

**13-1067 OBB PERSONENVERKEHR AG V. SACHS**

DECISION BELOW: 737 F.3d 584

LOWER COURT CASE NUMBER: 11-15458

QUESTION PRESENTED:

The Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 *et seq.* ("FSIA"), broadly provides sovereign immunity to foreign states and their instrumentalities, subject to limited statutory exceptions. The first clause of the commercial activity exception provides, *inter alia*, that United States courts have subject matter jurisdiction over claims that are "based upon a commercial activity carried on in the United States by the foreign state." *Id.* § 1605(a)(2).

The questions presented by this Petition are:

1. Whether, for purposes of determining when an entity is an "agent" of a "foreign state" under the first clause of the commercial activity exception of the FSIA, 28 U.S.C. § 1605(a)(2), the express definition of "agency" in the FSIA, the factors set forth *in First National City Bank v. Banco para el Comercio Exterior de Cuba (Bancec)*, 462 U.S. 611 (1983), or common law principles of agency, control.
2. Whether, under the first clause of the commercial activity exception of the FSIA, 28 U.S.C. § 1605(a)(2), a tort claim for personal injuries suffered in connection with travel outside of the United States is "based upon" the allegedly tortious conduct occurring outside of the United States or the preceding sale of the ticket in the United States for the travel entirely outside the United States.

CERT. GRANTED 1/23/2015