

Iran Bank Ruling Will Keep Courts Out Of Foreign Affairs

By **Evan Weinberger**

Law360, New York (April 20, 2016, 7:35 PM ET) -- The U.S. Supreme Court's Wednesday decision allowing the victims of Iranian-sponsored terrorism to collect on \$1.75 billion that that country's central bank held in U.S. accounts made clear that courts will not stand in the way of the government giving plaintiffs the ability to target similar assets in the future.

The high court's 6-2 decision in *Bank Markazi v. Peterson* blessed a 2012 move by President Barack Obama and Congress to retroactively make assets linked to Bank Markazi, the Iranian central bank, subject to a judgment in favor of families of the victims of the 1983 Marine Corps barracks bombing in Beirut.

By giving that seal of approval, the Supreme Court said that the judicial branch would not act to stop the government from making similar moves in the future, said Stuart Newberger, a partner at Crowell & Moring LLP.

"That's a message for any country that if Congress and the president take steps to freeze assets, make assets available to victims, that the courts are going to defer," said Newberger, who represents terror victims in litigation against foreign governments alleged to have sponsored terrorist acts.

Bank Markazi was attempting to overturn decisions in federal district court in New York and the Second Circuit that allowed approximately 1,000 victims of terrorist attacks sponsored by the Iranian government, including the families of the 241 Americans who died in the Beirut barracks bombing, to collect on \$1.75 billion that was found in a Citibank NA account.

The Iranian central bank argued that a 2012 law passed by Congress and implemented by the Obama administration that allowed the plaintiffs to tap those funds to settle a portion of the judgment against the Iranian government was an unfair attempt by the federal government to force a court to rule in a predetermined way. Previously, access to those funds had been blocked by the 1976 Foreign Sovereign Immunities Act.

Bank Markazi argued that Section 8772 of the Iran Threat Reduction and Syria Human Rights Act, passed by Congress in 2012 to hold Iran accountable for judgments entered in U.S. courts related to acts of terrorism, conflicted with a 1955 treaty between the U.S. and Iran. The bank also argued that the section, which was then put into operation by regulations from the Obama administration, predetermined the outcome of a decision by U.S. District Judge Katherine B. Forrest in 2013 in favor of the plaintiffs.

But the Supreme Court rejected those arguments, finding that the legislation, which retroactively applied the 2012 law to accounts that were found after a default judgment against Bank Markazi, did not force Judge Forrest to rule against the bank.

"Congress, our decisions make clear, may amend the law and make the change applicable to pending cases, even when the amendment is outcome determinative," Justice Ruth Bader Ginsburg wrote for the majority.

The decision should have a few immediate effects.

Plaintiffs who had sued Iran should see some payout in the next few months. That is significant because some of the decisions that went against Iran stretch back as far as 2003.

And that could benefit other victims of terror who are trying to collect on default judgments against states.

Because the victims of Iranian-sponsored attacks will recover around 70 percent of the \$2.5 billion they were originally awarded, they will no longer be allowed to collect from a \$1 billion fund established by Congress last year for victims of state-sponsored terrorism.

Victims can only initially collect up to 30 percent of any money they are owed under a judgment against a state-sponsor of terrorism from the fund, and additional funds are only released after all victims have received that amount.

Since the Iranian victims are set to collect more than that after the Bank Markazi decision, there will be more money available for other plaintiffs, Newberger said.

"It's a win-win for all victims of terrorism who" took their fights to court, he said.

But beyond that immediate impact, the ruling could put a halt to attempts by foreign governments to stop Congress and the executive branch from moving to make their assets available to settle legal judgments against them.

Justice Ginsburg in the majority opinion said that the courts should not get involved in foreign affairs decisions made by the political branches of the government.

"The executive has historically made case-specific sovereign-immunity determinations to which courts have deferred," Justice Ginsburg wrote. "And exercise by Congress and the president of control over claims against foreign governments, as well as foreign-government-owned property in the United States, is hardly a novelty."

Despite the firm stance by the majority of justices in the Bank Markazi case, Chief Justice John G. Roberts and Justice Sonia Sotomayor expressed concern in a dissenting opinion that the high court was giving its stamp of approval to the government's directing courts to make specific decisions.

"That's the right thing to be nervous about," said Michael S. Greve, a professor at the George Mason University School of Law.

Despite those concerns, foreign governments will have a hard time making that argument in court, given the Bank Markazi decision, said Andrew Hall, the managing partner of Hall Lamb and Hall PA.

"They can go to court," said Hall, who represents terror victims, "but they're not going to be very successful."

The victims are represented by James P. Bonner, Patrick L. Rocco and Susan M. Davies of Stone Bonner & Rocco LLP and Liviu Vogel of Salon Marrow Dyckman Newman & Broudy LLP.

Bank Markazi is represented by Jeffrey A. Lamken, Robert Kry, Sarah Newman and Lauren Weinstein of MoloLamken LLP, and Andreas A. Frischknecht and David M. Lindsey of Chaffetz Lindsey LLP.

The case is Bank Markazi v. Deborah Peterson et al., case number 14-770, in the Supreme Court of the United States.

--Editing by Jeremy Barker and Mark Lebetkin.

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