Jason Henry for The Wall Street Journal

Carl Payne, a former cable-car driver, is among the plaintiffs saying they suffered losses as a result of interest-rate manipulation by banks.

Banks Face Key Hurdle in Libor Fight

By Jean Eaglesham

Banks suspected by regulators around the world of manipulating interest rates are trying to escape another mire: more than 30 lawsuits filed by borrowers, lenders and other plaintiffs who claim they were cheated by the same financial institutions.

Next week, lawyers for **Barclays** PLC, **Royal Bank of Scotland Group** PLC, **UBS** AG and more than a dozen other banks still under investigation are expected to ask a federal-court judge to throw out many of the suits, which seek class-action status.

The suits, filed in civil court in California and New York by plaintiffs ranging from a retired cable-car driver in San Francisco to the city of Baltimore, have been piling up for nearly two years. They seek damages that could reach into the tens of billions of dollars from financial institutions that help determine the London interbank offered rate, or Libor. Barclays, RBS and UBS already have paid about $2.5 billion, and admitted wrongdoing, to settle rate-rigging allegations by U.S. and U.K. regulators.

In court filings, lawyers for the 16 banks accused of wrongdoing say the lawsuits have no legal validity. The lawyers say regulatory settlements reached so far don't support the central allegation in most of the civil suits that banks engaged in illegal, anticompetitive behavior.

For example, the Justice Department said in December that UBS traders manipulated Libor from 2006 to 2009, and as a result "defrauded the company's counterparties of millions of dollars." The banks say the regulators' findings on traders' attempts to manipulate rates don't prove the banks were working in concert to suppress or inflate Libor.

Bank lawyers also have argued in court filings that much of the

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Critical Hurdle Looms For Banks in Libor Fight

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misconduct by traders detailed in settlements was tied to yen Libor, rather than the rate pegged to the U.S. dollar. Libor is calculated for 10 different currencies, but the U.S. dollar Libor is the benchmark at the heart of allegations filed in U.S. civil suits.

Michael Hausfeld, chairman of law firm Hausfeld LLP, who represents Baltimore as a plaintiff in one of the largest proposed Libor class-action suits, said evidence from the deals with Barclays, RBS and UBS contradict any assertion that banks didn't band together to move rates.

The 16 banks targeted by the lawsuits are members of a panel that submits on a daily basis estimates of borrowing costs used to set U.S. dollar Libor, a rate underpinning trillions of dollars in financial contracts.

Mr. Hausfeld said that in the evidence already disclosed, the traders "indicated that the Libor panel was a cartel," and discussed how much money they could make by fixing it. "The only implausibility is the argument that collusion was implausible," Mr. Hausfeld said. Baltimore and other cities say suppressing Libor cost the cities billions of dollars in payments linked to the rate on interest-rate swaps.

A spokesman for RBS declined to comment beyond its statement in regulatory filings that it has "substantial and credible legal and factual defences" to the suits. Bank of America, Barclays, Citigroup, UBS and J.P. Morgan declined to comment.

U.S. District Judge Naomi Reice Buchwald might not make an immediate decision on the banks' motion to dismiss the Libor lawsuits. If her eventual ruling allows at least some of the plaintiffs' claims to proceed, then those cases will enter discovery, a phase where plaintiffs can seek detailed information from the banks aimed at bolstering the fraud allegations.

The judge's decision also could affect a logjam of several other Libor-related lawsuits that she put on hold last August. Plaintiffs' lawyers in those cases say they hope her ruling on the dismissal motion will lead to a separate move by the same judge to allow the other cases to proceed.

At some point, unless she dismisses the claims, Judge Buchwald will rule on whether certain suits can be certified as a class, allowing them to represent a group of firms or individuals affected by alleged interest-rate-manipulation.

Darrell Duffie, a finance professor at Stanford University, estimated that regulatory penalties and lawsuit payouts from the Libor scandal could "go into the tens of billions of dollars" in the next several years. Additional regulatory settlements are widely expected.

Some legal experts said the path to a big payday for plaintiffs is dotted with obstacles even if the banks fail to persuade the judge to throw out the cases. One potential snarl: Some of the lawsuits are based on conflicting claims.

Carl Payne, a 72-year-old former cable-car driver in San Francisco, alleged in a federal-court suit filed in December that manipulating interest rates lower inflated margins on adjustable-rate mortgages tied to U.S. dollar Libor. The law firm acting on Mr. Payne's proposed class action suit, Baron & Budd P.C., estimates that about a million mortgages were affected.

The interest rate on the mortgage for his condominium is based on the one-year rate plus a 2.25-percentage-point margin that is fixed over the life of the 30-year loan. Because the rate when he took out the mortgage was artificially low, Mr. Payne says, he was locked into a higher margin than he should have been. "I thought I could trust the big banks and that I wouldn't be in this situation at my age," Mr. Payne said in comments relayed by his lawyer. "Unfortunately, I was wrong."

But two other Libor suits allege that lenders—not borrowers—were hurt by suppressing a benchmark rate because borrowers paid too little interest on their mortgages. Two separate suits filed on behalf on mortgage borrowers say they paid too much interest because banks rigged Libor to make it artificially high.

The lawsuits filed on behalf of mortgage borrowers and lenders are all on hold, awaiting a decision on the banks' motions to dismiss.

Dominic Auld, a securities litigator at law firm Labaton Sucharow LLP, said differences within each group of investors, borrowers and other plaintiffs could create a "big hurdle" to winning class-action certification. "It's going to be a tough row to hoe."

If those efforts fail, it will be too expensive for some plaintiffs to keep fighting the banks on their own.

James Cox, a law professor at Duke University, predicted the "vast majority" of people and companies affected by alleged rate-rigging won't win damages "because their claims can't be reduced to a class action." Nonetheless, there is "still a substantial risk here for the banks."