

SOUTHERN DISTRICT CIVIL PRACTICE ROUNDUP

The TVPA Does Not Preempt State Indemnification and Contribution Claims

By Edward M. Spiro and Christopher B. Harwood

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When a defendant is sued, it often may assert indemnification or contribution claims against a co-defendant or third party. When a defendant is sued under a federal statute, the defendant may assert indemnification or contribution claims if such claims expressly or impliedly are contemplated by the statute. If not, indemnification or contribution still may be available if state law allows for such relief under similar circumstances.

Although some courts have concluded that indemnification and contribution claims are available for claims arising under a federal statute only if the statute expressly or impliedly provides for them, other courts have addressed the issue by conducting a traditional preemption analysis: *i.e.*, by analyzing whether in enacting the federal statute, Congress intended to eliminate a right to indemnification or contribution that already existed under state law.



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The U.S. Court of Appeals for the Second Circuit has not addressed the issue, and district courts within the circuit (including the U.S. District Court for the Southern District of New York), have taken both approaches.

Southern District Judge Jed S. Rakoff recently addressed this issue in the context of the Trafficking Victims Protection Act (TVPA) in *Doe 1 v. JPMorgan Chase Bank, N.A.*, 2023 WL 5317453 (S.D.N.Y. Aug. 18, 2023). JPMorgan asserted indemnification and contribution claims against one of its former executives, James Staley, after the bank was sued for its alleged role in facilitating Jeffrey Epstein's sex trafficking scheme. Staley moved to dismiss the claims, and after concluding that the TVPA did not expressly or impliedly provide for indemnification or contribution,

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Judge Rakoff concluded that such an intent could not be inferred by the text of the TVPA, its overall “remedial scheme,” or its “purposes,” and therefore, Judge Rakoff denied Staley’s motion to dismiss.

‘Doe 1 v. JPMorgan Chase Bank, N.A.’

JPMorgan’s indemnification and contribution claims against Staley arose from two complaints filed against the bank by (i) an anonymous alleged victim of Epstein (Jane Doe 1) and (ii) the Government of the

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United States Virgin Islands (together with Jane Doe 1, plaintiffs). Both complaints asserted claims under the TVPA. Plaintiffs alleged that JPMorgan facilitated Epstein’s sex trafficking operation, including by enabling Epstein to access large quantities of cash and not timely filing suspicious activity reports.

JPMorgan, in turn, asserted indemnification and contribution claims against Staley, who at different times during the relevant period was head of JPMorgan’s private banking division, CEO of JPMorgan’s Asset Management business, and CEO of JPMorgan’s Corporate and Investment Banking business. In support of its claims, JPMorgan alleged that, to the extent plaintiffs’ allegations that Staley knew of Epstein’s sex trafficking venture were true, Staley

concealed the truth about Epstein’s venture from the bank and abandoned the bank’s interests in pursuit of his own interests and those of Epstein.

Staley moved to dismiss JPMorgan’s indemnification and contribution claims on the grounds that Congress did not expressly or impliedly provide for such claims in the TVPA. JPMorgan argued that the TVPA impliedly provides for such claims, and even if it does not, the claims may be pursued under state law.

No Indemnification or Contribution Under the TVPA

Judge Rakoff first analyzed whether the TVPA expressly or impliedly creates a right to obtain contribution or indemnification, and concluded it does not. After noting that “[n]othing in the TVPA expressly creates a right to obtain contribution or indemnification,” Judge Rakoff turned to whether an implied right exists.

Judge Rakoff observed that a pair of 1981 Supreme Court cases establish the framework for analyzing whether Congress created such a right: *Northwest Airlines v. Transportation Workers Union of America, AFL-CIO*, 451 U.S. 630 (1981), and *Texas Industries v. Radcliff Materials*, 451 U.S. 630 (1981). Judge Rakoff explained that under those cases, the relevant factors for determining the existence of an implied right to indemnification or contribution are: “the language of the statute itself, its legislative history, the underlying purpose and structure of the statutory scheme, and the likelihood that Congress intended to supersede or supplement existing state remedies.” *Doe 1*, 2023 WL 5317453, at *3 (quoting *Northwest Airlines*, 451 U.S. at 91, and citing *Texas Industries*, 451 U.S. at 639).

Judge Rakoff also noted that “subsequent to 1981, the Supreme Court has ‘adopted a far more cautious course before finding implied causes of action,’”

holding that policy considerations alone are not enough, and instead, “the ‘determinative question is one of statutory intent’” (quoting *Ziglar v. Abbasi*, 582 U.S. 120 at 132 (2017)). As a result, “courts applying the framework established by *Northwest Airlines and Texas Industries* have been ‘reluctant to recognize a right of contribution as a matter either of federal common law or of [implication by] statute’” (quoting *Anderson v. Griffin*, 397 F.3d 515, 523 (7th Cir. 2005) (collecting cases)).

