No. _____

In the Supreme Court of the United States

KEYCORP AND
KEYBANK NATIONAL ASSOCIATION,
Petitioners,

v.

KEVIN J. SOLLITT,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress, through the "Edge Act" (specifically, 12 U.S.C. § 632), has conferred federal jurisdiction on "all 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." The Act is critical to the application of uniform law to international commerce, and international commerce is, of course, increasingly vital to America's economic health. Yet, this Court has never construed the scope of the Edge Act's jurisdictional grant, and the federal courts have remained hopelessly divided as to what "arising out of" means. Hence, the question presented is:

> Does a case under the Edge Act "arise" out of international or foreign banking transactions when the significant legal issues in the case are directly related to such transactions?

The Court of Appeals answered "no."

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Sixth Circuit:

The petitioners here and the defendants-appellees below are KeyBank, N.A. and KeyCorp.

The respondent here and the plaintiff-appellant below is Kevin Sollitt.

RULE 29.6 STATEMENT

Petitioner KeyBank, N.A. is a wholly owned subsidiary of Petitioner KeyCorp. KeyCorp is a publicly traded company. No publicly traded company owns ten percent or more of the stock of KeyCorp.

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PETITION FOR A WRIT OF CERTIORARI

KeyBank, N.A. and KeyCorp (collectively "Key") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is not reported, and is reproduced in Appendix A. App. 1a-11a. The order of the United States Court of Appeals for the Sixth Circuit denying Key's Petition for Rehearing and Rehearing En Banc is not reported, and is reproduced in Appendix D. App. 40a-41a.

The opinion of the United States District Court for the Northern District of Ohio denying Kevin Sollitt's Motion to Remand is not reported, and is reproduced in Appendix C. App. 30a-39a. The opinion of the United States District Court for the Northern District of Ohio granting Key's Motion for Summary Judgment is not reported, and is reproduced in Appendix B. App. 12a-29a.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered judgment on February 1, 2012. App. 1a-11a. The Sixth Circuit denied Key's Petition for Rehearing and Rehearing En Banc on March 9, 2012. App. 40a-41a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

"Notwithstanding any other provision of law, all suits of a civil nature at common law or in equity 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 banking in a dependency or insular possession of the United States, or out of other international or foreign financial operations, either directly or through the agency, ownership, or control of branches or local institutions in dependencies or insular possessions of the United States or in foreign countries, 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; and any 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." 12 U.S.C. § 632 (in pertinent part).

STATEMENT OF THE CASE

Respondent Kevin Sollitt, formerly head of the foreign exchange trading desk of Petitioner KeyBank, N.A., filed a case in state court alleging that he was wrongfully discharged in violation of public policy, an Ohio tort, because he complained to management that KeyBank had deceived its foreign exchange corporate customers by taking undisclosed, excessive "spreads" (or profit margins) on foreign currency transactions. According to Sollitt, these unwarranted and unlawful spreads produced "sizeable" or "windfall" profits for

KeyBank.[1] Sollitt also complained that KeyBank told its customers that it was giving them the "best price" on foreign currency transactions when it could have readily lowered its prices and still profited.[2] The case was removed to federal court under the Edge Act. The United States District Court for the Northern District of Ohio (the "District Court") accepted jurisdiction, but the Court of Appeals for the Sixth Circuit (the "Court of Appeals") reversed and remanded the case to state court.

The Edge Act. The Edge Act, at 12 U.S.C. § 632, confers federal jurisdiction on, and allows removal of, all civil suits which satisfy the following two conditions:

1) a "corporation organized under the laws of the United States (most commonly a national bank) shall be a party," and

2) the suit is one "arising out of transactions involving international or foreign banking … or out of other international or foreign financial operations."[3]

The first condition is not in dispute. KeyBank ***is*** a federally-chartered national bank. The controversy, rather, has centered on the second: Does Sollitt's suit against KeyBank and KeyCorp (collectively "Key")

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[1] *See* Sollitt's First Amended Complaint ("Amended Complaint") at App. 47a-48a.

[2] *See id*.

[3] 12 U.S.C. § 632.

"arise" from international or foreign banking or financial operations?[4] Judge Gwin of the District Court held that it does.

The District Court's Opinion. On Sollitt's motion to remand, the District Court applied the narrow reading of "arising out of" articulated in *Bank of N.Y. v. Bank of Am.,* 861 F. Supp. 225 (S.D.N.Y. 1994). Edge Act jurisdiction, under this narrow rule, is found only when the "banking aspect of the jurisdictional transaction … [is] legally significant in the case," or in other words, in cases that "were integrally tied to banking activity, such that the courts were required to consider and apply principles of banking law to resolve them." *Id.* at 232-233.[5]

The District Court observed, in analyzing Sollitt's allegation that Key had wrongfully profited from foreign exchange transactions, that his "case centers on KeyCorp's foreign exchange banking practices and transactions," in that he "argues that these practices and transactions were unlawful or otherwise

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[4] Although Sollitt had been employed by KeyBank, his original complaint mistakenly named KeyCorp—the Ohio corporation which serves as KeyBank's holding company—as the sole defendant. After the removal of the case to federal court (and after the District Court decision denying remand), Sollitt filed his Amended Complaint, which named KeyBank as well. Both KeyBank and KeyCorp have been parties to all later proceedings in the case, and Sollitt has never argued, in any way, that KeyBank's absence at the beginning of this suit affects federal jurisdiction over it.

[5] *See* Feb. 11, 2009 District Court Order Denying Removal at App. 36a (citing *Bank of N. Y.*).

improper."[6] Indeed, under Ohio law that governed his wrongful discharge claim, "Sollitt would need to demonstrate that (1) [a] clear public policy existed and was manifested in a state or federal constitution, statute, or administrative regulation, or in the common law; [and] (2) [that] dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy."[7] To judge whether Sollitt had demonstrated these elements of his claim, the District Court found that it would have to "delve deeply into the policies and practices of Defendant KeyCorp with respect to its foreign exchange banking practices."[8]

The District Court held that it could not hear Sollitt's wrongful-discharge claim without deciding which laws (or regulations or common-law rules) governed foreign currency exchange transactions, and whether those laws had been broken by the conduct of which Key stood accused. Hence, "Plaintiff Sollitt's state law claim of wrongful discharge in violation of the state's public policy is integrally tied to banking activity."[9] That claim accordingly "arose out of" transactions involving international or foreign banking. Thus, per the Edge Act, it belonged in federal court.

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[6] *Id.* at App. 37a.

[7] *Id.* at App. 38a (citing the Ohio Supreme Court decision in *Wiles v. Medina Auto Parts,* 96 Ohio St.3d 240, 773 N.E.2d 526, 529-530 (2002)).

[8] *Id.* at App. 38a.

[9] *Id*.

Later the District Court granted Key's motion for summary judgment. The Court noted that Sollitt had failed to "demonstrate the existence of a clear public policy" because, interpreting federal law, it found that federal law did not regulate or mandate specific currency spreads, including the extent to which such spreads must be disclosed.[10] Relying on federal court rulings, and in particular on an analysis of foreign currency transactions penned by the Seventh Circuit's Judge Easterbrook, the District Court ruled that "banks do not commit fraud in adding spreads to exchange rates (or, in other words, in making a profit on the transactions they carry out)."[11] Such transactions (said the District Court) are "conducted in a competitive and transparent market and the entities involved [are] large and sophisticated corporations."[12] Moreover, because customers in foreign exchange transactions already have "a significant financial incentive to work with FX [foreign exchange] facilitators that do not act in a fraudulent manner," the District Court further held that even if Sollitt could demonstrate a clear and relevant public policy

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[10] Aug. 21, 2009 District Court Order Granting Summary Judgment at App. 22a-23a.

[11] App. 22a-23a, citing *In re Mex. Money Transfer Litig.,* 267 F. 3d 743, 749 (7th Cir. 2001) (Easterbrook, J.) (holding that "[t]he customer of a bank's foreign exchange section (or an airport's currency kiosk) is quoted a retail rate, not a wholesale rate, and must turn to the newspapers or the Internet to determine how much the bank has marked up its Swiss Francs or Indian Rupees… . Nothing in this transaction smacks of fraud"), *cert. denied*, *Garcia v. Western Union Fin. Services, Inc.*, 535 U.S. 1018 (2002).

[12] App. 23a.

governing such transactions, he could not show that his dismissal by Key had jeopardized that policy.[13] For these failings in Sollitt's claim (among others), the District Court awarded summary judgment to Key.

Sollitt appealed, both from the District Court's grant of summary judgment on the merits and from its earlier decision denying remand to state court.

The Court of Appeals' Opinion. The confused state of Edge Act jurisdictional law is the dominant theme of the Court of Appeals' opinion. The Court noted that "[f]ederal courts are divided on whether 12 U.S.C. § 632 should be interpreted as providing a broad basis for federal jurisdiction or whether the statute should be read more narrowly."[14] According to the Court, the broad view, which grants jurisdiction if *any part of the claim* arises out of transactions involving international or foreign banking is "an inherently limitless view."[15] Other courts, construing the Act narrowly, "have imposed specific limits, such as requiring … that the banking aspect of the jurisdictional transaction must be legally significant in the case."[16] The District Court had adopted this narrow view, and held that the propriety of Key's

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[13] App. 25a.

[14] Feb. 1, 2012 Opinion from Court of Appeals for the Sixth Circuit at App. 7a (quoting *New Mexico ex rel. Foy v. Vanderbilt Capital Advisors, LLC,* No. Civ-09-0178, 2009 WL 3672921 at *2 (D.N.M. Apr.13, 2009)).

[15] *Id.* at App. 6a (internal citations omitted, emphasis in original).

[16] *Id.* at App. 7a (internal citations omitted).

foreign exchange practices were legally significant to the merits of Sollitt's termination.

The Sixth Circuit noted the "difficulty that courts are having in either reconciling [Edge Act cases] or choosing between them."[17] On this point, the appellate panel quoted a recent, New Mexico federal court decision as follows:

> Federal courts are divided on whether 12 U.S.C. § 632 should be interpreted as providing a broad basis for federal jurisdiction or whether the statute should be read more narrowly. *See Bank of New York v. Bank of America*, 861 F. Supp. 225, 232 (S.D.N.Y. 1994) (**noting that courts have generally interpreted 12 U.S.C. § 632 narrowly**); *Bank of America Corp. v. Lemgruber*, 385 F. Supp. 2d 200, 214 (S.D.N.Y. 2005) (**noting that courts have generally interpreted 12 U.S.C. § 632 broadly**). The lack of [federal appellate] precedent relating to 12 U.S.C. § 632 and the absence of an authoritative explication in the legislative history of the statute's jurisdictional component further complicate this matter. *See A.I. Trade Finance, Inc. v. PetraIntern. Banking Corp.*, 62 F.3d 1454, (D.C. Cir. 1995) (noting that the legislative history of 12 U.S.C. § 632 is of little help in divining its purpose).

App. 7a-8a (quoting *New Mexico ex rel. Foy v. Vanderbilt Capital Advisors, LLC,* No. Civ-09-0178,

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[17] *Id.* at App. 7a.

2009 WL 3672921 at *2 (D.N.M. Apr.13, 2009)) (emphasis added).

The Court of Appeals then selected, as the most "closely analogous" precedent, the 32-year old, two-page opinion of *Diaz v. Pan Am. Fed. Sav. and Loan Ass'n,* 635 F.2d 30 (1st Cir. 1980).[18] In *Diaz*, the appellate panel explained, "the plaintiff bounced a couple of checks … [the bank] pressed criminal charges … Diaz sued in federal court, claiming malicious prosecution… .[and] [t]he district court rejected Diaz's Edge Act argument."[19]

The Sixth Circuit then construed the Edge Act more narrowly than any other federal appellate panel that has considered the issue, thereby constricting jurisdiction so that very few cases in the future may be removable under that Act. According to the Court, the legal issues in the case do not matter; the nature of the claim for relief is what counts. For example, unless the claim itself involves "an aspect of banking," such as a claim to reduce the amount of spreads or to render foreign exchange transactions more transparent, there is no federal jurisdiction. Specifically, the Court held that Key's "firing of Sollitt was not an aspect of 'banking' and, therefore, Sollitt's claim of wrongful termination did not 'arise out of' a banking transaction, even though the entire episode arguably can be traced back to the … foreign currency

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[18] *Id.* at App. 8a.

