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### United States Courts Possess Personal Jurisdiction over Foreign Banks in Ongoing LIBOR Case



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The United States Supreme Court denied a petition for *certiorari* filed by six foreign banks that argued that U.S. courts lacked personal jurisdiction over them. (*Lloyd's Banking Group, PLC v. Schwab Short-Term Bond Market Fund, cert. denied* June 21, 2022.)

By way of background, the appeal to the Supreme Court arose out of the sprawling set of litigations brought against numerous banks to recover damages from alleged manipulation of the London Interbank Offered Rate (“LIBOR”). Specifically, the appeal here was brought by a group of plaintiffs affiliated with the Charles Schwab Corporation (the “Schwab” plaintiffs). The Schwab plaintiffs’ complaint had alleged claims for violations of state law and federal securities law. Unlike some other LIBOR plaintiffs, the Schwab plaintiffs did not bring claims alleging violations of antitrust law. The United States Court of Appeal for the Second Circuit held in 2016 that the Schwab plaintiffs’ allegations had been adequately pled to state a claim.

In a subsequent decision in 2018, the Second Circuit held that the District Court had possessed personal jurisdiction over the defendant banks, including six of the defendants that were not alleged to have sold financial instruments to Schwab at all (the “Non-Seller Defendants”). The Court adopted the “conspiracy” test of jurisdiction as articulated by the Fourth Circuit. Under that test, a complaint would establish the basis for personal jurisdiction if it alleged that: (1) a conspiracy existed; (2) the defendant participated in the conspiracy; and (3) a co-conspirator’s overt acts in furtherance of the conspiracy had sufficient contacts with a state to subject that co-conspirator to the jurisdiction of that state. The Court further found that the Schwab plaintiffs’ complaint was adequate to assert jurisdiction under that test. The Non-Seller Defendants filed an appeal to the Supreme Court to resolve a conflict among the circuits as well as among various state supreme courts as to the viability of the doctrine of “conspiracy jurisdiction.” It was in that appeal that the Supreme Court denied *certiorari*.

Chief Justice Roberts and Justices Kagan and Gorsuch, without explanation, did not participate in the Court's consideration of the appeal.

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