Applying the above principles, Judge Rakoff “ha[d] little difficulty concluding” that the TVPA does not create an implied right to contribution or indemnification because “both the TVPA’s text and legislative history are totally silent as to the availability of such rights.”

Indemnification and Contribution Are Available Under State Law

Judge Rakoff then turned to whether “state law offers an independent basis to obtain contribution and indemnification even for what are ultimately damages arising from a violation of a federal statute.” He observed that “[t]he Supreme Court has not had occasion to address this question, and lower federal courts have been inconsistent about their treatment of claims seeking contribution for federal-law violations under state contribution and indemnification laws.”

Whereas “[s]ome federal courts . . . [have] conclud[ed] that ‘[w]hen an underlying claim arises under federal law, there is no claim for contribution [or indemnification] unless the operative federal statute provides one,’” others “treat state-law claims seeking contribution or indemnification for a federal statutory violation as presenting a straightforward question of federal preemption.”

Judge Rakoff concluded that “the latter approach is correct and best comports with Supreme Court precedent,” which Judge Rakoff reasoned “‘explicitly rejects the notion that mere congressional silence on a particular issue may be read as preempting state law’” (quoting *U.S. Smokeless Tobacco Manufacturing Company v. City of New York*, 703 F. Supp. 2d 329, 336 (S.D.N.Y. 2010)). Accordingly, he conducted “a traditional preemption analysis to determine if it was Congress’s intent for the TVPA to preempt state contribution and indemnification remedies.”

Judge Rakoff observed that “[a] federal statute can preempt state law in one of three ways”: (i) by

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“contain[ing] an express preemption provision evincing an intent to displace state law,” (ii) “by creating a scheme so comprehensive that it ‘le[aves] no room for supplementary state regulation,’” or (iii) by making it “impossible to comply [both] with [state] and federal law” (quoting *International Paper Company v. Ouellette*, 479 U.S. 481, 491 (1987)).

Applying the above factors, Judge Rakoff first concluded that the TVPA contains no express preemption provision, and therefore “express preemption is not relevant here.” He then found that “the TVPA does not contain a comprehensive remedial scheme that would be disrupted by permitting JPMorgan’s contribution or indemnification claim,” including because the “TVPA’s civil remedial provision simply states that ‘[a]n individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator

... in an appropriate district court of the United States and may recover damages and reasonable attorneys fees” (citing 18 U.S.C. § 1595(a)).

Judge Rakoff observed that beyond the foregoing provision, “the only other details Congress set forth were to provide for an automatic stay during the pendency of a criminal action under the TVPA, to specify the statute of limitations, and to grant the State attorneys general standing to bring *parens patriae* actions.”

Finally, he concluded that “the purposes of the TVPA would not otherwise be frustrated by permitting contribution and indemnification,” because (i) “Congress enacted the TVPA ‘to prevent trafficking in persons, to ensure punishment of traffickers, and to protect their victims,’” and (ii) [p]ermitting contribution or indemnification would not undermine these objectives where, as here, the state law rights are premised upon imposing financial liability on a party responsible, in whole or part, for the underlying conduct” (quoting H.R. Rep. No. 108-264(II) (2003), at *2).

With respect to the latter point, Judge Rakoff found that the relevant state law does this “by estimating the comparative responsibility of a party and assigning an amount of damages accordingly” and permitting indemnification “only where the third-party plaintiff seeking [the relief] has been held liable without *any* personal fault.”

Accordingly, he concluded that “the TVPA does not preempt the state-law contribution or indemnification claims made here” by JPMorgan against Staley. He emphasized that “[p]ermitting claims for contribution and indemnification is particularly appropriate where, as here, the third-party complaint seeks

relief from a thirdparty defendant who is also among the class of individuals whose conduct the statute is designed to regulate.”

Judge Rakoff reasoned that if plaintiffs’ allegations are true, they “could have elected to sue Staley directly under the TVPA,” and “[w]hile the plaintiffs chose instead to pursue claims exclusively against JPMorgan, [that] Congress also authorized them to pursue claims against Staley under the TVPA demonstrates that permitting contribution or indemnification against him under state law would not disrupt the statutory scheme.”

Having found that the TVPA did not preempt JPMorgan’s right to seek contribution or indemnification against Staley under New York law, Judge Rakoff went on to reject Staley’s other, pleadings-based challenges to the state-law indemnification and contribution claims.

Four weeks before trial, JPMorgan settled the claims brought against it by plaintiffs for a combined \$365 million, and its indemnification and contribution claims against Staley for an undisclosed amount.

Conclusion

Although neither the Supreme Court nor the Second Circuit has addressed the proper analysis for assessing whether state law offers an independent basis to obtain indemnification or contribution for damages arising from a violation of federal law, Judge Rakoff has opted for a traditional preemption analysis. Given the divergence in approaches among district courts, the issue likely will be addressed by the Second Circuit soon.