

Leibovitch v. Islamic Republic of Iran: A Seventh Circuit Decision Extends a Path to Recovery for Foreign Nationals Harmed by an Act of State-Sponsored Terrorism

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I. OVERVIEW

Addressing a matter of first impression, the case at hand resulted in a victory for foreign national family members of a U.S. citizen who sought relief under the latest amendment of the state-sponsored terrorism exception of the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1605A.¹ As the Leibovitch family drove along the Trans-Israel highway, members of a well-known terrorist group, the Palestine Islamic Jihad (PIJ), crossed into Israel from the West Bank and shot at the family with a variety of firearms.² The terrorist shootings killed N.L., a seven-year-old Israeli citizen.³ N.L.’s sister, S.L., a U.S. citizen, suffered severe gunshot wounds to her wrist and torso.⁴ Four additional Israeli family members present in the car survived the 2003 attack without physical

1. Leibovitch v. Islamic Republic of Iran, 697 F.3d 561, 562 (7th Cir. 2012).
 2. *Id.*
 3. *Id.*
 4. *Id.*

injury, although they witnessed the traumatic event.⁵ The Leibovitch family filed claims in 2008 against the Islamic Republic of Iran and Iran's Ministry of Information and Security (collectively Iran) under the FSIA state-sponsored terrorism exception.⁶ The family sought damages on behalf of S.L., her parents, and the family members who survived the attack, although all but S.L. are Israeli nationals.⁷

The United States District Court for the Northern District of Illinois determined that Iran supplied the PIJ with "material support and resources for [its] campaign of extrajudicial killings," and therefore "Iran was vicariously liable for PIJ's terrorist attack."⁸ While the district court entered a default judgment for S.L.'s claims and awarded compensatory and punitive damages for her injuries, the court dismissed all claims from the rest of the Leibovitch family for lack of subject matter jurisdiction.⁹ The foreign national family members appealed on the issue of subject matter jurisdiction, and the appellate court considered *de novo* whether the district court erred by dismissing the plaintiffs' claims.¹⁰ The United States Court of Appeals for the Seventh Circuit *held* that the FSIA does confer subject matter jurisdiction over the claims brought by the foreign national family members of a U.S. citizen who sustained injuries from an act of state-sponsored terrorism because Congress did not intend to repeal the pass-through approach; therefore the court reversed the district court's judgment and remanded the case for reconsideration of the claims for emotional distress under Israeli law. *Leibovitch v. Islamic Republic of Iran*, 697 F.3d 561, 571-73 (7th Cir. 2012).

II. BACKGROUND

The FSIA provides the statutory framework for protection under the doctrine of sovereign immunity, as well as the exceptions that allow foreign states to be sued in U.S. courts.¹¹ As the rule of absolute sovereign immunity weakened, the FSIA purported to codify the restrictive theory of immunity that prevailed throughout the twentieth

5. *Id.* N.L. and S.L.'s grandparents and two siblings were in the car. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* at 562-63. Iran did not file any briefs or make an appearance in this suit, which led the district court to enter a default judgment. *Id.* at 562.

10. *Id.* at 563, 568.

11. *See* 28 U.S.C. §§ 1330, 1602-1611 (2006); *see also* *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989) ("[T]he FSIA provides the sole basis for obtaining jurisdiction over a foreign state in federal court[s].").

century under customary international law.¹² Section 1604 of the FSIA makes clear that although a presumption of immunity remains, the presumption can be rebutted when a plaintiff shows that a foreign state defendant is subject to one of the enumerated exceptions in §§ 1605-1607.¹³ One of those exceptions, the focus of this Note, is state-sponsored terrorism.¹⁴ In this instance, the FSIA waives sovereign immunity and confers subject matter jurisdiction in cases where “money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, . . . or the provision of material support or resources for such an act” of state-sponsored terrorism.¹⁵