[19] *See id.* at App. 8a.

transaction."[20] Key moved, unsuccessfully, for both a rehearing and a rehearing *en banc*.

REASONS FOR GRANTING CERTIORARI

Edge Act jurisdiction ensures federal control over foreign and international banking, but this Court has never decided how far that jurisdiction extends. The crucial question under the statute is whether a suit "arises out of" transactions involving international banking, and the federal appellate and district courts are thoroughly divided on what this phrase means. The Court of Appeals for the Sixth Circuit's decision in this case has both perpetuated and deepened that confusion, and furnished a troubling precedent for shunting international banking cases into state courts against the expressed purpose of the statute. This case's connection with foreign currency sales makes that prospect especially alarming, as state-court regulation of global foreign exchange transactions would cause complete disarray, precisely what the Edge Act exists to prevent. Because only this Court can clarify the Edge Act's scope, and because international banking and foreign exchange issues (both of which are more important than ever in today's world economy) should not be left to the inconsistent judgment of the different states' courts, certiorari is warranted.

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[20] *Id.* at App. 10a-11a.

I. Edge Act Jurisdiction Is Critical to Federal Control Over National and International Banking.

"Nearly 200 years ago, in *McCulloch v. Maryland,* 4 Wheat. 316, 4 L.Ed. 579 (1819), this Court held federal law supreme over state law with respect to national banking." *Watters v. Wachovia Bank, N.A.,* 550 U.S. 1, 10 (2007). The Edge Act, passed in 1919 to provide for "[c]orporations to be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations," helps maintain that supremacy. *See* 12 U.S.C. § 611. "Crafted in the wake of the turmoil that the World War [One] had caused in international financial markets, the 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." *A.I. Trade Fin., Inc. v. Petra Int'l Banking Corp.,* 62 F.3d 1454, 1462 (D.C. Cir. 1995). "Federal supervision of these financial institutions was seen as essential if they were ever to succeed in the international marketplace." *Id.* "[T]he substantive federal regulations that the Congress placed upon Edge Act corporations, to be supplemented by the oversight of the Federal Reserve Board, are intended to facilitate and stimulate international trade by providing the uniformity of federal law." *Id.*

The Edge Act's jurisdictional grant—now codified at 12 U.S.C. § 632 — was added in 1933 as part of that seminal overhaul of the banking system, the Glass-

Steagall Act.[21] Since that time, the Edge Act has conferred federal jurisdiction on "all suits of a civil nature at common law or in equity to which any corporation organized under the laws of the United States [including a national bank] shall be a party, arising out of transactions involving international or foreign banking … or international or foreign financial operations." 12 U.S.C. § 632.

"[T]he role of Section 632 [in the words of one commentator] 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."[22] Or, as the Court of Appeals for the D.C. Circuit put it: "The prospect of divergent outcomes in the 50 state courts of last resort is something that the Congress has the power to avoid by bringing all such disputes within the unifying jurisdiction of the federal courts." *A.I. Trade Fin., Inc.,* 62 F.3d at 1463. Edge Act jurisdiction is a powerful tool "to facilitate international trade by providing national corporations involved in international financial operations with access to a more uniform and predictable system of dispute resolution within the federal courts." *New Mexico ex rel. Foy v. Vanderbilt Capital Advisors, LLC,*

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[21] Steven M. Davidoff, *Section 632: An Expanded Basis of Federal Jurisdiction For National Banks*, 123 BANKING L.J. 687, 688 (2006).

[22] *Id.* at 690.

No. Civ- 09-0178, 2009 WL 3672921, at *2 (D.N.M. Apr. 13, 2009).

Nor is the Act less critical to federal control over national banking simply because the claims it covers frequently arise under state law. Indeed, if the Edge Act embraced only federal law claims, it would add nothing to already – existing federal question jurisdiction. The federal courts, unsurprisingly, agree that "the presence of state law issues does not divest federal courts of Edge Act jurisdiction so long as the foreign banking transactions are involved." *Pinto v. Bank One Corp.,* 02 Civ. 8477, 2003 WL 21297300, at *4 (S.D.N.Y. June 4, 2003); *see also In re Lloyd's Am. Trust Fund Litig.,* 928 F. Supp. 333, 340 (S.D.N.Y. 1996) (referring to "other federal court decisions that have routinely applied Section 632, even in cases based on state law causes of action").

The Edge Act, in short, provides vital support to federal control over national and international banking, and therefore is well worth this Court's attention. This is especially so when, as explained in more detail below, the federal courts' disagreement on the Act's scope threatens its effectiveness. Given the importance of the statute, and the controversy surrounding its interpretation, certiorari should be granted.

II. The Federal Courts Are Divided on the Scope of the Edge Act's Jurisdictional Grant.

The federal courts cannot agree on the scope of Edge Act jurisdiction, and specifically contradict each other on the proper standard to be applied when deciding whether a civil claim "arises out of" transactions involving international banking. Some federal courts construe this phrase broadly, while others do so narrowly, and this Court has never decided the question.

The contradiction began in 1980, with a decision of the Court of Appeals for the Second Circuit. That court applied the Edge Act to a tangled dispute involving the Venezuelan guarantor of notes issued by a Venezuelan company, sold to a Swiss corporation, and then resold to U.S. banks. *See Corporacion Venezolana de Fomento v. Vintero Sales Corp.,* 629 F.2d 786, 788 (2nd Cir. 1980), *cert. denied*, *Corporacion Venezolana De Fomento v. Merban Corp.*, 449 U.S. 1080 (1981). The district court had found Edge Act jurisdiction based on the presence (as intervenors) of the American banks who were secondary purchasers. *Id.* at 791. The Second Circuit appellate panel held that these banks' presence could not support jurisdiction over the Swiss company's (i.e., the original purchaser's) counterclaims against the guarantor, because the American banks' secondary purchase of the notes was simply contractual and not, by itself, an international banking transaction, and because these banks' relation to the original purchaser's counterclaim was too remote. *Id.* at 792. Yet the Second Circuit affirmed on other grounds, relying on the inclusion in the lawsuit, as a defendant, of yet

another American bank that had issued a letter of credit to the note issuer, and then allowed one of the defendants to take drawdowns against that letter. *Id.* The appellate panel considered the actions of that bank to involve "international or foreign banking," and found Edge Act jurisdiction. *Id.* at 792-93.

The *Corporacion Venezolana* opinion supports either a broad or narrow reading of the Edge Act, depending on whether one looks to the Second Circuit's rejection of the trial court's rationale for finding Edge Act jurisdiction, or to the Circuit's ultimate affirmance of the trial court's decision on other grounds. As this Court denied certiorari on the case, the federal courts have been free to choose and apply the reading they prefer. Examples of both views are given below.

A. The Narrow View of The Edge Act.

The Court of Appeals for the First Circuit, in the same year as *Corporacion,* sought to narrow the Edge Act's coverage. *See Diaz v. Pan Am. Fed. Sav. and Loan Ass'n,* 635 F.2d 30 (1st Cir. 1980). The Act, by its terms, applies to claims which arise from banking transactions in U.S. territories as well as from international banking transactions; thus, the *Diaz* case arrived in the First Circuit from Puerto Rico.[23] A banking customer had bounced checks, the bank had filed a criminal complaint, and the customer had sued the bank for malicious prosecution. *Diaz,* 635 F.2d 30,

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[23] 12 U.S.C. § 632 embraces civil lawsuits (to which a corporation organized under federal law is a party) "arising out of transactions involving … banking in a dependency or insular possession of the United States."

31. The First Circuit panel rejected jurisdiction, holding that the word "banking," as used in the Edge Act, "includes only traditional banking activities," and that the filing of a criminal complaint did not qualify. *Id.* at 32. The *Diaz* Court cited the then-recent *Corporacion Venezolana* decision as one of the authorities supporting its decision.

A few years later a federal court in Florida cited both *Diaz* and *Corporacion* to support a narrow construction of the Edge Act. Ruling on a dispute between a bank and its credit card servicer over whether the bank or the servicer should be allocated "chargebacks" (refusals of purchasers to make payments on their credit card invoices) on the sales of travel club memberships in the Bahamas, the court determined that the dispute did not arise from an international banking transaction. *See Telecredit Serv. Ctr v. First Nat'l Bank of the Fla. Keys,* 679 F. Supp. 1101 (S.D. Fla. 1988). Relying on *Corporacion Venezolana*, the court held that in applying the Edge Act, it must look "to the nature of the transaction," regardless of the presence of a bank in the lawsuit. *See id.* at 1103. Viewing "the nature of the transaction at issue … as a contractual dispute between the parties," the court held that conferring Edge Act jurisdiction "stretches the statute well beyond what Congress intended, and well beyond what has been considered a traditional banking activity." *Id.* at 1104**.**

This narrow view of Edge Act jurisdiction was given more definite form in *Bank of N.Y. v. Bank of Am.,* 861 F. Supp. 225 (S.D.N.Y. 1994). That case, a "dispute between two Australian banks and their American parent companies," stemmed "from a failed purchase

of loans by … [a bank's] foreign subsidiary." *Id.* at 226, 232. The district court found, however, that "[d]espite … [the controversy's] appearance of having arisen from a failed banking transaction, the case is essentially contractual." *Id.* at 233. The court (citing *Telecredit*) held that for Edge Act jurisdiction to apply, "the banking aspect of the jurisdictional transaction must be legally significant to the case," or in other words, that the Act only covers "claims … integrally tied to banking activity, such that the courts were required to consider and apply principles of banking law to resolve them." *Id.* at 232-233. But, this doctrine was no sooner announced than it was criticized by other courts, which took a broader view of the jurisdiction conferred by the Edge Act.

B. The Broad View of Edge Act Jurisdiction.

The First Circuit, as explained above, took a limited view of the Edge Act in *Diaz,* but shortly thereafter, in another case from Puerto Rico, it seemed to change course. In *Conjugal Soc'y Composed of Juvenal Rosa v. Chicago Title Ins. Co.,* 690 F.2d 1 (1st Cir. 1982), the plaintiffs — sellers of a parcel of land — had agreed to subordinate their mortgage on the land to that of a title company, in exchange for the title company's assurance that a performance bond and guaranties would remain in effect. *Id.* at *3. When the bond and guaranties were canceled, the plaintiffs sued, in federal court, both the title company and the bank that held the title company's mortgage. *Id.* Although the defendants argued (as in the cases cited above) that the agreement between the plaintiffs and the title company was not a banking transaction, the First Circuit cited *Corporacion Venezolana* for the

principle that "[s]ection 632 is not limited to the original two parties to a banking transaction." *Id.* Since the mortgage agreement between the bank and title company was a "traditional banking activity," (as *Diaz* required), and "[d]efendants' assurances to plaintiffs … constituted part of defendants' banking transactions," the Edge Act embraced the entire case. *Id.* at *4.

This broader view of the Edge Act has persuaded other district courts. For example, the district court in *In re Lloyd's Am. Trust Fund Litig.,* 928 F. Supp. 333 (S.D.N.Y. 1996) held that "[a] suit satisfies the jurisdictional requisites of Section 632 if any part of it arises out of transactions involving international or foreign banking." *Id.* at 338. This suit involved claims of improper money handling and investment activities brought by members of the Lloyd's insurance syndicate against the bank that served as trustee of their American trust funds. *Id.* at 334-335. In finding Edge Act jurisdiction, the *In re Lloyd's* Court specifically attacked the "legally significant" doctrine put forth in *Bank of New York,* holding that "[t]he decision in *Bank of New York* is … inconsistent with the text of Section 632 and with 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." *Id.* at 340. Later district court decisions have followed *In re Lloyd's* in questioning "whether *Bank of New York* is truly consistent with the text of the Edge Act or with the case law interpreting it." *Pinto v. Bank One Corp.,* No. 02 Civ. 8477, 2003 WL 21297300, at *5 (S.D.N.Y. June 3, 2003).

