

Arab Bank Verdict Injects Risk Into Compliance Landscape

By **Pete Brush**

Law360, New York (September 23, 2014, 7:17 PM ET) -- A New York federal jury's landmark decision to hold Arab Bank PLC liable for terror attacks will be subject to a lengthy appeal, but its immediate impact will be to force a financial sector already obsessed with governmental regulatory compliance to redouble internal control efforts with private lawsuits in mind, experts said Tuesday.

The **decision** sets up proceedings on the amount of damages, likely to be a complicated process in its own right given the thousands of plaintiffs -- hundreds of whom are Americans with claims under the Anti-Terrorism Act -- and their disparate situations. After, or potentially during, that process, appeals over Monday's verdict are a certainty.

With the plaintiffs' lawyers having **said they seek** more than \$1 billion in damages, the banking world will be watching every twist and turn with an eye on heading off similar jeopardy.

"This is one of the first, if not the first, significant findings of liability under the U.S. Anti-Terrorism Act," said attorney Zachary Goldman, executive director of New York University's Center on Law and Security. "Through litigation we're in the process of finding out what exactly banks need to do — what their due diligence obligations are."

The plaintiffs brought evidence suggesting the bank knowingly processed transactions that supported Hamas, making it liable under the U.S. Anti-Terrorism Act for 24 terror attacks that took place during a roughly four-year Palestinian uprising in the early 2000s.

A nine- or 10-figure damages tally against the Amman, Jordan-based bank would be devastating, not just to the business but to pensioners in the Middle East who own its shares, according to legal filings added to the record by the Kingdom of Jordan.

That possibility will force all banks to think about risk that goes beyond running afoul of federal prosecutors or falling out of compliance with regulators on anti-money laundering and anti-terror laws, according to experts, including Pryor Cashman LLP partner Jeffrey Alberts.

"Now banks have to keep in mind that they could be pursued in a civil action by attorneys who aren't part of the government at all — and take that into account in setting up their compliance programs," Alberts said.

Unlike regulators, who typically are willing to work closely with banks on compliance, and unlike prosecutors, primarily tasked with enforcing the law, plaintiffs' lawyers have no stake in being predictable, since they're focused on maximizing financial recovery, Alberts said.

Arab Bank, in a lengthy statement dated Tuesday, vowed to challenge a number of wrinkles from the liability trial, including a controversial court order that let the jury infer that it had provided financial services to terrorists and a decision to exclude bank experts from arguing

that a Saudi bank client was in fact a legitimate charity.

Payments from that client, the Saudi Committee, to terrorists and their families are at the heart of the case.

On compliance, the bank also blasted the trial court, claiming it was punished despite having gone to great lengths to work within applicable laws and regulations in multiple jurisdictions to remain "a responsible and law-abiding institution."

"Today's decision, if it stands, exposes the banking industry to enormous liability for nothing other than the processing of routine transactions," the bank said. "This precedent would create vast uncertainty and risk in the international finance system and accelerate derisking activities already underway."

The outcome of the appeal was far from certain, with Alberts noting that the sheer number of significant decisions made by the trial court raise the risk that some or all of the proceedings could be overturned.

But there have been signs that U.S. courts are showing less sympathy for banks accused of processing transactions for Hamas and other groups.

Among them was a **decision Monday** by the Second Circuit that plaintiffs seeking to hold Royal Bank of Scotland Group PLC unit National Westminster Bank PLC liable for supporting Hamas don't have to show the bank knew a charitable client was supporting overt acts of terror to prove their case — only that it knew it was supporting a terrorist organization.

"The NatWest opinion surely is a good thing for the plaintiffs in the Arab Bank case. The Second Circuit laid out an understanding of the the law consistent with the view the Arab Bank plaintiffs are taking," said Edwards Wildman Palmer LLP litigator Stephen J. Landes.

If Arab Bank ultimately is forced to pay a bank-breaking sum, some argue it ironically could have a long-term deleterious effect on the United States' larger ability to remain a player in anti-terrorism and anti-money-laundering efforts.

"It's important for the U.S. to have strong financial ties to these areas," Alberts said. "It's counterproductive to increase compliance hurdles so high that banks stop routing transactions through the U.S."

--Editing by Kat Laskowski and Chris Yates.