Congress expands Anti-Terrorism Act liability exposure

Litigation Alert

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By: Kevin Walsh | Douglas Walter Mateyaschuk

American victims of international terrorism, along with their estates, survivors and heirs, will now have as long as 18 years to file civil claims under the Anti-Terrorism Act, 18 U.S.C. 2331, et seq., as a result of the recent enactment of the National Defense Authorization Act for Fiscal Year 2013 (H.R. 4310) (the NDAA).

A provision of the NDAA that has received little attention, found on page 386 of the 681-page omnibus bill, amends the Anti-Terrorism Act to increase the amount of time Americans injured as a result of terrorist attacks will have to file civil claims from four years to ten years. Americans injured as a result of terrorist attacks that occurred in the time period from September 11, 2001 to January 1, 2009 will also benefit from a “special rule” which provides an additional six years following the enactment of the NDAA (on January 2, 2013) to file suit—a statutory period of up to 18 years for a plaintiff injured in 2001.

Anti-Terrorism Act claims seeking billions of dollars in damages have been filed on behalf of plaintiffs against corporations in the financial, agricultural, media and trade sectors, among others, alleging that the defendants provided “material support or resources” to terrorist organizations, or to affiliates of terrorist organizations, responsible for assisting in the commission of terrorist acts. Deep-pocket institutions are favored defendants in Anti-Terrorism Act suits, where a successful plaintiff can recover “threelfold the damages he or she sustains and the cost of the suit, including attorney’s fees.” 18 U.S.C. § 2333. International banks, in particular, have been repeatedly sued under the Anti-Terrorism Act for allegedly processing foreign wire transfers for the benefit of entities or individuals alleged to be affiliated with an organization that has been officially designated as a Foreign Terrorist Organization or Specially Designated Global Terrorist by the United States government.

The pre-amendment text of the Anti-Terrorism Act’s “limitations of actions” section, 18 U.S.C. § 2335, and the text of the NDAA’s amendment to that section, appear below.

For more information about these prospective claims, please contact Kevin Walsh and Douglas Walter Mateyaschuk.

Pre-Amendment

Section 2335: Limitation of actions
(a) In General. - Subject to subsection (b), a suit for recovery of damages under section 2333 of this title
shall not be maintained unless commenced within 4 years after the date the cause of action accrued.

(b) Calculation of Period. - The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, or of any concealment of the defendant's whereabouts, shall not be included in the 4-year period set forth in subsection (a).

Amendment

SEC. 1251. STATUTE OF LIMITATIONS FOR CIVIL ACTIONS REGARDING TERRORIST ACTS.

(a) In General- Section 2335 of title 18, United States Code, is amended--
   (1) in subsection (a), by striking '4 years' and inserting '10 years'; and
   (2) in subsection (b), by striking '4-year period' and inserting '10-year period'.

(b) Effective Date- The amendments made by this section shall apply to any civil action arising under section 2333 of title 18, United States Code, that is pending on, or commenced on or after, the date of the enactment of this Act.

(c) Special Rule Relating to Certain Acts of International Terrorism- Notwithstanding section 2335 of title 18, United States Code, as amended by subsection (a), a civil action under section 2333 of such title resulting from an act of international terrorism that occurred on or after September 11, 2001, and before the date that is 4 years before the date of the enactment of this Act, may be maintained if the civil action is commenced during the 6-year period beginning on such date of enactment.

AUTHORS

Kevin Walsh
Partner
New York | T: +1 212 335 4500
[email protected]

Douglas Walter Mateyaschuk
Partner
New York | T: +1 212 335 4500
[email protected]