

Barclays Wants Second Shot At Exiting Libor Suit

By **Braden Campbell**

Law360, New York (September 29, 2016, 8:26 PM EDT) -- Barclays Bank PLC and two other foreign banks urged a New York federal court Thursday to revisit a 2014 order stopping them from filing a jurisdictional challenge to a suit alleging a multibank conspiracy to fix interbank loan rates, saying a recent Second Circuit decision upset the court's reasoning.

Barclays, Cooperative Rabobank UA and Societe Generale told U.S. District Judge George B. Daniels that the Southern District of New York's reach no longer extends to them following the Second Circuit's August decision in *Waldman v. Palestine Liberation Organization*.

In that suit, the appeals court found that the defendants did not waive their right to a jurisdictional challenge by raising one only after the Second Circuit set a new standard — in *Gucci v. Weixing Li* — rather than invoking an earlier U.S. Supreme Court decision that only questioned precedent, *Daimler AG v. Bauman*.

“By rejecting an argument that defendants waived their personal jurisdiction defense by failing to raise it before *Gucci*, *Waldman* makes clear that it was *Gucci* that established a new test for general jurisdiction in the Second Circuit — not *Daimler*, which merely ‘cast doubt’ on the now defunct ‘doing business’ test,” the banks said.

The banks moved in June 2013 to dismiss the suit for failure to state a claim. At the time, foreign companies needed only “do business” somewhere to face suit there. As such, a jurisdictional challenge was futile at that time and the banks did not file one, they said Thursday.

In November 2014, the Second Circuit ruled in *Gucci* that a corporation is only subject to a court's jurisdiction when it calls that court's seat home, codifying doubts about the existing standard that the Supreme Court shared earlier in *Daimler*. The banks sought leave to move to dismiss for lack of jurisdiction the day after that decision was handed down, but Judge Daniels dismissed the motion as “untimely” shortly after.

The banks urged the judge to take another look at that decision in light of the *Waldman* ruling Thursday, saying it made clear their 2014 motion was timely. The court in *Waldman* said defendants did not waive their right to a personal jurisdiction offense when they filed such a challenge only after the clear change of law in *Gucci*, rather than the murkier one in *Daimler*. The banks said this makes their earlier challenge valid.

“Waldman resolved in defendants’ favor the question of whether defendants should have known that their personal jurisdiction defense would become available to them before the Second Circuit overturned its prior case law in Gucci, based on the Supreme Court’s earlier decision in Daimler,” the banks said.

The banks also asked that the court certify an appeal to bring this issue to the Second Circuit filed by several other banks Thursday, should it find their letter unpersuasive.

Earlier this week, investors **asked the court** to approve a \$58 million settlement with HSBC and Citibank covering this suit and another filed in 2015 over the same alleged scheme.

The banks and the investors did not immediately respond Thursday to requests for comment.

The investors are represented by Vincent Briganti, Geoffrey Horn and Peter St. Phillip of Lowey Dannenberg Cohen & Hart PC, Joseph Tabacco, Todd Seaver, Patrick Egan and Daryl DeValerio Andrews of Berman DeValerio, and Christopher Lovell and Gary S. Jacobson of Lovell Stewart Halebian Jacobson LLP.

The banks are represented by Jonathan D. Schiller, Michael A. Brille, Melissa Felder Zappala and Leigh M. Nathanson of Boies, Schiller & Flexner LLP, David H. Braff, Yvonne S. Quinn, Jeffrey T. Scott and Matthew T. Porpora of Sullivan & Cromwell LLP, David R. Gelfand, Sean M. Murphy and Mark D. Villaverde of Milbank Tweed Hadley & McCloy LLP and Steven Wolowitz, Henninger S. Bullock and Andrew J. Calica of Mayer Brown LLP.

The case is Laydon v. Mizuho Bank Ltd. et al., case number 1:12-cv-03419, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Rick Archer. Editing by Orlando Lorenzo.