The state-sponsored terrorism exception has a particularly convoluted and contentious history, and despite undergoing several legislative changes, it remains a source of confusion for courts.¹⁶ In determining whether a plaintiff has a valid cause of action, courts have differed in their interpretation of elements that are not clearly defined by the statutory language.¹⁷ However, one element has remained clear: a foreign state can only be sued as a defendant if it was designated as a “state sponsor of terrorism” by the United States Department of State when the act giving rise to the claim occurred.¹⁸ Currently, the State Department lists four countries as state-sponsors of terrorism: Cuba, Iran, Sudan, and Syria.¹⁹ Iran, the defendant in the noted case, has remained on the list since 1984 and has been a defendant in a substantial number of suits filed pursuant to the FSIA terrorism exception.²⁰

In the majority of suits brought pursuant to the FSIA state-sponsored terrorism exception, foreign state defendants rarely submit any

12. JENNIFER K. ELSEA, CONG. RESEARCH SERV., RL31258, SUITS AGAINST TERRORIST STATES BY VICTIMS OF TERRORISM 3-4 (2008).

13. 28 U.S.C. §§ 1604-1607.

14. 28 U.S.C. § 1605A (2006 & Supp. 2012).

15. *Id.* § 1605A(a)(1); *id.* §§ 1605A(h)(1)-(7) (defining the particular acts of terrorism).

16. *See, e.g.,* Roeder v. Islamic Republic of Iran, 742 F. Supp. 2d 1, 19-20 (D.D.C. 2010) (“[M]uch time and effort have been expended parsing esoteric phrases of statutory text and legislative history in an effort to discern the intent of Congress. . . . Congress has failed to enact plain, straightforward language creating a cause of action for plaintiffs . . .”).

17. *See* Rubin v. Islamic Republic of Iran, 637 F.3d 783, 785 (7th Cir. 2011), *as corrected* (Apr. 1, 2011) (“The district court’s approach to this case cannot be reconciled with the text, structure, and history of the FSIA.”); Oveissi v. Islamic Republic of Iran, 573 F.3d 835, 837 (D.C. Cir. 2009) (reversing and remanding because the district court erred in its application of the law).

18. *See, e.g.,* Debra M. Strauss, *Reaching Out to the International Community: Civil Lawsuits as the Common Ground in the Battle Against Terrorism*, 19 DUKE J. COMP. & INT’L L. 307, 312 n.22, 330 n.97 (2009).

19. *See* U.S. DEP’T OF STATE, COUNTRY REPORTS ON TERRORISM 2011, at 171-75 (2012), available at <http://www.state.gov/documents/organization/195768.pdf>.

20. *Id.* at 171-72; ELSEA, *supra* note 12, at 24-31.

documents or appear in court, as occurred in the noted case.²¹ Therefore, federal district courts often enter default judgments against foreign state defendants and proceed accordingly with the analysis of the plaintiff's claim.²² Although courts have traditionally taken different approaches to the analysis, courts often sympathize with plaintiffs in FSIA cases, as can be shown by the many judgments ordering foreign state defendants to pay large awards for compensatory, and now punitive, damages.²³ However, plaintiffs ultimately face great challenges collecting their awards, as could be expected from the foreign state's failure to represent itself during the course of the litigation.²⁴

Beyond the element that dictates which foreign states can be sued under the FSIA exception, courts have continually had questions about the statutory gaps and Congress's intent regarding the extent of jurisdiction and a plaintiff's right to a cause of action.²⁵ A historical overview of the FSIA terrorism exception reveals a trend of legislative intent that principally aims to deter acts of state-sponsored terrorism, albeit ostensibly, by opening doors of recovery for claimants and victims who have sustained injury as a result of such acts.²⁶

21. See, e.g., *Owens v. Republic of Sudan*, 826 F. Supp. 2d 128, 133-34 (D.D.C. 2011) (highlighting multiple cases where default judgments were entered against foreign defendant states who failed to appear); see also Debra M. Strauss, *Enlisting the U.S. Courts in a New Front: Dismantling the International Business Holdings of Terrorist Groups Through Federal Statutory and Common-Law Suits*, 38 VAND. J. TRANSNAT'L L. 679, 695 (2005) ("The leading case under the AEDPA, *Flatow v. Islamic Republic of Iran*, which set the standards and procedures for suits brought pursuant to this statute, itself resulted from a default judgment against Iran." (footnote omitted)).

