

[Withdrawal Symptoms]

# WHEN IS BANKING A TERRORIST ACT?

CAN A FOREIGN BANK be held liable in U.S. courts for financing terrorism, even if its home country has ruled otherwise? Are financial institutions supposed to surf the web to ferret out suspicious clients? Much to the surprise of the banking industry, the answer to both questions appears to be yes, according to a pair of recent rulings by a federal judge in Brooklyn that could expose banks to multimillion-dollar damages.

Earlier this fall U.S. district court judge Charles Sifton rejected motions filed by *Crédit Lyonnais* of France and Britain's *NatWest* bank to dismiss claims that they provided material support to the Palestinian group Hamas. Two civil lawsuits filed last year by dozens of American victims of Hamas

attacks and their families accused the banks of handling accounts and transfers of two charities listed by the U.S. Treasury Department as "specially designated global terrorist" organizations because of their ties to Hamas.

Judge Sifton agreed with the banks that they had not aided and abetted the terrorist attacks by providing financial services to the charities—*Interpal* in Britain and France's *Comité de Bienfaisance et de Secours aux Palestiniens*. But he said the case could go forward on the theory that the banks had "knowingly provided material support" to a foreign terrorist organization and had "unlawfully and willfully provided or collected funds" for terrorist purposes under federal law. He said that proving such support under the Antiterrorism Act does not require a showing of intent, but only evidence that a defendant participated knowingly at some point in the terrorist enter-

prise. And the banks, the plaintiffs claim, were presumably aware of the allegations leveled against their clients by the U.S. Sifton added that U.S. courts were not bound by the fact that in each case the local government had cleared the respective charities of terrorism links.

The decision follows a similar ruling handed down in September 2005 by New York federal judge Nina Gershon rejecting a motion by the Arab Bank of Jordan in a case also brought by American victims of Palestinian attacks. "Those decisions are significant for the banking industry," says Jimmy Gurulé, a former Treasury Department official. "Banks could end up paying significant legal fees and huge damages, and have their reputation shattered by their perceived association with terrorism."

Spokesmen for Royal Bank of Scotland, which owns *NatWest*, and *Crédit Lyonnais*, which is now part of *Calyon*, vowed that the banks would "vigorously" defend themselves. The banks are likely to file a motion for summary judgment that, if rejected, could pave the way for a jury trial or a settlement.

Sifton's rulings are far-reaching because they appear to grant extraterritorial reach to an American government decision that contradicts the official views of the countries in which the banks are headquartered. In addition, the rulings seem to broaden the definition of what constitutes "knowledge" by requesting banks to not only check U.S. terror lists but also scour media reports and even foreign watch lists. The banking industry is now nervously awaiting a decision that judge Gershon is expected to render soon on whether to accept a complaint filed against the Arab Bank

**"THIS COULD BE THE NEXT TOBACCO SAGA," SAYS WOLOSKY.**



**JUDGMENT DAY** A U.S. district court rejected motions filed by British bank *NatWest* (one of its London branches is shown above) and France's *Crédit Lyonnais* to dismiss claims that they provided material support to terrorist groups.

of Jordan on behalf of Israeli terrorism victims, which could open U.S. courts to legal action by foreign victims against American and international banks with a U.S. foothold. Says Lee Wolosky, a former director of transnational threats at the National Security Council, who estimates that the treble damages provided by U.S. law in terrorism civil cases could reach \$10 million per family: "This could be the next tobacco saga." —Marc Perelman