

MARKS & WEINBERG, P.C.

**Panasonic Communications & Systems Co. v.
State of Maine, Department of Administration, Bureau of Purchases
691 A.2d 190 (ME 1997)**

The State of Maine executed a purchase order contract with OASYS to lease photocopy equipment. OASYS purchased the necessary copiers from Panasonic on credit. That agreement required OASYS to establish an escrow account in which Panasonic would have a security interest and make "arrangements with the State of Maine to deposit all such copier payments only in such account."

Subsequently, OASYS persuaded the State to sign a letter agreement with Panasonic which provided that monthly payments would be made payable to OASYS, but sent to the escrow account rather than to OASYS directly. The State, however, sent payments to OASYS instead of the escrow account.

When OASYS declared bankruptcy it was discovered that two of the payments from the State totaling \$170,595 were not deposited into the escrow account and Panasonic sued the State for breach of contract. The court held that the letter did not create a contractual relationship between Panasonic and the State because neither OASYS nor Panasonic provided the necessary consideration. OASYS did not supply the necessary consideration because it was already obligated to supply the State with copier services. The State did not



bargain with Panasonic, thus there was no consideration. Furthermore, because of the lack of consideration from OASYS, Panasonic cannot be a third party beneficiary.

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