C. Confounding Broad and Narrow - The First Circuit's Recent Decision in *Burgos* And Continued Confusion On The Scope of Edge Act Jurisdiction.

The Court of Appeals for the First Circuit has revisited the Edge Act, but without solving the contradictions in its jurisprudence. In another case from Puerto Rico, the delinquent borrower on a car loan reached a repayment agreement with the bank, and when collection efforts were nonetheless instituted, she sued the bank for both malicious prosecution and breach of contract (the contract being the repayment agreement). *See Burgos v. Citibank, N.A.,* 432 F.3d 46 (1st Cir. 2005).

The *Burgos* Court held that "[t]he material question is not whether entering into contracts is a traditional banking activity … [but] ***whether the subject matter of the particular contract arises out of a traditional banking activity.***" *Id.* at 49 (emphasis added). Because the repayment agreement had superseded a loan contract — which was a banking transaction — the First Circuit held that an action for breach of that agreement "arose out of" that banking transaction. In the words of the *Burgos* panel, "[h]owever narrow one's definition of 'traditional banking activity' may be, the phrase 'arising out of' [as used in the Edge Act] is notoriously more broad." *Id.* at 50.

Edge Act jurisprudence, since *Burgos,* has been in complete disarray. A federal judge denying a motion for reconsideration of an Edge Act ruling exclaimed, in exasperation, that "[c]oncededly, the courts in this district have taken differing views on the proper scope

of the Edge Act… .[but] [t]hat this Court's opinion falls on one side of that spectrum is not grounds for reconsideration." *Am. Int'l Group v. Bank of Am. Corp.,* No. 11 Civ. 6212, 2011 WL 6778473, at *2 (S.D.N.Y. Dec. 20, 2011). Rival commentators have also taken dueling positions on the issue. *See* Steven M. Davidoff, *Section 632: An Expanded Basis of Federal Jurisdiction For National Banks*, 123 BANKING L.J. 687, 688 (2006); *cf.* Elizabeth R. Sheyn, *The "Technicalities" of Edge Act Jurisdiction: Advocating For The Federal Courts' Adoption Of And Adherence To A Uniform and Narrow Interpretation of 12 U.S.C. § 632*, 41 U. TOL. L. REV. 637 (2010).

Only this Court can clarify the current confusion among the federal courts on the proper scope of the Edge Act. Because of the non-reviewable nature of most district court remand orders, the risk that disparate state court decisions will spawn uncertainty in the laws applicable to foreign financial transactions is high. This Court should act now.

III. The Sixth Circuit's Decision Will Severely Narrow The Range Of Banking Cases Heard in Federal Court.

The Sixth Circuit decision in this case comprehensively constrains Edge Act jurisdiction. Before that decision, the narrowest judicial view of the Edge Act's scope limited that scope to cases where the banking issues were "legally significant." *See Bank of New York,* 861 F. Supp. 225, 232-233. Yet this case involved significant banking law issues (as the District Court found, and as the Court of Appeals did not dispute), and the Sixth Circuit nonetheless rejected Edge Act jurisdiction simply because the plaintiff's

claim involved a workplace termination. The Sixth Circuit's opinion would therefore (if followed) take out of federal court all cases—no matter how deep or significant the banking issues involved—where the claim for relief was nominally about something other than banking. Such a view of the Edge Act would drastically undercut the Act and narrow the range of cases that could be heard in federal court, and would make Edge Act jurisdiction turn on the label of the pleading rather than the true substance of the case.

This cramped view of the Edge Act is also at odds with the *Burgos* decision, where the First Circuit held that "the phrase 'arising out of' is notoriously more broad," and reinforced this point by finding jurisdiction over a breach of contract claim that arose (in the first instance) from a repayment agreement that superseded a car loan contract that in turn flowed from a banking transaction (the car loan). *Burgos,* 432 F.3d at 50 (1st Cir. 2005). Nor can the Sixth Circuit's holding be squared with the *Bank of New York* doctrine that requires the banking transaction to be "legally significant." The Sixth Circuit ***did not so much as address*** the District Court's determination that the banking aspects of this case are, in fact, "legally significant."

Additionally, the Sixth Circuit's stifled reading of the Edge Act conflicts with the plain text and purposes of the Act itself. Had Congress wished to confer federal jurisdiction only on (for example) "international banking law claims," it could have done so; that the Edge Act more broadly includes claims "arising out of transactions involving international banking" is surely significant. Or as the Court of Appeals for the D.C. Circuit noted: "The prospect of

divergent outcomes in the 50 state courts of last resort is something that the Congress has the power to avoid by bringing all such disputes within the unifying jurisdiction of the federal courts, ***regardless whether the issues in dispute in a particular case present that problem*** [i.e., of federal banking law]." *A.I. Trade Fin., Inc. v. Petra Int'l Banking Corp.,* 62 F.3d 1454, 1462 (D.C. Cir. 1995) (emphasis added).

At best then, if left to stand, the Sixth Circuit's novel, extremely narrow Edge Act reading will exacerbate the current confusion in the federal district courts as to which cases do, or do not, "arise out of" international banking transactions. At worst the Sixth Circuit's precedent, by limiting the Edge Act's scope and motivating the district courts to remand banking claims to state court, will bring about the "divergent outcomes in the 50 state courts" that the Act is designed to prevent. Neither outcome is desirable, and both (or either) justify certiorari in this case.

IV. Federal Jurisdiction is Especially Important For the International Foreign Currency Markets.

The consequences of narrowed or confused Edge Act jurisdiction will be particularly severe in the foreign currency markets; indeed, the federal courts have agreed that foreign exchange transactions are among the "traditional banking activities" covered by the Edge Act. *See Clarken v. Citicorp Diners Club, Inc.,* No. 01 C 5123, 2001 WL 1263366, at *1 (N.D. Ill. Oct. 22, 2001) (holding that currency conversion "clearly qualifies" as "a traditional banking function"); *In re Currency Fee Antitrust Litig.,* No. 1409, 21–95, 2003 WL 22097502, *2 (S.D.N.Y. Sept. 10, 2003) (same).

Legal disputes in these markets — in particular, the profit margins that foreign exchange middlemen can properly charge — have been much in the news lately. The U.S. Department of Justice, for example, has sued one financial institution in a high-profile case on foreign currency sales.[24] Now is assuredly not the time to subject the foreign currency markets to differing state-court views.

The federal courts have previously held in such disputes that the currency markets are transparent, and that buyers in such markets have the ability and duty to monitor their own purchases. As Judge Easterbrook of the Seventh Circuit said:

> Money is just a commodity in the international market. Pesos are for sale – at one price for those who buy in bulk …. and at another, higher price for those who buy at retail …. Neiman Marcus does not tell customers what it paid for the clothes they buy, nor need an auto dealer reveal rebates and incentives it receives to sell cars. This is true in financial markets no less than markets for physical goods. The customer of a bank's foreign-exchange section (or an airport's currency kiosk) is quoted a retail rate, not a wholesale rate, and must turn to the newspapers or the Internet to determine how much the bank has marked up its Swiss Francs

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[24] *See United States v. Bank of N.Y. Mellon Corp.*, currently pending in the Southern District of New York as Case No. 1:11-cv-06969.

> or Indian Rupees … . Nothing in this transaction smacks of fraud.

In re Mex. Money Transfer Litig., 267 F.3d 743, 749 (7th Cir. 2001); *see also Interactive Intelligence v. Keycorp*, 546 F.3d 897, 899, 901 (7th Cir. 2008) (holding that "[i]nformation on [foreign] exchange rates is widely available," and that foreign currency transactions are "simply not a situation in which the [selling] bank was acting as a fiduciary"); *Compania Sud-Americana de Vapores, S.A. v. IBJ Schroder Bank & Trust Co.*, 785 F. Supp. 411, 419-421 (S.D.N.Y. 1992) (holding, in suit by foreign exchange purchaser against selling bank, that the "difference between the [foreign exchange] rate charged by Schroder [the selling bank] and the interbank rate" was irrelevant, as the purchaser, "did not compare Schroder's rates with the published interbank rate, did not ask other banks for quotations, and made no effort to inquire as to the underlying facts of its claim").

Whether this emphasis on the freedom and transparency of the foreign currency markets should be followed (as Key believes), or modified, or departed from, the decision should be made exclusively by the federal courts. A state court judgment on acceptable procedures or profits in international foreign exchange transactions by national banks will throw the foreign currency markets into confusion; conflicting state court judgments could cripple them entirely. Edge Act jurisdiction, if it means anything, surely means that the law governing the global conversion and trading of foreign currencies by national banks should be made in the federal courts.

CONCLUSION

For all of the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 5, 2012

APPENDIX

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case Nos. 09-4143 & 10-3408

[Filed February 1, 2012]

KEVIN JOHN SOLLITT,	)
	)
Plaintiff-Appellant,	)
	)
v.	)
	)
KEYCORP, *et al.*,	)
Defendants-Appellees.	)
	)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Before: BATCHELDER, Chief Circuit Judge; COLE and GIBBONS, Circuit Judges.

ALICE M. BATCHELDER, Chief Judge. John Sollitt sued his former employer, KeyCorp, in an Ohio court, claiming wrongful termination. KeyCorp removed the case to federal district court and Sollitt moved for remand, but the district court denied. KeyCorp moved for summary judgment on the merits,

which the district court granted. On appeal, Sollitt contends, *inter alia*, that federal jurisdiction is lacking and the district court erred byrefusing to remand. We agree.

I.

KeyCorp's Foreign Currency Exchange ("FX") Group is separated into two "sectors" or "desks": FX Sales and FX Trading. Basically, FX Sales sells foreign currencies to customers and FX Trading executes the trades necessary to satisfy the sales. Sollitt was the Sector Manager for FX Trading and Flavio Guist the Sector Manager for FX Sales. The two sectors worked closely together and both Sollitt and Guist reported to Denise Shade, the FX Group Manager. Shade reported to Richard Owens, the FX Department Head, who oversaw all of the Groups in the FX Department.

In April 2008, Sollitt complained to Shade that he had caught Guist taking advantage of a customer, Parker Hannifin Corp. ("PHC"), on a sale of $250 million in Canadian dollars. According to Sollitt, Guist quoted PHC a price, PHC accepted, and then Guist raised the price, claiming (falsely) that there had been an error in the original quote. There had been no error, Sollitt claimed; Guist had lied to exact additional profit. PHC agreed to the higher price and Guist (KeyCorp) netted an additional several hundred thousand dollars. Shade did not respond to Sollitt's accusation because she did not recognize it as being serious. Sollitt complained to Shade again the next day and, in the weeks and months that followed, Sollitt repeatedly complained to Shade that Guist and the FX Sales personnel were committing fraud and

misrepresentation to obtain higher prices and more profit. Sollitt himself never reported this to Owens, nor did Shade relay these complaints to Owens or anyone else.

In July 2008, KeyCorp used a new software to conduct a company-wide "sweep" of all of its employees' email, scanning for pornography, nudity, or otherwise offensive content. The scan of Sollitt's email account revealed that, between May 1 and July 14, 2008, Sollitt received over 80 emails containing nude images or other pornographic content (some extremely graphic) and had forwarded some of the emails to his personal account. A Senior Employee Relations Consultant from the corporate human resources department conducted an internal investigation, concluded that Sollitt had violated KeyCorp's Code of Ethics, and recommended to Owens that he fire Sollitt. The recommendation was based on several factors: the frequency, volume, and graphic content of the emails; that Sollitt forwarded some to his outside account; that Sollitt never attempted to stop the sender from sending them; that Sollitt had a responsibility as a manager to serve as a role model; and that Sollitt did not appreciate the seriousness of the offense, stating that even though he knew he was receiving pornographic emails in violation of company policy he considered stopping these emails a "backseat priority." Owens fired Sollitt and also fired the only other employee in the FX Department who had been caught in the sweep. Overall, KeyCorp caught 90 employees in the sweep and fired 20 of them. Little explanation was offered as to why some were fired and others were not.

