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After 10 Years, a Jury Gets Arab Bank Case

Tania Karas, New York Law Journal

August 15, 2014

Lawyers for a group of terrorist attack victims tried to convince a Brooklyn jury Thursday that a Jordan-based bank knowingly facilitated transactions used to finance 24 attacks carried out by Hamas, the Palestinian terrorist group, between 2000 and 2004.

It was the first day of a trial a decade in the making. The civil case is the first time a U.S. jury will hear claims that a bank financed terrorism. The United States designated Hamas as a terrorist group in 1997.

In opening arguments before Eastern District Judge Brian Cogan ([See Profile](#)), plaintiffs' attorney C. Tab Turner, of Little Rock, Ark., called the bank a "paymaster" that "funneled millions of dollars" to Hamas, thereby incentivizing its members to carry out suicide bombings.

Lawyers for Arab Bank plc insisted that the institution followed counterterrorism laws and regulations, thus cannot be held liable for violent acts by Hamas or other terrorist groups.

The suit, *Linde v. Arab Bank*, 04-CV-2799, was initially filed in July 2004 on behalf of nearly 300 victims and their family members who were hurt in 24 attacks by Hamas in Israel and the Palestinian territories during the Second Intifada, an uprising of Palestinians against Israel.

Plaintiffs allege Arab Bank violated the federal Antiterrorism Act of 1990, which allows victims of violent attacks outside the U.S. to bring lawsuits against terrorists in U.S. courts.

The bank, which has \$45.6 billion in assets and 600 branches worldwide, said in a statement last week that banks should not be held liable for "the millions of routine, automated transactions that they process even when proper compliance requirements are followed and the parties were in good standing at the time."

Thursday's openings drew an audience that filled Cogan's courtroom and part of an overflow room. Witnesses in the course of what is expected to be a monthlong trial will include experts on terrorist groups and terror financing, as well as Arab Bank's chairman Sabih Al-Masri and other current and former bank executives. Several will testify in Arabic through translators.

Plaintiffs' attorney Mark Werbner, of Sayles Werbner in Dallas, told jurors that the bank knew from the beginning that its customers had ties to Hamas.

"It wasn't a mistake," he said. "It wasn't routine banking. It was a choice that Arab Bank made. They

knew they were banking for Hamas."

In the course of the trial, he said, the plaintiffs would show the bank maintained accounts for at least 11 Hamas operatives who appear on U.S. and global terrorist lists.

Jurors will also be shown evidence that the bank routed donations to terrorists' families from a Saudi Arabian charity called the Saudi Committee for the Support of the Intifada al Quds, he said. Families of "martyrs," or those who killed themselves in efforts to kill others, received the highest payments of \$5,003, while prisoners and those injured received smaller sums. Plaintiffs' attorneys alleged that Arab Bank funneled money through branches in Jordan and New York before paying a designated list of recipients in cash.

Additional plaintiffs' attorneys are Gary Osen with Osen LLC; Shawn Naunton, a partner at Zuckerman Spaeder; and Michael Elsner, a member at Motley Rice in South Carolina.

The plaintiffs lamented they would not be able to show jurors the full evidentiary record because the bank would not provide many requested documents on customer accounts, citing foreign banking secrecy laws. The fight over account records led to years of delays in the case.

In 2010, Judge Nina Gershon ([See Profile](#)) sanctioned the bank for not producing the records. She ordered that jurors be instructed they could infer the bank "knowingly and purposefully" offered financial services to terrorist organizations. The bank appealed her decision to the U.S. Supreme Court, which declined to review it.

At the start of his 90-minute opening statement Thursday, Shand Stephens, a partner at DLA Piper representing Arab Bank, said his clients' "hearts go out to the victims of such acts of senseless violence."

He acknowledged at least two instances where the bank allowed transactions to Hamas operatives or their affiliates to go through, calling them "mistakes." Oftentimes, he said, Arabic names have various spellings in their English transliterations, allowing a transaction to clear the bank's terrorist blacklist if the spelling does not match up.

That was the case with an electronic transfer involving Hamas founder Sheikh Ahmed Yassin, he said.

"The fact that this transaction went through does not show the bank knowingly supported terrorism," Stephens said. "It shows the spelling that the bank uses is different than the spelling on the global terrorist list."

As to alleged payments to martyrs, it was the Saudi Committee, and not Arab Bank, that controlled who received the funds, Stephens said. He said the committee was a humanitarian aid group that helped Palestinian victims of the Second Intifada and was not designated as a terrorist group during the period the *Linde* lawsuit covers.

Stephens is joined by DLA partners Brett Ingerman and Anthony Coles.

The trial will continue Monday.