

## New York Court of Appeals Rejects Attempt to Expand Scope of Liability for Professional Service Providers

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On October 21, 2010, the New York Court of Appeals issued a critically important decision that limits the ability of corporations, as well as those who sue standing in their shoes (such as bankruptcy trustees and derivative plaintiffs), to bring claims against professional advisors and other third parties for allegedly assisting or failing to detect wrongdoing that is perpetrated by the corporation's own senior management. WilmerHale represented the prevailing investment bank defendants in one of two cases that led to the ruling (*Kirschner*), and our partner Phil Anker argued that case before the Court.

As the dissent suggests, this will surely prove to be a seminal decision, greatly reducing the potential for bankruptcy trustees, derivative plaintiffs and others that stand in the shoes of a company to assert claims against third-party professionals for damages resulting from the fraud or other misconduct of the company's own management. It is a counterweight to recent decisions from the highest courts of two other states that can be read, to one degree or another, to allow such plaintiffs more easily to disclaim the misconduct of their own corporate insiders in suits against professional advisors, thereby weakening in those states the *in pari delicto* doctrine. The significance of the New York Court of Appeals' decision will likely be even more magnified, given the importance of New York law, particularly in the commercial context.

More detail regarding this decision can be found at the [In Seminal Decision, New York Courts of Appeals Rejects Attempt to Expand Scope of Liability for Professional Service Providers](#) litigation alert found at [Legal Insights](#).

In briefing and argument before the Court of Appeals, the WilmerHale team included [Phil Anker](#) (who argued the case), Anne Small, Jeremy Winer, [Paul Wolfson](#) and [Dan Kearney](#). Additional input and assistance was provided by [Ross Firszenbaum](#).