Sollitt sued in Ohio court, claiming "wrongful discharge in violation of public policy" — i.e., KeyCorp

had actually fired him because he had complained about Guist's and the FX Sales desk's fraud and misrepresentation in the sale of foreign currency. KeyCorp removed the case to federal court citing the Edge Act of 1913, 12 U.S.C. § 632, a statute that provides for federal subject matter jurisdiction in certain types of civil cases involving United States corporations and international or foreign banking. Sollitt moved the district court to remand the case but the court declined. The court found that "this case centers on KeyCorp's foreign exchange banking practices and transactions" because "Sollitt argues that these practices and transactions were unlawful or otherwise improper[,] while contending that his own actions were lawful and proper."

II.

The district court relied on the Edge Act as the source of federal subject matter jurisdiction and the basis for removal in this case. The Edge Act provides, in relevant part:

> [A]ll suits of a civil nature at common law or in equity 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; and any 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.

12 U.S.C. § 632. KeyCorp asserted — and the district court agreed — that, as described in Sollitt's complaint, the claim arose out of transactions involving international or foreign banking, and the foreign currency transactions would be central to the disposition of the dispute.

Subject matter jurisdiction is always a threshold determination. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998) (there is no "doctrine of 'hypothetical jurisdiction' that enables a court to resolve contested questions of law when its jurisdiction is in doubt"). We consider this challenge, concerning removal and federal subject matter jurisdiction, *de novo*, as a question of law. *Cf. Carson v. U.S. Office of Special Counsel*, 633 F.3d 487, 491 (6th Cir. 2011). Removal statutes are strictly construed with all doubts resolved against removal. *See Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002). And the removing party has the burden of proving federal jurisdiction. *See Harnden v. Jayco, Inc.*, 496 F.3d 579, 581 (6th Cir. 2007).

The required elements of the Edge Act are clear from the statute and have been interpreted consistently by the relatively few courts to have considered and addressed jurisdiction under it:

> To establish jurisdiction under the Edge Act: (1) the suit must be civil in nature; (2) one of the parties at interest [must be] a corporation organized under the laws of the United States;

> and (3) the suit [must] arise[] out of a transaction involving international or foreign banking.

Retailers Nat. Bank v. Harding, No. C 03-4190, 2006 WL 6181282 at *2 (N.D. Cal. June 30, 2006) (citing cases) (citations, quotation marks, and editorial marks omitted).

The present case is plainly civil in nature and the defendant, KeyCorp, is a corporation organized under the laws of the United States. Moreover, allegations in this case involve foreign currency transactions, which are international or foreign banking activities. *See* 12 U.S.C. § 24(7). The question at issue is whether Sollitt's claim (for wrongful termination) actually arises out of the transaction or transactions involving international or foreign banking. We hold that it does not.

There are, to be sure, cases asserting that "a suit satisfies the jurisdictional requisites of Section 632 if *any part of it* arises out of transactions involving international or foreign banking." *Pinto v. Bank One Corp.*, No. 02 Civ. 8477, 2003 WL 21297300 at *3 (S.D.N.Y. June 4, 2003) (emphasis added; editorial marks omitted) (quoting *In re Lloyd's Am. Trust Fund Litig.*, 928 F. Supp. 333, 338 (S.D.N.Y. 1996)). We are reluctant to subscribe to such an inherently limitless view. Suppose, for example, that Sollitt had tripped and fallen over a stack of carelessly placed printouts of foreign-currency transactions. This meager association — ridiculous as it is — between the potential negligence claim and the foreign banking transaction that generated the printouts, would

appear to suffice for Edge Act jurisdiction under so limitless a view. That cannot be correct.

Other courts have imposed specific limits, such as requiring that the claim "stem from the supposed foreign aspect of the transaction," *Telecredit Serv. Ctr. v. First Nat. Bank of the Fla. Keys*, 679 F. Supp. 1101, 1104 (S.D. Fla. 1988), or "that the banking aspect of the jurisdictional transaction must be legally significant in the case," *Bank of N.Y. v. Bank of Am.*, 861 F. Supp. 225, 233 (S.D.N.Y. 1994). But theses cases are not without criticism. *See*, *e.g.*, *City of Stockton v. Bank of Am., N.A.*, No. C-08-4060, 2008 WL 4911183 at *4 (N.D. Cal. Nov. 13, 2008) (criticizing *Telecredit*); *In re Lloyd's*, 928 F. Supp. at 340 (noting that the "decision in *Bank of New York* is. . . inconsistent with the text of Section 632"); *but see Retailers Nat. Bank*, 2006 WL 6181282 at *3 ("The Court does not find any inconsistency between these [*Pinto* and *Telecredit*] cases.").

A recent case acknowledged these competing views and hinted at the difficulty that courts are having in either reconciling them or choosing between them:

> Federal courts are divided on whether 12 U.S.C. § 632 should be interpreted as providing a broad basis for federal jurisdiction or whether the statute should be read more narrowly. *See Bank of New York v. Bank of America*, 861 F. Supp. 225, 232 (S.D.N.Y. 1994) (noting that courts have generally interpreted 12 U.S.C. § 632 narrowly); *Bank of America Corp. v. Lemgruber*, 385 F. Supp. 2d 200, 214 (S.D.N.Y. 2005) (noting that courts have generally interpreted 12 U.S.C. § 632 broadly). The lack

> of [federal appellate] precedent relating to 12 U.S.C. § 632 and the absence of an authoritative explication in the legislative history of the statute's jurisdictional component further complicate this matter. *See A.I. Trade Finance, Inc. v. Petra Intern. Banking Corp.*, 62 F.3d 1454, (D.C. Cir. 1995) (noting that the legislative history of 12 U.S.C. § 632 is of little help in divining its purpose).

New Mexico ex rel. Foy v. Vanderbilt Capital Advisors, LLC, No. Civ-09-0178, 2009 WL 3672921 at *2 (D.N.M. Apr. 13, 2009). In the present appeal, each party backs a competing view (Sollitt for the narrow and KeyCorp for the broad) and argues capably for its selection.

But, having reviewed the relatively sparse case law, we find the present situation most closely analogous to *Diaz v. Pan American Federal Savings and Loan Association*, 635 F.2d 30 (1st Cir. 1980), a case in which the First Circuit held that a malicious-prosecution claim did not fall within the Edge Act. *See also Burgos v. Citibank, N.A.*, 432 F.3d 46, 49 (1st Cir. 2005) (distinguishing two claims, breach of contract and malicious prosecution, and finding Edge Act jurisdiction for the breach of contract while declining to consider the malicious prosecution).

In *Diaz*, 432 F.3d at 31, the plaintiff bounced a couple of checks and Pan American Bank pressed criminal charges. Diaz sued in federal court, claiming malicious prosecution. *Id*. The district court rejected Diaz's Edge Act argument — i.e., that his was a civil case, against a U.S. bank, arising out of a banking

transaction in Puerto Rico[1]— and dismissed for lack of jurisdiction. *Id*. The First Circuit agreed and affirmed the dismissal, explaining:

> [Diaz] would . . . have us . . . read the word 'banking' expansively to include [Pan American]'s filing of a criminal complaint based on the alleged passing of bad checks. We decline to read the term 'banking' so broadly.
>
> The statute is otherwise limited to cases arising from 'transactions' and 'other . . . financial operations' of banking institutions. We think that this limited range of companion parts of the same statutory section militates in favor of a similar narrow limitation for the term 'banking'. Moreover, a commonsense approach to a statute principally concerned with financial transactions of an international character suggests that 'banking' includes only traditional banking activities. As was the district court, we are unable to believe that Congress intended to reach all cases in which a bank is a party. If Congress so intended, it could have stated its intent more easily. The authority which we have been able to find supports our reading of § 632. We therefore conclude that the filing of a criminal complaint as a result of [Diaz]'s alleged passing of bad checks falls outside the scope of traditional

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[1] The Edge Act's third element also includes a clause covering "banking in a dependency or insular possession of the United States," 12 U.S.C. § 632, which includes Puerto Rico. Thus, the "foreign" aspect was not in dispute.

> banking and that the district court properly dismissed.

Id. at 31-32 (footnote and citations omitted) (citing, among others, *Corporacion Venezolana de Fomento v. Vintero Sales Corp.*, 629 F.2d 786, 791-92 (2d Cir. 1980)).

To recap, Diaz bounced a couple of checks, Pan American filed criminal charges, and Diaz sued in federal court for malicious prosecution. *Id*. at 31. The First Circuit held that Pan American's filing of a criminal complaint was not an aspect of "banking" and, therefore, Diaz's claim of malicious prosecution did not "arise out of" a banking transaction, even though the entire episode could be traced back to Diaz's bounced checks, which are certainly banking transactions. *Id*. at 3132. The First Circuit declined to find jurisdiction under the Edge Act and dismissed the case. *Id*.

We find the First Circuit's reasoning persuasive. Analogously to the circumstances in *Diaz*, Sollitt accused a co-worker of misconduct, KeyCorp fired Sollitt, and Sollitt sued in federal court for wrongful termination.[2] KeyCorp's firing of Sollitt was not an aspect of "banking" and, therefore, Sollitt's claim of wrongful termination did not "arise out of" a banking transaction, even though the entire episode arguably can be traced back to the PHC foreign currency

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[2] This is, of course, Sollitt's version of events and ignores KeyCorp's putative and independent reason for firing Sollitt — i.e., his possession of pornography on his work computer in violation of KeyCorp's Code of Ethics.

transaction. This scenario does not satisfy the third element of the Edge Act, 12 U.S.C. § 632.

Because KeyCorp, the removing party, cannot demonstrate that the claim at issue actually "arose out of" a transaction involving international or foreign banking, it cannot satisfy 12 U.S.C. § 632. *See Diaz*, 635 F.2d at 31-32. Consequently, this case lacks federal subject matter jurisdiction.

We **VACATE** the judgment of the district court and **REMAND** this case with instructions to grant plaintiff-appellant Kevin Sollitt's motion for remand to the state court.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CASE NO. 1:09-CV-43

[Filed August 21, 2009]

KEVIN JOHN SOLLITT)
)
Plaintiff;)
)
vs.)
)
KEYCORP, *et al*.)
)
Defendants.)

OPINION & ORDER
[Resolving Doc. Nos. 44, 60 & 63.]

JAMES S. GWIN,
UNITED STATES DISTRICT JUDGE:

Defendants KeyCorp and KeyBank, N.A. (collectively, the "Defendants") move for summary judgment in this Edge Act suit. [Does. 44, 63.] Plaintiff Kevin John Sollitt ("Sollitt") opposes this motion. [Doc. 60.] For the following reasons, the Court **GRANTS** the Defendants' motion.

I. Background

Plaintiff Kevin John Sollitt, a former employee of Defendant KeyCorp, has sued KeyCorp for allegedly wrongfully discharging him in violation of public policy. [Doc. 1-1.] As part of his claim, Sollitt argues that his termination for improper computer usage was pretextual and that he was actually fired because he objected to certain transactions and practices of KeyCorp's foreign exchange ("FX") sales department. [*Id*. at 9.]

Defendant KeyCorp hired Plaintiff Sollitt in 1998 for the position of vice president of FX. [Doc. 72-1 at 27, 29.] In 2006, KeyCorp promoted Sollitt to sector manager for the FX trading desk; his responsibilities included generating revenue for KeyCorp by trading foreign currency, managing the risk associated with foreign currency transactions undertaken for KeyCorp clients, assisting the FX marketing employees, and engaging in some business development activities. [*Id*. at 39, 42-44.] Sollitt earned more than $500,000 per year (in total compensation) during each of his last three years of employment. [Doc. 44-1 at 45-46.] Bonus payments accounted for the majority of Sollitt's compensation. Denise Shade, the manager of the FX group, was Sollitt's direct supervisor during his last 18 months of employment. [Doc. 44-12 at 3.]

