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Gibson Dunn Secures Second Appellate Win for Victims of Terrorism

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Gibson Dunn won a crucial victory for victims of terrorism before the D.C. Circuit in *Estate of Jeremy Isadore Levin v. Wells Fargo Bank, N.A.*, Nos. 23-7080, 23-7082. For the second time, the D.C. Circuit unanimously reversed the district court's dismissal of our clients' order of attachment of nearly $10 million in blocked Iranian funds. Its decision clears the way for victims of terrorism to attach blocked terrorist funds to their judgments against state sponsors of terrorism under the Terrorism Risk Insurance Act (TRIA), even when the government has brought its own forfeiture proceedings against the assets.

Gibson Dunn represents a group of plaintiffs (“the Owens plaintiffs") who hold nearly $1 billion in judgments against the Islamic Republic of Iran, stemming from its role in al Qaeda's 1998 bombings of the U.S. embassies in Kenya and Tanzania. In October 2019, an agent of Iran attempted to route nearly $10 million (intended for the purchase of a Liberian oil tanker) through a series of banks including Wells Fargo, where they were blocked pursuant to an order of the Office of Foreign Asset Control (OFAC). The Owens plaintiffs attached the blocked funds to their judgments, and the United States — which had earlier sought forfeiture of the same funds — intervened and moved to quash the writ of attachment.

The district court initially granted the motion to quash after accepting the government’s arguments that the blocked funds were not “assets of Iran” for purposes of TRIA, even though the government had blocked the funds because of their Iranian origination. In 2022, the D.C. Circuit unanimously reversed the district court’s decision, holding that because the funds were clearly traceable to Iran, they were attachable under TRIA. On remand, the district court nonetheless granted the government’s renewed motion to quash the writs on the basis (1) that the government’s forfeiture action — including the issuance of an OFAC license allowing the government to pursue forfeiture — unblocked the funds for purposes of TRIA and (2) that under the prior exclusive jurisdiction doctrine, the government’s forfeiture action barred any subsequent proceedings against the funds.

The D.C. Circuit (Katsas, Walker, Garcia) again reversed unanimously in an opinion by Judge Katsas, holding that the funds remain blocked for purposes of TRIA, since they are still subject to a blocking order and immobilized at Wells Fargo. While the government’s license authorized it to pursue forfeiture of the funds, it did not unblock them or allow the government to take present possession of the funds. The court explained that to hold otherwise would vitiate TRIA since the government could “thwart attachment of blocked assets simply by authorizing itself to initiate forfeiture proceedings.”

The court also rejected the district court’s application of the prior exclusive jurisdiction doctrine to bar the writs. It held that the doctrine — which was designed to prevent the practical problems associated with two different courts exercising in rem jurisdiction over the same piece of property — does not apply to proceedings “filed in the same court.”

This is a major win for victims of terrorism, especially since the other circuits previously rejected attempts to attach assets under TRIA that are the subject of forfeiture proceedings. And it is not uncommon for the government to bring forfeiture proceedings against assets it has blocked. By concluding that “TRIA specifically allows attachments”

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that otherwise would be prohibited under the civil forfeiture statute, the D.C. Circuit vindicated TRIA's notwithstanding clause, which allows victims of terrorism to attach blocked assets of state sponsors of terrorism "[n]otwithstanding any other provision of law."

Partner Jessica Wagner argued the appeal and led the Gibson Dunn team, which included associate Jeffrey Warren and a former partner and associate.

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