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Second Circuit reverses traders’ LIBOR-based wire fraud convictions

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Citing insufficient evidence, the Second Circuit last week reversed the fraud convictions of two bank traders for their roles in the LIBOR manipulation scandal. The case highlights prosecutors’ challenges in securing convictions in white collar cases using the federal wire fraud statute.

Background

On January 27, 2022, the Second Circuit reversed the wire fraud convictions of two traders for their purported roles in the London Interbank Offered Rates (LIBOR) manipulation scandal, which previously resulted in a number of resolutions by banks. In *United States v. Connolly*, the Second Circuit held that there was insufficient evidence to prove that the traders’ requests for LIBOR rate submissions to colleagues were false, fraudulent, or misleading. The court’s reversal marks the likely end to this highly publicized case and signals potential challenges for prosecutors seeking wire fraud convictions in the context of index manipulation schemes.

Following a cross-border investigation into the manipulation of LIBOR, Matthew Connolly and Gavin Black were arrested and subsequently convicted of wire fraud and a related conspiracy to induce colleagues to submit false statements to the British Bankers’ Association. The false statements, the government alleged, could have influenced LIBOR rates, benefitting their employer’s bottom lines on existing derivative contracts. A post-verdict motion for acquittal on the basis of insufficient evidence was denied. United States District Judge Colleen McMahon ruled that evidence that Deutsche Bank “*could* have borrowed funds at a submitted rate would not have rendered the Defendants’ statements truthful.” As noted in a prior client update, this prosecution also led to a significant ruling with respect to the manner in which the government could coordinate with company and outside counsel. Specifically, in a prior ruling by the trial court, Judge McMahon sharply criticized the Department of Justice (DOJ) for “outsourc[ing] its investigation” of the case to the company’s outside counsel. As a result of the degree of the government’s involvement in the company’s internal investigation, Judge McMahon determined that the government violated Mr. Black’s Fifth Amendment rights when outside counsel interviewed him under the threat of employment termination. Nonetheless, because the government did not introduce the compelled statements at trial, the district court ultimately held that the violations did not invalidate his convictions.

Second Circuit’s holding

On appeal, the defendants argued that the government failed to prove that the traders’ requests for LIBOR rate submissions to colleagues were false, fraudulent, or misleading. The Second Circuit agreed, reversing Connolly and Black’s convictions. LIBOR is an average interest rate that is calculated using estimates submitted by London banks and can affect existing derivatives contracts. In reversing the traders’ convictions, the Second Circuit rejected the government’s theory of falsity—that there was only one true, automatically generated interest rate that would be submitted by the bank absent a request from a trader.

According to the Second Circuit’s unanimous opinion, while the traders’ efforts to impact contract outcomes by influencing LIBOR rates “may have violated any reasonable notion of fairness,” there was insufficient evidence of fraud. The decision primarily relied on two reasons for the reversal of the convictions. First, the court found persuasive

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testimony indicating that many factors impacted Deutsche Bank's final LIBOR rate submission. Those factors extended beyond the data automatically received by the pricing tool used to determine rates. Second, evidence demonstrated that there was not one true rate that the bank had to submit; it could have agreed to many available loans that had varying interest rates. The court further observed that, according to government witness testimony, the LIBOR submitters regularly deviated from pricing tool outputs to reflect rate estimates by independent brokers and that deviation occurred even without trader requests. In addition, the court noted the government failed to introduce evidence that rate submissions influenced by traders were not ones at which the bank could request, receive offers, and accept loans.

Key takeaways

With the Second Circuit's decision in *United States v. Connolly*, each of the trial convictions in the LIBOR-rigging investigation has now been overturned, despite numerous resolutions with financial institutions. And, while the government has long stated a priority of prosecuting individuals as part of its corporate criminal enforcement program, that has proven difficult in practice given several recent court rulings on the breadth of the federal wire fraud statutes. For example, in its 2020 "Bridgegate" decision, the Supreme Court reversed the convictions of two state officials who had not aimed to obtain money or property as required by the federal wire fraud statute. As evidenced in *Connolly*, prosecutors continue to have difficulty applying an expansive interpretation of the federal wire fraud statute to prove financial fraud. In recent years, the Second Circuit, in particular, has rejected or narrowed the government's charging theories in a number of white collar cases, and has taken a more limited view of wire fraud, as well as the extraterritorial application of other white collar offenses, including the Foreign Corrupt Practices Act. Because many companies are often unable or unwilling to take a case to trial, these court decisions in individual cases provide useful data points for clients and defense counsel in advocating their positions with DOJ.

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