

20-1458 (L)

*In re Platinum and Palladium Antitrust Litigation*

**In the  
United States Court of Appeals  
FOR THE SECOND CIRCUIT**

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AUGUST TERM 2020

Nos. 20-1458, 20-1575, 20-1611

**IN RE PLATINUM AND PALLADIUM ANTITRUST LITIGATION**

**KPFF INVESTMENT, INC., WHITE OAK FUND LP, INDIVIDUALLY AND  
ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, LARRY HOLLIN,  
*Plaintiffs-Appellants-Cross-Appellees,***

**MODERN SETTINGS LLC, A NEW YORK LIMITED LIABILITY COMPANY,  
MODERN SETTINGS LLC, A FLORIDA LIMITED LIABILITY COMPANY,  
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,  
CRAIG R. COOKSLEY, INDIVIDUALLY AND ON BEHALF OF ALL THOSE  
SIMILARLY SITUATED, NORMAN BAILEY, THOMAS GALLIGHER,  
KEN PETERS,  
*Plaintiffs,***

v.

**BASF METALS LIMITED, ICBC STANDARD BANK PLLC,  
*Defendants-Appellees-Cross-Appellants,***

**GOLDMAN SACHS INTERNATIONAL, HSBC BANK USA, N.A., THE  
LONDON PLATINUM AND PALLADIUM FIXING COMPANY LTD., BASF  
CORPORATION,  
*Defendants-Appellees,***

**UBS AG, UBS SECURITIES LLC,  
*Defendants.\****

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\* The Clerk of Court is directed to amend the caption as set forth above.

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On Appeal from the United States District Court  
for the Southern District of New York

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ARGUED: JUNE 4, 2021  
DECIDED: FEBRUARY 27, 2023

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Before: POOLER and MENASHI, *Circuit Judges*, and VYSKOCIL,  
*District Judge*.<sup>†</sup>

The plaintiffs-appellants and cross-appellees are participants in the physical and derivatives markets for platinum and palladium and seek monetary and injunctive relief for violations of the antitrust laws and the Commodities Exchange Act (“CEA”). According to the plaintiffs-appellants, the defendants—mostly foreign companies engaged in trading these metals—manipulated the benchmark prices for platinum and palladium by collusively trading on the futures market to depress the price of these metals and by abusing the process for setting the benchmark prices. The defendants allegedly benefited from this conduct via trading in the physical markets and holding short positions in the futures market. The district court held that it had personal jurisdiction over two of the foreign defendants, but it dismissed the plaintiffs’ antitrust claims for lack of antitrust standing and the plaintiffs’ CEA claims for being impermissibly extraterritorial. The plaintiffs appeal the dismissal of these claims. The

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<sup>†</sup> Judge Mary Kay Vyskocil of the U.S. District Court for the Southern District of New York, sitting by designation.

defendants cross-appeal the district court's holdings on personal jurisdiction.

We reverse in part, vacate in part, and affirm in part. We reverse the district court's holding that Larry Hollin and White Oak Fund LP (the "Exchange Plaintiffs") lacked antitrust standing to sue for the manipulation of the New York Mercantile Exchange futures market in platinum and palladium. As traders in that market, the Exchange Plaintiffs are the most efficient enforcers of the antitrust laws for that injury. But we affirm the district court's conclusion that KPFF Investment, Inc. did not have antitrust standing. Additionally, we vacate the district court's dismissal of the plaintiffs' CEA claims. The plaintiffs have alleged sufficient domestic activity so that the CEA claims are not impermissibly extraterritorial. We affirm the district court's holdings as to personal jurisdiction over the foreign defendants under a conspiracy theory of personal jurisdiction.

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PAUL MEZZINA, King & Spalding LLP, Washington, DC (Damien J. Marshall, Leigh M. Nathanson, King & Spalding LLP, New York, NY, *and* Joshua N. Mitchell,

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*HSBC Bank USA, N.A.*

Stephen Ehrenbergh, Mark A. Popovsky, Sullivan &  
Cromwell LLP, New York, NY, *for Goldman Sachs  
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MATTHEW A. KATZ (Lisa C. Cohen, *on the brief*), Schindler  
Cohen & Hochman LLP, New York, NY, *for the London  
Platinum and Palladium Fixing Company Ltd.*

ANDREW C. LAWRENCE (Michael F. Williams, Peter A.  
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DC, *for BASF Metals Limited and BASF Corporation.*

ROBERT G. HOUCK (John D. Friel, Minji Reem, *on the brief*),  
Clifford Chance US LLP, New York NY, *for ICBC  
Standard Bank Plc.*

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MENASHI, *Circuit Judge:*

The plaintiffs-appellants and cross-appellees in this case participate in the markets for physical platinum and palladium and for derivatives in those commodities. The plaintiffs-appellants brought lawsuits alleging that the defendants—companies engaged in precious metals trading—conspired to manipulate the global benchmarks for those metals. Most, but not all, of the defendants are foreign.

The plaintiffs sued for violations of the antitrust laws and the Commodities Exchange Act (“CEA”) and for unjust enrichment. According to the plaintiffs, the defendants artificially depressed the

benchmark prices for platinum and palladium both by collusively trading in those metals' derivatives—and thereby affecting the price of platinum and palladium generally—and by manipulating the process of setting the benchmark price. The defendants allegedly benefited from these actions by participating in the physical market for platinum and palladium and by holding short positions in the futures market. The plaintiffs, as sellers of platinum and palladium and participants in the derivatives market, allege corresponding injuries.

The changing legal landscape since the initial filing resulted in multiple complaints from the plaintiffs and multiple dispositions from the district court. Ultimately, the district court concluded that it had personal jurisdiction over two of the foreign defendants under a conspiracy theory of personal jurisdiction, but it dismissed the antitrust and CEA claims. It determined that the plaintiffs were not efficient enforcers of the antitrust laws—and therefore lacked antitrust standing—and that the plaintiffs' CEA claims were impermissibly extraterritorial. The plaintiffs timely appealed, and the foreign defendants over whom the district court held that it had personal jurisdiction cross-appealed that issue.

We reverse in part, vacate in part, and affirm in part. KPFF Investment, Inc. lacked antitrust standing to sue for the impact that the defendants had on the physical platinum and palladium market. However, those plaintiffs who participated in the futures market—Larry Hollin and White Oak Fund LP—are the most efficient enforcers of the alleged antitrust injury in that market and have antitrust standing to pursue claims based on that injury. We also hold that the plaintiffs have alleged sufficient domestic activity to survive

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