Jury Hands Prosecutors First Loss In LIBOR Trials

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Following a four-month jury trial in London, a Southwark Crown Court jury acquitted six defendants of charges including fraud and conspiracy stemming from alleged manipulation of the London Interbank Offered Rate (LIBOR). While the acquittal represents a loss for British prosecutors, it does not appear likely to deter future LIBOR prosecutions in the United Kingdom or the United States. Tasked with prosecuting serious or complex fraud, bribery and corruption crimes in the United Kingdom, the Serious Fraud Office (SFO) alleged that Colin Goodman, Danny Wilkinson, Terry Farr, James Gilmour, Noel Cryan, and Darrell Read—all former London-based brokers at financial services firms—conspired to fraudulently manipulate LIBOR rates. LIBOR—the average interest rate at which banks can borrow unsecured funds from one another in the London market—plays a role in derivative contracts as well as mortgage and credit card rates, among other things. As alleged by the SFO, these six defendants conspired with former bank trader Tom Hayes to improperly extract additional profits for themselves out of the manipulation of the LIBOR rate. Hayes was previously convicted of conspiracy to defraud in August 2015 for his role in the alleged LIBOR scheme. His sentence, initially set at 14 years, was later reduced to 11 years. The acquittals represent a setback for prosecutors in the lengthy and complex SFO investigation and prosecution of those caught up in the LIBOR scandal. Reversing a prior decision by his predecessor not to investigate, SFO Director David Green initiated the investigations by accepting the LIBOR matter on July 6, 2012. In response to the jury's acquittal, SFO Director David Green defended his agency's decision to take the cases to trial: "The key issue in this trial was whether these defendants were party to a dishonest agreement with Tom Hayes. By their verdicts the jury have said that they could not be sure that this was the case. Nobody could sensibly suggest that these charges should not have been brought and considered by a jury." As SFO Director David Green's remarks suggest, the verdict is by no means the end of the SFO's LIBOR-based criminal prosecutions. An additional trial of individuals charged with manipulating U.S. Dollar LIBOR in the U.K. is scheduled to begin on February 15, 2016. The SFO will begin another trial of other individuals charged with the manipulation of the Euro Interbank Offered Rate (EURIBOR) on September 4, 2017. To date, the SFO has charged 19 individuals as part of its ongoing investigation, and there are no indications that the investigations will cease, notwithstanding the recent verdict. The alleged LIBOR-fixing scheme's impact and resulting prosecutions stretch beyond the United Kingdom. In the United States, federal authorities have successfully investigated and prosecuted a number of alleged LIBOR manipulators. The first guilty verdict in U.S. LIBOR trials was reached in November 2015 by a federal jury in Manhattan. The jury in that case found that two former traders at a global bank—one of whom served as its former global head of liquidity—were guilty of a broad conspiracy to fraudulently manipulate LIBOR submissions to banking associations. During that case, prosecutors presented extensive documentary evidence, including e-mails, purporting to show the defendants actively participating in rate fixes. Sentencing for these two U.S.-based defendants is scheduled for March 2016. Three other individuals charged in the U.S. have pleaded guilty before

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trial, and four others currently have LIBOR-related criminal actions pending against them. At present, the LIBOR manipulation scandal has yielded several high-profile prosecutions of not just individuals, but also corporations. The investigations have spanned across jurisdictions and included assistance from, among others, the Financial Conduct Authority, City of London Police, the U.S. Department of Justice, and the Commodity Futures Trading Commission. As a result of the unprecedented level of cooperation among government authorities in various jurisdictions, resolving the criminal prosecutions has meant unprecedented settlement payments and fines levied against some of the world's largest financial institutions. For example, U.S. and European regulators fined a global bank $1 billion for its role in the alleged scheme. Multiple other large financial institutions have either pleaded guilty to or settled claims for their roles in the alleged LIBOR scheme. Penalties and fines associated with resolving these claims have ranged from $450 million for the first such publicly-disclosed agreement in June 2012, to as high as $2.5 billion for others. While the six acquittals in the Southwark Crown Court case represent a meaningful setback for British prosecutors, the net effect on both individuals and corporations embroiled in the LIBOR scandal cannot be overstated. Moving forward, public officials have repeatedly reaffirmed their resolve to prosecute both the individuals and the corporations whom public officials believe should shoulder responsibility for their roles in the scandal. The fallout from the LIBOR-manipulation accusations should also serve as a cautionary tale for businesses and their management, emphasizing the need for effective compliance controls, monitoring, and investigation.