In April 2008, Plaintiff Sollitt became concerned that Defendant KeyCorp was employing questionable practices relating to the marketing of foreign currency transactions. Sollitt especially questioned a large foreign currency transaction that KeyCorp handled on behalf of Parker Hannifin Corporation ("Parker") on April 3, 2008. [Doc. 60-10 at 2.] This transaction

involved "two [FX] trades, with Parker needing to obtain a total of approximately 250 million Canadian dollars." [*Id*.]

According to Plaintiff Sollitt, Defendant KeyCorp made a profit of approximately $220,000 on the first part of the Parker transaction by adding a quarter percent spread to the rate earlier quoted to Parker. [Doc. 44-14 at 3-5.][1] Further, Sollitt argues that on the second part of the transaction, Flavio Giust, the sector manager for the FX sales desk, [Doc. 72-1 at 39-40], contacted Parker and changed the contract rate after the entire transaction closed to increase KeyCorp's profits, [Doc. 60-10 at 2.] Sollitt states that to explain this change to Parker's representative, David Ostro, Giust falsely stated that there had been "trader error." [*Id*.] In reality, Sollitt says that no such error had occurred. [*Id*.] Following the completion of the Parker transaction, Sollitt contends that Giust "bragged that he was able to extract additional profit from the Parker transaction as a result of his strong relationship with Parker." [*Id*.]

The Defendants argue that there were no improprieties with respect to the first part of the Parker transaction because there are no set rules

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[1] In a typical FX transaction, the sales person must obtain a "cover rate" from a trader based upon the market price. [Doc. 44-14 at 72.] This cover rate reflects the rate at which KeyCorp could cover the transaction while accounting for the inherent risk associated with foreign currency transactions. [Doc. 44-12 at 73-76.] KeyCorp's sales person would then add a "spread" to the cover rates representing the profit that KeyCorp would make on the transaction. [Doc. 44-14 at 72.] Together, the cover rate and the spread constitute the contract price. [Doc. 44-12 at 134-136.]

governing maximum spreads on FX transactions; if customers do not like the quoted prices, they may simply go elsewhere. In other words, KeyCorp owed Parker no fiduciary duty and it could act to its own advantage and to Parker's disadvantage with respect to FX transactions. The Defendants also state that, even if KeyCorp did have some duty to treat its customers fairly, Plaintiff Sollitt was not a sales person and he therefore did not know what spreads would be fair or unfair. [Doc. 72-1 at 173.] Moreover, the Defendants contend that KeyCorp did not act improperly with regard to the second part of the Parker transaction; Giust mistakenly quoted a rate to Parker before that rate had been "locked in" by the trading desk and, when Giust realized his mistake and noticed that the rate had changed a few minutes later, he simply called back Ostro, Parker's representative, and asked to adjust the price. [Doc. 44-14 at 4-6.] The Defendants also point out that Ostro ultimately accepted the corrected rate because it was competitive with the rates quoted by other banks. [Doc. 48 at 6.]

Immediately following the completion of the Parker transaction, Plaintiff Sollitt met with Giust and Shade to discuss the transaction. [Doc. 72-1 at 235.] During the meeting, Sollitt objected to Giust's actions because he felt that Giust had lied to Parker to induce it to agree to the different rate and to obtain a bigger profit for KeyCorp. [*Id*. at 235-236.] The day after this meeting took place, Sollitt again met with Shade and reiterated his objections to the way in which the Parker transaction was handled; he broadly questioned the transaction, saying at one point that Giust's actions were potentially unethical and "verg[ed] on fraud." [*Id*. at 244.] Sollitt does not allege, however, that he complained about Giust's supposed

misconduct to Richard Owens, the head of the FX department, Shade's supervisor, and the individual who ultimately terminated Sollitt[2] [*Id*.; *see also* Doc. 44-9 at 5-7].

In the months following the Parker transaction, Plaintiff Sollitt reviewed FX transactions logged into Defendant KeyCorp's internal FX database. [Doc. 60-10 at 3.] According to Sollitt, he began to notice that KeyCorp was routinely charging exaggerated spreads on transactions involving large corporate clients. [*Id*.] Further, Sollitt noticed that KeyCorp's sales personnel often secured the large, profitable spreads by representing that the price offered to the client was the "best price" that could be obtained. [*Id.*] Relatedly, Sollitt observed that KeyCorp obtained exaggerated profit margins by treating its clients' employees to free meals at expensive restaurants and to free tickets to sports events. Sollitt continued to complain to Shade in the months leading up to his termination about the ethics of these practices. [*Id*.]

In July 2008, Defendant KeyCorp began using IronPort software to monitor the e-mails of KeyCorp employees including Plaintiff Sollitt to ensure that these employees were complying with KeyCorp's Code

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[2] Owens also indicates that he did not know anything about Sollitt's complaints regarding the Parker transaction both before and after Sollitt was terminated. [Doc. 44-9 at 7.] Sollitt does state, however, that he assumed that Owens knew about Sollitt's complaints because Shade had indicated that if an employee "raised an issue about something they thought was illegal, unlawful, or unethical," she would "immediately go to Richard [Owens] and let him know that we had an employee that had an issue." [Doc. 44-12 at 155.]

of Ethics and Electronic Communications Use Standard (CS 32.03). [Doc. 47 at 2.] Accessing or forwarding e-mails containing pornography, nudity, or otherwise offensive images or language would violate both the Code of Ethics and CS 32.03 and could result in termination. [Doc. 47-2 at 3; Doc. 47-3 at 7] Sollitt certified that he had read the Code of Ethics and the accompanying policies throughout the duration of his employment at KeyCorp. [Doc. 44-4, 5, 6.]

The IronPort software flagged Plaintiff Sollitt's account because he had received and forwarded inappropriate e-mails, some of which contained nude images or other pornographic content. [Doc. 46 at 3.] Apparently, Sollitt forwarded the offensive emails to a private email account that he maintained. No evidence suggests that he forwarded these e-mails to any other individuals or accounts.

Senior Employee Relations Consultant Liane DiGiandomenico investigated Plaintiff Sollitt's e-mail account, as well as the accounts of other KeyCorp employees that had been flagged by the software. [*Id.*] In the course of her investigation, DiGiandomenico discovered that Sollitt had received over 80 e-mails containing inappropriate content, including pornographic images and videos, from May 1, 2008 until July 14, 2008. [*Id.*] Sollitt had also forwarded at least 10 of these mails to his personal e-mail account. [*Id*.] Based on her initial review, DiGiandomenico recommended that Sollitt be fired to her manager, Patricia Wyant. [*Id*.]

Wyant discussed this preliminary recommendation with Debbie Kaput — the Human Resources Director assigned to the Capital Markets Group — and Richard

Owens on August 19, 2008. [Doc. 60-14 at 25.] As a group, these individuals agreed with DiGiandomenico that Sollitt should be terminated. [*Id*.]

Following Wyant, Kaput, and Owens's agreement that Plaintiff Sollitt should be fired, DiGiandomenico continued her investigation and interviewed Sollitt on August 20, 2008. [*Id*. at 4.] Sollitt admitted that he had received and forwarded inappropriate e-mails to his own email account and that he understood that such actions were prohibited by Defendant KeyCorp's policies. [*Id*. at 4.] Following this interview, DiGiandomenico and Wyant again met with Richard Owens and again recommended that Sollitt's employment be terminated; Owens subsequently fired Sollitt, as well as another employee in the FX group who had also been found to have violated KeyCorp's electronic communications policies [*Id*.]

Plaintiff Sollitt filed a complaint containing a single cause of action against the Defendants in the Court of Common Pleas, Cuyahoga County on December 15, 2008. The Defendants removed the action to this Court on January 8, 2009. [Doc. 1.] On July 6, 2009, the Defendants filed a motion for summary judgment on Plaintiff Sollitt's sole claim for wrongful discharge in violation of public policy. [Docs. 44, 63.] Sollitt opposed the Defendants' motion for summary judgment on July 20, 2009. [Doc. 60.] For the following reasons, the Court **GRANTS** the Defendants' motion.

II. Legal Standard

Summary judgment is appropriate where the evidence submitted shows "that there is no genuine issue as to any material fact and that the movant is

entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the initial burden of showing the absence of a genuine issue of material fact as to an essential element of the non-moving party's case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "A fact is material if its resolution will affect the outcome of the lawsuit." *Martingale, LLC v. City of Louisville*, 361 F.3d 297, 301 (6th Cir. 2004) (citing *Daughenbaugh v. City of Tiffin*, 150 F.3d 594, 597 (6th Cir. 1998) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986))).

The moving party meets its burden by "informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp.*, 477 U.S. at 323 (quoting FED. R. CIV. P. 56(c). However, the moving party is under no "express or implied" duty to "support its motion with affidavits or other similar materials negating the opponent's claim." *Id*.

Once the moving party satisfies its burden, the burden shifts to the nonmoving party to set forth specific facts showing a triable issue. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). It is not sufficient for the nonmoving party merely to show that there is some existence of doubt as to the material facts. *See id*. at 586. Nor can the nonmoving party rely upon the mere allegations or denials of its pleadings. FED. R. CIV. P. 56(e).

In deciding a motion for summary judgment, the Court views the factual evidence and draws all

reasonable inferences in favor of the nonmoving party. *Thomas v. Cohen*, 453 F.3d 657, 660 (6th Cir. 2004) (citations omitted). "The disputed issue does not have to be resolved conclusively in favor of the non-moving party, but that party is required to present some significant probative evidence that makes it necessary to resolve the parties' differing versions of the dispute at trial." *60 Ivy Street Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987) (citing *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968)). Ultimately the Court must decide "whether the evidence presents sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Martingale*, 361 F.3d at 301 (citing *Terry Barr Sales Agency, Inc. v. All-Lock Co., Inc.*, 96 F.3d 174, 178 (6th Cir. 1996)) (internal quotations omitted).

III. Analysis

In their motion for summary judgment, the Defendants argue that they are entitled to judgment as a matter of law on Plaintiff Sollitt's claim that he was wrongfully discharged in violation of public policy. Because no genuine issues of material fact exist with respect to three of the four elements of Sollitt's claim, and because Sollitt must satisfy all four elements to make out his claim, *Hill v. Mr. Money Fin. Co. & First Citizens Banc Corp.*, 309 Fed. App . 950, 965 (6th Cir. 2009), the Court agrees with the Defendants and grants summary judgment in their favor. To establish his claim of wrongful discharge in violation of public policy, Plaintiff Sollitt must demonstrate that: (1) a "clear public policy existed and was manifested in a state or federal constitution, statute or administrative regulation, or in the common law (the clarity

element);" (2) "dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy (the jeopardy element);" (3) the "plaintiff's dismissal was motivated by conduct related to the public policy (the causation element);" and (4) the "employer lacked overriding legitimate business justification for the dismissal (the overriding justification element)." *Wiles v. Medina Auto Parts*, 773 N.E.2d 526, 529-30 (Ohio 2002) (citations omitted). "The first two elements are questions of law to be determined by the court, while the latter two elements are questions of fact to be determined by the trier of fact." *Aldrich v. Greg*, 200 F. Supp. 2d, 784, 789 (N.D. Ohio 2002) (citations omitted).

The Court finds that Plaintiff Sollitt does not satisfy all four elements of his claim for wrongful discharge in violation of public policy. Although the Court acknowledges that genuine issues of material fact may exist with respect to the fourth element of Sollitt's claim because Sollitt could show at trial that Defendant KeyCorp lacked overriding legitimate business justification for terminating Sollitt, no genuine issues of material fact exist with respect to the other three elements of the claim. Thus, Sollitt's claim necessarily fails.

