choice of Law Prevail in the Exercise of Jurisdiction under 12 U.S.C. § 632?*, 122 *BANKING L.J.* 821 (2005).

⁷² This opportunity is not confined to national banks, since Section 632, which states that "any defendant can remove," permits defendants other than a national bank to remove a case under Section 632 to federal court. In *Stamm I*, the court upheld the removal by Lloyd's even though Lloyd's made no claim to be a national bank. See, e.g., *Wenzoski v. Citicorp*, 480 F.Supp. 1056 (N.D.Cal. 1979) (holding that under Section 632 removal need not be unanimous and that any defendant may remove).