22. See, e.g., *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1121 n.1 (9th Cir. 2010) ("A district court generally does not have to conduct a trial before it can enter a default judgment against a defendant who fails to appear. However, the FSIA requires a plaintiff to 'establish[] his claim or right to relief by evidence that is satisfactory to the court' before a default judgment may be entered against a foreign state defendant." (citation omitted)). The court stated, "The FSIA provides that a court may not order enforcement of a default judgment until a copy of that judgment is 'sent to the foreign state or political subdivision in the manner prescribed for service in this section.'" *Id.* at 1129 (citation omitted).

23. See Daveed Gartenstein-Ross, Note, *A Critique of the Terrorism Exception to the Foreign Sovereign Immunities Act*, 34 N.Y.U. J. INT'L L. & POL. 887, 898-900 (2002) (highlighting the number of lawsuits that result in high awards of compensatory and punitive damages).

24. *Id.* at 931.

25. See James P. Kreindler & Megan Wolfe Benett, *Finding Justice for Victims of State-Sponsored Terrorism*, L.A. LAW., July/Aug. 2010, at 18-19.

26. See, e.g., *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 25 (D.D.C. 1998) (highlighting Congress's intent to make punitive damages undoubtedly available); see also Ruthanne M. Deutsch, *Suing State-Sponsors of Terrorism Under the Foreign Sovereign Immunities Act: Giving Life to the Jurisdictional Grant After Cicippio-Puleo*, 38 INT'L LAW 891, 901-03 (2004) (reasoning that Congress did not intend to replace the jurisdiction granted under § 1605(a)(7) when it enacted the Flatow Amendment).

A. *From Absolute to Restrictive Sovereign Immunity: Contours and Queries of the Original FSIA State-Sponsored Terrorism Exception*

Congress first amended the FSIA to include the state-sponsored terrorism exception as part of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).²⁷ The AEDPA (formerly codified at 28 U.S.C. § 1605(a)(7)) laid the jurisdictional framework for claims arising from terrorist acts by waiving immunity of a foreign state when “an official, employee, or agent of [the] foreign state” committed an act of terrorism “while acting within the scope of his or her office, employment, or agency.”²⁸ Section 1605(a)(7) of the FSIA demonstrated the shift from absolute sovereign immunity to a restrictive theory of immunity under U.S. federal law.²⁹ Although the FSIA retained the presumption of sovereign immunity, the state-sponsored terrorism exception identified particular circumstances in which immunity would not be available.³⁰ Specifically, Congress enacted the AEDPA amendment in order “to create a judicial forum for compensating the victims of terrorism, and in so doing to punish foreign states who have committed or sponsored such acts and deter them from doing so in the future.”³¹

More than a decade before the state-sponsored terrorism exception was enacted, the United States Supreme Court broadly addressed the presumption that FSIA exceptions were purely jurisdiction-conferring statutes intended to establish a judicial forum.³² In *First National City Bank v. Banco Para El Comercio Exterior de Cuba*, the Court held that the FSIA “was not intended to affect the substantive law determining the liability of [or attribution of liability to] a foreign state or

27. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 221(a), 110 Stat. 1214 (codified as amended in scattered titles of the U.S.C.).

28. *Id.*

29. See *Price v. Socialist People’s Libyan Arab Jamahiriya*, 294 F.3d 82, 87, 90 (D.C. Cir. 2002) (“[FSIA] exceptions were crafted in order to codify the ‘restrictive theory’ of sovereign immunity, under which immunity is generally limited to a foreign state’s public or governmental acts . . . but withheld from its private or commercial acts Thus, § 1605(a)(7) now allows personal jurisdiction to be maintained over defendants in circumstances that do not appear to satisfy the ‘minimum contacts’ requirement of the Due Process Clause.” (citations omitted)); Lee M. Caplan, *The Constitution and Jurisdiction over Foreign States: The 1996 Amendment to the Foreign Sovereign Immunities Act in Perspective*, 41 VA. J. INT’L L. 369, 408 (2001) (“Under its plain terms, the new law extends extraterritorially much further than the traditional reach of the *International Shoe* standard.”).