First, Plaintiff Sollitt cannot demonstrate the existence of a clear public policy. Although Sollitt claims that his allegations implicate three sources of public policy — common law fraud,[3] securing a writing

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[3] "The elements of an action in actual fraud are: (a) a representation or, where there is a duty to disclose, concealment

by deception,[4] and the Ohio Deceptive Trade Practices Act[5] - he cannot show that Defendant KeyCorp's actions violate any of these "policies."

Courts including the Seventh Circuit have held that banks do not commit fraud in adding spreads to exchange rates (or, in other words, in making a profit on the transactions they carry out) or in changing promised rates because rate information is widely available and the parties involved in FX transactions are sophisticated. *See Interactive Intelligence, Inc. v. KeyCorp*, 546 F.3d 897, 901 (7th Cir. 2008) ("[T]here is nothing confidential in the FX transaction. The . . . [client's] employees knew that exchange rates were available on the Internet and in the *Wall Street Journal*."); *In re Mex. Money Transfer Litig*., 267 F.3d 743, 749 (7th Cir. 2001) ("Neiman Marcus does not tell customers what it paid for the clothes they buy, nor need an auto dealer reveal rebates and incentives it receives to sell cars. This is true in financial markets

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of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance." *Gaines v. Preterm-Cleveland, Inc*., 514 N.E.2d 709, 712 (Ohio 1987).

[4] "No person, by deception, shall cause another to execute any writing that disposes of or encumbers property, or by which a pecuniary obligation is incurred." O.R.C. § 2913.43.

[5] A deceptive trade practice includes the making of "false statements of fact concerning the reasons for . . . price reductions." O.R.C. § 4165.02.

no less than markets for physical goods. The customer of a bank's foreign-exchange section (or an airport's currency kiosk) is quoted a retail rate, not a wholesale rate, and must turn to the newspapers or the Internet to determine how much the bank has marked up its Swiss Francs or Indian Rupees. . . . Nothing in this transaction smacks of fraud . . . .."); *Compania Sud-Americana de Vapores, S.A. v. IBJ Schroeder Bank & Trust Co.* 785 F.Supp. 411 , 419-20 (S.D.N.Y. 1992) (rejecting a fraud claim based upon the change of a promised rate for an FX transaction because the rates were widely available and the parties to the transaction were sophisticated).

In this case, Plaintiff Sollitt cannot show that the Parker transaction was fraudulent. This transaction was conducted in a competitive and transparent market and the entities involved with the transaction were large and sophisticated corporations. In fact, Ostro, Parker's representative in the FX transaction conducted by KeyCorp, checked the quoted rate for the transaction (after Giust changed it) to determine whether it was competitive with the rates offered by other banks before accepting it. As a result, Sollitt cannot establish that Parker justifiably relied upon Flavio Giust's statement that error caused Defendant KeyCorp's pricing to change. *Gaines*, 514 N.E.2d at 712. Moreover, KeyCorp was free to add any spread to their rates; if the rate was too high, the large corporate client would simply conduct the transaction with another bank. Thus, the Parker transaction does not implicate the prohibition against securing a writing by deception or the Ohio Deceptive Trade Practices Act.

Second, even if a clear public policy existed in this case, Plaintiff Sollitt cannot satisfy the jeopardy

element of the wrongful discharge in violation of public policy claim. In *Jermer v. Siemens Energy & Automation, Inc.*, 395 F.3d 655, 659 (6th Cir. 2005), the Sixth Circuit held that to establish the jeopardy element, "the employee must at least have made clear to his employer that he is invoking a governmental policy as the basis for his complaint, not just his own self-interest. Otherwise, the employer is not effectively put on notice that the employee is acting not only for himself, but also for the public at large." The *Jermer* court also noted that although complaints must not be in writing, they "must do more than merely indicate a preference or make a vague statement. [They] must at least connect the employer's conduct in some way to government policy." *Id*.

Here, Plaintiff Sollitt does not satisfy the jeopardy element because he did not make clear to his employer that he was invoking public policies as the basis for his complaints. Sollitt never explicitly stated or even suggested that he thought that Defendant KeyCorp was conducting its transactions in a fraudulent manner or that its actions amounted to misrepresentation. [Doc. 72-1 at 243.] Indeed, he acknowledged that he was uncomfortable making such strong statements to his supervisors. [*Id*. at 244.] At most, Sollitt raised questions about the ethics of the Parker transaction to Denise Shade and Flavio Giust. Additionally, at no point did Sollitt suggest to his employer that his complaints were grounded in the prohibition against securing a writing by deception or the Ohio Deceptive Trade Practices Act. Sollitt's statements regarding the manner in which KeyCorp carried out its transactions were thus decidedly vague and centered on whether KeyCorp's actions were ethical, not on whether they were fraudulent.

Additionally, the jeopardy element looks to whether allowing an employee's dismissal under the circumstances involved in the case could seriously affect the public policy against fraud in similar commercial transactions. In this case, Parker has a significant financial incentive to work with FX facilitators that do not act in a fraudulent manner. Allowing Sollitt's case to go forward provides minimal (if any) incentive for curbing fraudulent conduct in FX transactions. As a result, Sollitt cannot demonstrate that he satisfies the second element of his wrongful discharge in violation of public policy claim.

Third, assuming Plaintiff Sollitt could satisfy the clarity and jeopardy elements, he cannot establish the causation element of his wrongful discharge in violation of public policy claim. In *Herlik v. Cont'l Airlines. Inc*., No. 04-3790, 2005 WI, 2445947, at *4 (6th Cir. 2005), the Sixth Circuit held that the employee failed to satisfy the causation requirement where there was no evidence that the supervisor responsible for the termination decision knew of the employee's complaints that the employee alleged were the basis of his termination. Further, in *Avery v. Joint Twp. Dist. Mem'l Hosp*., 504 F. Supp.2d 248, 258 (N.D. Ohio 2007), the Northern District of Ohio held that the employee failed to establish the causation element when the employee demonstrated that he had complained to only one of his two supervisors, who were jointly responsible for his termination; the other supervisor had asserted that he had no knowledge of the employee's complaints.

In this case, Plaintiff Sollitt cannot establish that Richard Owens, the individual who terminated him, knew about Sollitt's complaints regarding the Parker

transaction and other KeyCorp transactions. Owens, along with the human resources personnel who recommended Sollitt's termination, states that he did not know about Sollitt's complaints regarding Flavio Giust and the Parker transaction both before and after he discharged Sollitt. In response to Owens's unequivocal statement that he did not have any knowledge of Sollitt's complaints prior to terminating him, Sollitt offers only speculation. He argues that Denise Shade, Sollitt's direct supervisor, must have told Owens about Sollitt's complaints. Such speculation by Sollitt which is directly contradicted by Owens's and Shade's testimony — is insufficient to withstand a summary judgment motion. *See*, *e.g.*, *Lewis v. Philip Morris Inc.*, 355 F.3d 5 15, 533 (6th Cir. 2004); *Avery*, 504 F. Supp. 2d at 258 n.9.

Not only can Plaintiff Sollitt not show that the individual who terminated him knew about Sollitt's complaints regarding the Parker transaction, but also Sollitt cannot establish a temporal connection between his complaints and his discharge. "[T]the proximity in time between protected activity and adverse employment action may give rise to an inference of a causal connection." *Moon v. Transp. Drivers, Inc*., 836 F.2d 226. 229 (6th Cir. 1987). In this case, however, nearly five months elapsed between the Parker transaction and Sollitt's complaints regarding the handling of this transaction and Sollitt's termination. The relevant proximity in time thus occurred not between Sollitt's complaints and his discharge, but between the discovery of Sollitt's violation of KeyCorp's policy regarding the use of electronic communication and his discharge. As a result, Sollitt cannot show that he satisfies the third element of his wrongful discharge in violation of public policy claim.

Because Plaintiff Sollitt fails to establish all four elements of his wrongful discharge in violation of public policy claim, the Court must grant summary judgment in favor of the Defendants on this claim.

IV. Conclusion

For the foregoing reasons, the Court GRANTS the Defendants' motion for summary judgment.

IT IS SO ORDERED.

Dated: August 21, 2009

/s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CASE NO. 1:09-CV-43

[Filed August 21, 2009]

KEVIN JOHN SOLLITT	)
	)
Plaintiff;	)
	)
vs.	)
	)
KEYCORP, *et al*.	)
	)
Defendants.	)
	)

JUDGMENT

JAMES S. GWIN,
UNITED STATES DISTRICT JUDGE:

For the reasons provided in the accompanying order and opinion, the Court **GRANTS** the Defendants' motion for summary judgment.

Accordingly, this action is terminated pursuant to Federal Rule of Civil Procedure 58.

IT IS SO ORDERED.

Dated: August 21, 2009

/s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CASE NO. 1:09-CV-43

[Filed February 11, 2009]

KEVIN JOHN SOLLITT	)
	)
Plaintiff;	)
	)
vs.	)
	)
KEYCORP, et al.	)
	)
Defendants.	)
	)

OPINION & ORDER
[Resolving Doc. Nos. 5, 8 & 10.]

JAMES S. GWIN,
UNITED STATES DISTRICT JUDGE:

With this opinion and order, the Court decides whether this action should be remanded to state court upon Plaintiff Kevin John Sollitt's argument that this case presents no federal question sufficient to support jurisdiction. [Doc. 5.]

On December 3, 2008, Plaintiff Sollitt filed his Complaint in the Cuyahoga County Court of Common Pleas. [Doc. 1-A.] In that case, Plaintiff Sollitt alleged that he was wrongfully discharged in violation of the public policy of the State of Ohio. [*Id.*] On January 8, 2009, Defendant KeyCorp removed the case to this Court on the basis of federal question jurisdiction. [Doc. 1.] As discussed below, the Court finds that has federal question jurisdiction over this case pursuant to the Edge Act of 1913, 12 U.S.C. § 632. The Court therefore **DENIES** Plaintiff Sollitt's motion and declines to remand this case to state court.

I. Background

Plaintiff Sollitt's Complaint set forth a single cause of action: wrongful discharge in violation of the public policy of the State of Ohio. [Doc. 1-A.] Defendant KeyCorp removed Sollitt's lawsuit to this Court on the basis of federal question jurisdiction. [Doc. 1.] With its petition for removal, the Defendant argued that this Court has federal question based on 28 U.S.C. § 1441(b) and the Edge Act of 1913, 12 U.S.C. § 632. The Edge Act states, in pertinent part, that

> all 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; and any 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.

12 U.S.C. § 632 (emphasis added).

Plaintiff Sollitt responds to Defendant Key Corp's removal action with the instant motion to remand. [Doc. 5.] In support of his motion to remand, Sollitt argues that his Complaint is entirely premised on Ohio law. According to Sollitt, "it is not Key[Corp's] foreign exchange business practices that are at issue[] in this case, but [KeyCorp's] motivations in terminating [Sollitt's] employment. The propriety of [KeyCorp's] foreign exchange business dealings are, at best, a peripheral matter." [*Id.* at 10.]

In response, Defendant KeyCorp contends that Plaintiff Sollitt's "lawsuit involves traditional banking functions [in that it is] . . . . based on alleged misrepresentations made by various Key[Corp] sales employees in the foreign currency exchange department regarding the best price that could be offered on foreign currency transactions." [Doc. 8 at 7.]

II. Legal Standard

A defendant may remove any civil action brought in state court "of which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). Federal question jurisdiction exists in "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The party seeking removal bears the burden of establishing federal

question jurisdiction. *Ahearn v. Charter Twp. of Bloomfield*, 100 F.3d 451, 453-54 (6th Cir. 1996).

A case "arises under" federal law:

> only when the plaintiff's statement of his own cause of action shows that it is based upon [federal] laws or the Constitution. It is not enough that the plaintiff alleges some anticipated defense to his cause of action, and asserts that the defense is invalidated by some provision of the Constitution of the United States.

Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149, 152 (1908). This requirement is known as the "well-pleaded complaint rule." *See, e.g.*, *Kerr-McGee Chem. Corp. v. Ill.*, 459 U.S. 1049 (1982) (citations omitted).

Under the well-pleaded complaint rule, the plaintiff is master of his complaint. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The Supreme Court does not allow a defendant to foist federal jurisdiction onto a plaintiff's complaint: "the question whether a party claims a right under the constitution or laws of the United States is to be ascertained by the legal construction of its own allegation, and not by the effect attributed to those allegations by the adverse party." *Tenn. v. Union & Planters' Bank*, 152 U.S. 454, 460 (1894) (citation omitted). A defendant cannot "create removal jurisdiction merely by raising a federal question as a defense." *Her Majesty The Queen In Right of the Province of Ontario v. City of Detroit*, 874 F.2d 332, 344 (6th Cir. 1989) (citation omitted).

Moreover, "the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction." *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 813 (1986). Instead, the cause of action must contain a "substantial" federal issue. *Id.* at 813-14. If a federal court determines that a case does not raise a substantial federal question, it must remand the case. 28 U.S.C. § 1447(c). Likewise, if a party improperly removes a case to federal court, the court must remand the case back to the appropriate state court. 28 U.S.C. § 1447(d). If a federal court is in doubt of its jurisdiction, it must resolve such doubt in favor of state court jurisdiction. *See Brierly v. Alusuisse Packaging, Inc.*, 184 F.3d 527, 534 (6th Cir. 1999). Because the removal statutes implicate federalism concerns, a court must narrowly construe the statutes against removal. *Long v. Bando Mfg. of Am., Inc.*, 201 F.3d 754, 757 (6th Cir. 2000).

III. Analysis

This case raises a substantial federal question that confers jurisdiction upon the Court. As a result, the Court declines to remand this case to state court.

Plaintiff Sollitt argues that he does not assert any federal causes of action in his Complaint. He posits that Ohio law, specifically the Ohio common law tort of wrongful discharge in violation of the state's public policy, forms the basis of his single claim against Defendant KeyCorp. In contrast, Defendant KeyCorp argues that the Edge Act of 1913, 12 U.S.C. § 632, confers jurisdiction on the Court with respect to Sollitt's claim because this claim involves international banking transactions. *See Bucheit Int'l, Inc. v.*

Ameritrust Co. Nat'l Ass'n, No. 95-4267, 1997 WL 21196, at *1 (6th Cir. Jan 17, 1997).

To establish jurisdiction under the Edge Act, (1) the suit must be civil in nature; (2) one of the parties in interest must be a corporation organized under the laws of the United States; and (3) the suit must arise out of a transaction involving international or foreign banking. *In re Currency Conversion Fee Antitrust Litig*., No. 1409, 21-95, 2003 WL 22097502, at * 2 (S.D.N.Y. Sept. 10, 2003).

"The mere fact that a bank is party to an action does not trigger section 632 jurisdiction," however. *Burgos v. Citibank, N.A.*, 432 F.3d 46, 48 (1st Cir. 2005). Indeed, "[s]ection 632 reaches only traditional banking activities . . . ." *Conjugal Soc'y Composed of Juvenal Rosa v. Chicago Title Ins. Co.*, 690 F.2d 1, 4 (1st Cir. 1982) (citations omitted); *see also Telecredit Serv. Ctr. v. First Nat'l Bank of the Fla. Keys*, 679 F. Supp. 1101, 1003 (S.D. Fla. 1988) ("The focus of the court's inquiry must be whether 'the transaction in question be one 'arising out of . . . international or foreign banking.'") (citations omitted). Traditional banking activities "include, *inter alia*, mortgage loan agreements, foreclosures on such mortgages, loan guarantor agreements, subordination agreements, and suits to recover on defaulted loans," *Burgos*, 432 F.3d at 49, though these activities must contain some foreign aspect to qualify for Edge Act jurisdiction. Further, courts have also deemed currency conversion and the imposition of foreign currency conversion fees to be traditional banking functions. *See Clarken v. Citicorp Diners Club, Inc.*, No. 01-C-5123, 2001 WL 1263366, at *1 (N.D. Ill. Oct. 22, 2001).

Courts have adopted a relatively narrow interpretation of the Edge Act, ordering a remand if claims in particular cases were not "integrally tied to banking activity, such that the courts were required to consider and apply principles of banking law to resolve them," *Bank of N.Y. v. Bank of Am.*, 861 F. Supp. 225, 232-233 (S.D.N.Y. 1994), and if "the banking aspect of the jurisdictional transaction[s] [were not] legally significant in the case[s]," *id.* at 233.

Defendant KeyCorp indisputably meets the first two requirements of Edge Act jurisdiction: Plaintiff Sollitt makes a civil claim and Defendant KeyCorp is an Ohio corporation. While acknowledging this fact, Plaintiff Sollitt disputes whether this case implicates traditional banking activities.

Plaintiff Sollitt's Complaint, however, centers on his claim that Defendant KeyCorp fraudulently induced its customer, Parker Hannifin, to pay an improper exchange rate on a March 2008 transactions, netting KeyCorp "hundreds of thousands of dollars in additional profit on this single transaction." [Doc. 1-A at 7.] In his Complaint, Sollitt alleges:

> 31. . . . In this case Mr. Sollitt provided the market-rate on the Parker Hannifin trade, absorbing the risk generated in a volatile market and providing to Mr[.] Giust [the head or sector manager of the institutional bank side of KeyCorp's foreign exchange sales group] competitive rate. Mr. Sollitt later learned that Mr. Giust took not only a normal spread on this trade but that after some time had passed from the original transaction, Mr. Giust called Parker Hannifin back and changed the rate to

> disadvantage the client, thereby reaping extra profit for KeyCorp and for himself. Mr. Giust told Parker Hannifin that the new late was necessitated by an error on the part of the trading desk. In reality, however, the price provided by the Mr[.] Sollitt and the trading desk never changed. Mr. Giust's actions netted KeyCorp hundreds of thousands of dollars in additional profit on this single transaction.
>
> 32. Following the trade, Mr. Sollitt raised objections to Mr. Giust's actions in belatedly extracting hundreds of thousands of dollars from a client under false pretenses Indeed, Mr. Sollitt complained to Mr. Giust directly that the exorbitant profit extracted from Parker Hannifin represented the value of several manufacturing jobs.

[*Id.*] Regarding other clients, Sollitt says he complained concerning "the practices of Mr. Giust, including his practice of misrepresenting to clients the best possible price that KeyCorp could obtain on a given transaction." [*Id.*] Sollitt then alleges that KeyCorp fired him in retaliation "after he voiced objections to KeyCorp's business practices . . . ."[*Id.* at 10.]

Thus, contrary to Plaintiff Sollitt's argument in support of remand, this case centers on KeyCorp's foreign exchange banking practices and transactions. Sollitt argues that these practices and transactions were unlawful or otherwise improper while contending that his own actions were lawful and proper. [Doc. 5 at 6-7.]

Further, Plaintiff Sollitt's state law claim of wrongful discharge in violation of the state's public policy is "integrally tied to banking activity, such that the [Court is] required to consider and apply principles of banking law to resolve [it]." *Bank of N.Y.*, 861 F. Supp. at 232-233. Under Ohio law, Sollitt would need to demonstrate that (1) clear public policy existed and was manifested in a state or federal constitution, statute or administrative regulation, or in the common law; (2) dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy; (3) the plaintiff's dismissal was motivated by conduct related to the public policy; and (4) the employer lacked overriding legitimate business justification for the dismissal. *Wiles v. Medina Auto Parts*, 773 N.E.2d 526, 529-530 (Ohio 2002). This test requires the Court to delve deeply into the policies and practices of Defendant KeyCorp with respect to its foreign exchange banking transactions and operations.

Thus, "the banking aspect of the jurisdictional transaction [is] legally significant in [this] case," *Bank of N.Y.*, 861 F. Supp. at 233, and the Court therefore has federal question jurisdiction over this case pursuant to the Edge Act of 1913, 12 U.S.C. § 632.

IV. Conclusion

For the above noted reasons, the Court finds that it has federal question jurisdiction over this case. As a result, the Court **DENIES** Plaintiff Sollitt's motion and declines to remand this case to state court

IT IS SO ORDERED.

Dated: February 11, 2009

/s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case Nos. 09-4143 & 10-3408

[Filed March 9, 2012]

KEVIN JOHN SOLLITT,	)
	)
Plaintiff-Appellant,	)
	)
v.	)
	)
KEYCORP, *et al.*,	)
Defendants-Appellees.	)
	)

Before: BATCHELDER, Chief Circuit Judge; COLE and GIBBONS, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the

petition were fully considered upon the original submission and decision of the cases. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/_____
Leonard Green, Clerk

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO.: 1:09-cv-00043
JUDGE JAMES GWIN

[Filed February 27, 2009]

KEVIN JOHN SOLLITT	)
	)
Plaintiff,	)
	)
vs.	)
	)
KEYCORP	)
	)
and	)
	)
KEYBANK NATIONAL ASSOCIATION c/o Paul Harris, General Counsel 127 Public Square Cleveland, Ohio 44114	)
	)
and	)
	)
XYZ Corporations 1-10,	)
	)
Defendants.	)
	)

FIRST AMENDED COMPLAINT
(*Jury Demand Endorsed Hereon*)

NOW COMES Plaintiff, Kevin Sollitt, by and through undersigned counsel, and for his First Amended Complaint against Defendants states as follows:

THE PARTIES

1. Plaintiff Kevin Sollitt is a resident of the City of Westlake, the County of Cuyahoga and the State of Ohio.

2. Defendant Key is an Ohio corporation with a principal place of business in Cuyahoga County, Ohio.

3. KeyBank National Association is a federally chartered national bank with a principal place of business in Cleveland, Ohio. Defendants Key and KeyBank National Association will be referred to collectively herein at simply "Key."

4. Counsel for KeyCorp in this litigation has agreed to accept service of the Amended Complaint on behalf of KeyBank, N.A.

5. Unnamed XYZ Corporations 1-10 are entities associated with Key by a formal or informal relationship, including, but not limited to, subsidiaries of Key and clients of Key. Plaintiff reserves the right to name these additional parties, if and when they are identified during discovery.

JURISDICTION AND VENUE

6. By virtue of its February 11, 2009 ruling, the United States District Court for the Northern District of Ohio has exercised jurisdiction over this proceeding. For reasons more fully explained in Plaintiff's *Motion for Remand* and related filing filings, Plaintiff respectfully contends that jurisdiction properly lies with the Cuyahoga County Court of Common Pleas.

7. In light of the Court's ruling on the jurisdictional question, venue is appropriate in the United States District Court for the Northern District of Ohio, Eastern Division, because the actions giving rise to Plaintiff's claims occurred in this jurisdiction. Consistent with his position regarding jurisdiction, Plaintiff respectfully contends that venue should properly lie in the Cuyahoga County Court of Common Pleas.

FACTUAL ALLEGATIONS

Mr. Sollitt Joins Key and Over His Ten Years of Employment Manages Billions of Dollars in Currency Risk and Generates Millions of Dollars In Trading Revenue while Rising to become the Head (Sector Manager) of the Foreign Exchange Trading Desk

8. Plaintiff Kevin Sollitt was first hired by Key in or about August 1998, beginning work in November 1998. In accepting employment with Key as a Foreign Exchange Trader, VP level, Mr. Sollitt agreed to relocate from London, England to Cleveland, Ohio with his then pregnant wife and his two-and-one-half year old daughter.

9. Mr. Sollitt was initially hired at an annual salary of $125,000 and promised a bonus of $25,000 to be paid in March, 1999. Based upon his early performance, this bonus payment was increased to $35,000.

10. On average, foreign currency traders were expected to generate a profit of $500,000 per trader on an annual basis.

11. In every year from 2000 forward, Mr. Sollitt performed exceptionally well, at times personally generating more than $1 million in annual trading revenue for Key.

