

## Traders' Platinum, Palladium Antitrust Claims Nixed For Now

By **Dave Simpson**

Law360 (March 30, 2020, 9:30 PM EDT) -- A New York federal judge has knocked out all claims from a proposed class action alleging that several banks conspired to deflate the market value of platinum and palladium, ruling Sunday that the plaintiffs are not "efficient enforcers" because they had no direct dealings with the banks.

U.S. District Judge Gregory Woods dismissed the claims without prejudice while saying the plaintiffs should not expect additional opportunities to amend their complaint if their next attempt fails. Woods nixed new and refiled allegations from the traders' third amended complaint and also granted the banks' bid for reconsideration of claims that had survived a **dismissal bid in March 2017**.

"Plaintiffs' theory is that defendants manipulated the price of platinum and palladium to profit from their short positions," Judge Woods said. "The suggestion that defendants (and, perhaps, their non-defendant co-conspirators) traded to further depress the price of platinum and palladium when they had — according to plaintiffs' allegations — a tailor-made opportunity to manipulate that price via the fixing does not make sense and is inconsistent with the allegations in the TAC."

**The suit**, consolidated in 2015, claims the banks used their influence as the only parties in a twice-daily teleconference that set the rates for platinum and palladium to their own benefit by using their knowledge of impending downward swings to buy and sell the metals and their derivatives at opportune times. The various **banks responded** with several motions to dismiss on the basis of failure to state a claim, improper jurisdiction and standing issues.

In March 2017, Judge Woods found that ICBC, BASF Metals and the London Platinum and Palladium Fixing Company Ltd. could not be sued under U.S. jurisdiction because they were foreign entities with meager suit-related U.S. contacts. He also dismissed all claims against UBS and BASF Corp., finding the plaintiffs had not backed up their accusations the firms were involved in the alleged conspiracy.

The judge also nixed two manipulative device claims under the Commodities Exchange Act because the transactions in question predate the manipulative device section of the act, which wasn't effective until Aug. 15, 2011. The judge dismissed the unjust enrichment claims, too, finding they did not stem from any direct dealings between the parties, nor were the banks enriched at the stockholders' expense.

But he did, at the time, preserve three Commodities Exchange Act claims — for market manipulation, principal-agent liability, and aiding and abetting manipulation — against Goldman Sachs International and HSBC, which are accused of using lawful, industry-accepted price setting calls to illegally deflate the metals' value. This allegedly hurt the class of traders who were betting on the long-term health of the metals' prices in the form of options and futures.

In an August 2017 **decision in a separate case** — Prime International Trading Ltd. et al. v. BP PLC et al. — the Second Circuit ruled that to assess whether plaintiffs have pleaded an appropriately domestic application of the CEA, the court must assess whether the plaintiffs' CEA claims are predominately foreign.

Based on this decision, the defendants asked for a reconsideration of the court's March 2017 finding that the remaining CEA claims are not impermissibly extraterritorial.

On Sunday, Judge Woods agreed.

"Plaintiffs allege that defendants manipulated the fix, which occurred in London and set the price of physical platinum located in London or Zurich," he said. "... Because Prime International Trading directs that the court should direct its focus to where the allegedly unlawful manipulation occurred, this weighs heavily in favor of the conclusion that plaintiffs' claims are predominately foreign."

The investors are represented by Merrill G. Davidoff of Berger & Montague PC and Jay L. Himes of Labaton Sucharow LLP.

HSBC is represented by Damien Jerome Marshall of Boies Schiller Flexner LLP.

Goldman Sachs is represented by Stephen Ehrenberg of Sullivan and Cromwell LLP.

The suit is In re: Platinum and Palladium Antitrust Litigation, case number 1:14-cv-09391, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Cara Bayles. Editing by Peter Rozovsky.