12. In 2003, Mr. Sollitt was promoted to the position of Senior Vice President based on his strong performance.

13. In 2006, Mr. Sollitt was promoted to become head or sector manager of the foreign exchange trading desk. Despite the significant increase in duties, workload and associated responsibility, however, Mr. Sollitt did not receive a commensurate salary increase at the time of his promotion.

14. In the final three years of his employment, Mr. Sollitt earned annual performance-based bonuses of $375,000, $450,000 and $385,000, respectively.

15. In any one year, Mr. Sollitt was ultimately responsible for managing the risk of billions of dollars in assets under Key's control.

As Head of the Foreign Exchange Trading Desk, Mr. Sollitt Began To Recognize Improprieties On the Part of the Foreign Exchange Sales Team

16. As the Head of the Foreign Exchange trading desk, Mr. Sollitt reported directly at first to Richard Owens, the Executive Vice President and Managing Director of Key's Capital Markets Group. In early 2007, Mr. Owens appointed Denise Shade as Manager, Foreign Exchange, to oversee both the Sales and Trading sides of the foreign exchange department. Ms. Shade reported to Richard Owens.

17. Mr. Sollitt's counterpart within Key's Foreign Exchange Sales was Flavio Giust, the head, or sector manager, of the Institutional (I-bank) side of the group. In that role, Mr. Giust was responsible for marketing Key's Foreign Exchange services to companies, including many of Key's largest foreign currency customers. Mr. Giust also supervised a group of sales personnel and reported to Denise Shade.

18. The department also included a Tom Simenic, a long-time Key employee, whose work involved the administrative details of recording foreign currency transactions made by Key on behalf of their clients. In this role, Mr. Simenic was uniquely positioned to have access to both the representations and sales quotes being made to the customers and the actual prices at which the transactions are being made.

19. As co-founder, former head of the sales group and now sector manager for I-bank sales in the Foreign Exchange department, Mr. Giust wielded

tremendous influence over the entire department, including Ms. Shade whom he had originally hired and had previously supervised

20. Traditionally, Mr. Sollitt had shared a close and amiable working relationship with Mr. Giust.

21. However, in the months prior to his termination, Mr. Sollitt gained first hand knowledge of certain sales practices carried out by sales personnel, which cause him great concern.

22. By way of explanation, in the context of foreign exchange transactions, the difference between the price paid by the customer and the price paid by the financial institution to complete a transaction is referred to as the "spread." This spread represents the profit made by the financial institution supplying liquidity to their client and is measured in increments of one ten thousandth of a U.S. dollar. One ten thousandth of a U.S. dollar is referred to in industry parlance as a "pip." One pip on one million base currency is 100 USD.

23. During the last year of his employment, Mr. Sollitt learned that sales employees, including, but not limited to Mr. Giust, would routinely misrepresent the best available price that could be offered on certain currency transactions involving large corporate clients. Key's clients reasonably relied upon these misrepresentations in electing to use Key to effectuate their foreign exchange currency transactions.

24. For instance, Mr. Sollitt learned that Mr. Giust affirmatively represented to large corporate clients that the "best price" he could get in the market

was as much as one hundred pips above the price that Key currency traders were able to actually get in the marketplace. These misrepresentations to the client resulted in millions of dollars in windfall profits for Key and tens of thousands of dollars for the individual sales employees.

25. Encouraging this sort of practice, Mr. Giust and Ms. Shade presented at least two seminars to all sales and trading employees in the Foreign Exchange department discussing strategies for increasing the performance of the department. Among the strategies advocated by Ms. Shade and Mr. Giust was the practice of building close relationships with large corporate clients in order to facilitate aggressive pricing of transactions. Mr. Giust and Ms. Shade also recommended and approved of the practice of taking losses on small transactions by offering prices below those that could be had in the marketplace, so as to establish good will with clients and reduce scrutiny on larger transactions where Key enjoyed sizeable profits as a result of affirmative misrepresentations made to clients.

26. It was well known that Mr. Giust was among the most aggressive in employing these questionable tactics with customers.

27. Consistent with his presentation at the aforementioned seminars, Mr. Giust facilitated this practice by maintaining close personal relationships with the decision makers at large clients. Mr. Giust was known to take his clients out for dinners and other entertainment costing hundreds of dollars to facilitate this process, a method he recommend Mr. Sollitt use to diffuse problematic situations, on occasion.

28. While the practice of misrepresenting the best prices available on the marketplace was tacitly implied, if not endorsed, by senior management, lower level sales employees were made to be scapegoats if clients raised questions about Key's pricing representations.

29. Upon information and belief, at least two sales employees were terminated after clients expressed concerns that they were manipulating rates.

In What Was Considered an Act of Rebellion by Upper Management, Mr. Sollitt Questioned the Unlawful Practice of Sales Employees Affirmatively Misrepresenting To Clients the "Best Price" that Could be Obtained on the Market

30. In or about March 2008, Mr. Sollitt worked with Mr. Giust on a large transaction for Parker Hannifin. Over Mr. Sollitt's objection and at the insistence of Mr. Giust and the approval of Ms. Shade, this transaction was executed in a manner which jeopardized the perception of Key amongst Inter-bank counterparties in the Foreign Exchange marketplace, a vital source of liquidity for the bank's core business needs. When Mr. Sollitt pointed out that the proposed manner in which the transaction be completed could potentially be injurious to Key's longer-term and future standing in the foreign currency banking community, Mr. Giust replied, "All I care about is this deal."

31. The next day, Mr. Sollitt again expressed his concern regarding the manner in which the Parker Hannifin transaction was handled to Ms. Shade. In

response, Ms. Shade conceded that she should have over-ruled Mr. Giust and allowed Mr. Sollitt to execute the transaction as he saw fit. Indeed, she observed that Mr. Giust had crossed the line by insisting on the manner in which the deal was completed.

32. Following the Parker Hannifin transaction and exchange of dialog, Mr. Sollitt and Ms. Shade were required to travel to New York City to visit some of Key's main liquidity providers, to provide explanations and address questions regarding the manner in which the Parker Hannifin deal was executed, all the while preserving the client's anonymity.

33. The practice of getting close to powerful industry and client contacts enabled Mr. Giust in this instance to take advantage of the 'personal' relationships he fostered and encouraged others to replicate. In this case Mr. Sollitt provided the market-rate on the Parker Hannifin trade, absorbing the risk generated in a volatile market and providing to Mr. Giust a competitive rate. Mr. Sollitt later learned that Mr. Giust took not only a normal spread on this trade but that after some time had passed from the original transaction, Mr. Giust called Parker Hannifin back and changed the rate to disadvantage the client, thereby reaping extra profit for Key and for himself. Mr. Giust told Parker Hannifin that the new rate was necessitated by an error on the part of the trading desk. In reality, however, the price provided by the Mr. Sollitt and the trading desk never changed. Mr. Giust's actions netted Key hundreds of thousands of dollars in additional profit on this single transaction.

34. Following the trade, Mr. Sollitt raised objections to Mr. Giust's actions in belatedly extracting hundreds of thousands of dollars from a client under false pretenses. Indeed, Mr. Sollitt complained to Mr. Guist directly that the exorbitant profit extracted from Parker Hannifin represented the value of several manufacturing jobs.

35. Over the next several months, Mr. Sollitt continued to express opposition to Ms. Shade over the practices of Mr. Giust, including his practice of misrepresenting to clients the best possible price that Key could obtain on a given transaction.

36. During this time, Mr. Guist's contact with Mr. Sollitt, which had previously been friendly and frequent, became strained and essentially ceased.

37. Further, upon information and belief, Mr. Owens came to view Mr. Sollitt's objections to the unlawful business practices of the Key sales team as a rebellion and defiance of his own authority over Ms. Shade, Mr. Giust and the entire group.

38. Nevertheless, between March and July of 2008, Mr. Sollitt continued to voice objections regarding Mr. Giust's business practices to Ms. Shade and others. Mr. Sollitt's continued objections were well known to Mr. Giust and Mr. Owens.

Mr. Sollitt's Employment Is Terminated In Retaliation for his Opposition to the Unlawful Business Practices of Mr. Giust and his Sales Team

39. On or about August 20, 2008, Mr. Sollitt was summoned to a meeting with Liane DiGiandomenico of Key's human resources department.

40. At that meeting, Mr. Sollitt was asked to sign a form saying that he would not disclose the contents of this meeting to anyone except his personal attorney. He was then told that his PC had been flagged for inappropriate use and as a result his employment may be terminated for a violation of Key's "Electronic Communications Use Standard" policy, CS32.03.

41. Later in the day on August 20, 2008, Mr. Sollitt was called to another meeting by Richard Owens and was told that as result of the investigation of the contents on his PC, his employment was terminated immediately for a violation of Key's "Electronic Communications Use Standard" policy, CS32.03.

42. Specifically, Mr. Sollitt, a ten-year employee who had contributed millions of dollars of profit to Key's bottom line, was terminated for receiving "emails of an inappropriate nature between May 6, 2008 and July 14, 2008." Further, Mr. Sollitt was accused of forwarding inappropriate e-mails from his Key e-mail account to his personal e-mail account on two occasions.

43. Notably, Mr. Sollitt was never alleged to have accessed or distributed any inappropriate electronic content.

44. Likewise, there is no suggestion that Mr. Sollitt ever viewed any inappropriate content on his Key computer.

45. Upon information and belief, several other individuals were terminated on the same day and within the same week as Mr. Sollitt and for similar reasons, including Mr. Simenic, the foreign exchange department employee with unique access to information regarding the pricing of foreign exchange transactions.

46. Mr. Sollitt's termination for an alleged violation of "Electronic Communications Use Standard" policy, CS32.02, was pretextual insofar as other individuals terminated at the same time under the same rationale committed policy violations which were far more severe than those alleged against Mr. Sollitt and because individuals who engaged in violations similar to those alleged against Mr. Sollitt, but who did not object to unlawful business practices, were not terminated.

47. Indeed, upon information and belief, individuals employed by Key, including individuals employed in the foreign exchange department, who have regularly engaged in and continue to engage in flagrant violations of the "Electronic Communications Use Standard" policy, CS32.03, but who did not object to unlawful and unethical conduct on the part of high ranking and profitable employees were not terminated.

COUNT ONE

(Wrongful Discharge in Violation of Public Policy)

48. The preceding allegations are incorporated by reference as if fully set forth herein.

49. A clear public policy exists prohibiting Key and the employees of its Foreign Exchange Sales Group from, among other things, affirmatively misrepresenting material facts concerning prices offered to customers and upon which customers reasonably relied. Furthermore, there is a clear public policy which prohibits Key from securing a writing by deception by which a pecuniary obligation is incurred.

50. Key's action in terminating Mr. Sollitt's employment after he voiced his objections to Key's business practices jeopardizes the aforementioned public policies.

51. The decision to terminate Mr. Sollitt's employment was motivated, at least in part, by his actions in protesting the unlawful business practices of Key and its foreign exchange sales staff.

52. Key had no legitimate business justification for terminating Mr. Sollitt's employment.

53. Key's action in terminating Mr. Sollitt's employment for reasons contrary to public policy was intentional, willful, reckless and malicious.

54. As a direct and proximate result of this illegal activity, including, but not limited to pain and

suffering, emotional distress, and the loss of past and future salary, wages, benefits, and other privileges and conditions of employment.

WHEREFORE, Mr. Sollitt prays for relief as follows:

A. All remedies available for the claim of Wrongful Termination in Violation of Public Policy, including, but not limited to past and future economic and noneconomic damages in excess of $25,000, back pay, front pay, lost benefits, punitive damages, interest, all attorneys' fees, expert fees, and costs.

B. Any other relief that this Court deems appropriate.

Respectfully submitted,

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JURY DEMAND

Plaintiff hereby demands a jury trial on all claims that may be tried to a jury.

/s/ Shannon J. Polk
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