30. *Price*, 294 F.3d at 87-89.

31. *Id.* at 88-89 (citations omitted).

32. *Id.* at 87 (citing *First Nat’l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 620 (1983)).

instrumentality.”³³ District courts continued to follow the Supreme Court’s ruling that the FSIA did not create a new cause of action, but instead established that under the circumstances where immunity was waived, “the foreign state [would] be liable in the same manner and to the same extent as a private individual under like circumstances.”³⁴ As such, § 1606 of the FSIA acted as a “pass-through” provision to seek relief under federal or state substantive law claims.³⁵

The pass-through approach required courts to conduct a choice of law analysis to determine which jurisdiction’s law applied.³⁶ However, the FSIA did not contain an express choice of law provision upon which courts could rely on.³⁷ Despite keeping in mind the legislative intent of the FSIA, as well as its exceptions, courts utilized various approaches, applying the law of the forum state, the law of the plaintiff’s domicile, or the federal choice of law rule, which looks to the law of the place where the tort was committed.³⁸ Because the choice of law analysis led courts to apply different substantive law on a case-by-case basis, confusion first arose as to whether plaintiffs could recover punitive damages.³⁹ On one hand, § 1606 of the FSIA expressly prohibited recovery of punitive damages against foreign states, but on the other hand, plaintiffs were also

33. 462 U.S. at 620, 622 n.11 (“[W]here state law provides a rule of liability governing private individuals, the FSIA requires the application of that rule to foreign states in like circumstances.”).

34. 28 U.S.C. § 1606 (2006); *e.g.*, *Barkanic v. Gen. Admin. of Civil Aviation of the People’s Republic of China*, 923 F.2d 957, 959 (2d Cir. 1991) (citing *First Nat’l City Bank*, 462 U.S. at 622 n.11).

35. *See Rux v. Republic of Sudan*, 672 F. Supp. 2d 726, 731 (E.D. Va. 2009), *aff’d in part, appeal dismissed in part*, 410 F. App’x 581 (4th Cir. 2011) (“Under this ‘pass-through’ provision, plaintiffs could bring suit against a foreign government based on substantive federal or state law, and then strip the foreign government of sovereign immunity through one of the exceptions listed in §§ 1605-1607.” (citation omitted)); *Price v. Socialist People’s Libyan Arab Jamahiriya*, 384 F. Supp. 2d 120, 132-34 (D.D.C. 2005) (relying on state law of “assault, battery, and intentional infliction of emotional distress” for claim pursuant to the FSIA terrorism exception).

36. *E.g.*, *Pescatore v. Pan Am. World Airways, Inc.*, 97 F.3d 1, 12 (2d Cir. 1996).

37. *See id.* (highlighting that the choice of law rule is unsettled even within a particular circuit court); *Barkanic*, 923 F.2d at 959 (“[Courts] must infer from the statutory language a choice of law analysis that best effectuates Congress’ overall intent.”).

38. *Compare Pescatore*, 97 F.3d at 13 (relying on law of the plaintiff’s domicile), *with Barkanic*, 923 F.2d at 961 (applying law of forum state in an action arising under FSIA), *and Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 14-15 (D.D.C. 1998) (following the federal common law choice of law rule, which relies on the Restatement (Second) of Conflict of Laws § 175). When there was a conflict of laws, courts had discretion to apply the law of the jurisdiction with the strongest governmental interest or most significant relationship to the case. *Flatow*, 999 F. Supp. at 14-15 (“When another jurisdiction has a stronger interest and closer connections to the case, it is appropriate to apply that jurisdiction’s law.” (citation omitted)).

39. *See, e.g.*, *Baumel v. Syrian Arab Republic*, 667 F. Supp. 2d 39, 44 (D.D.C. 2009) (“Despite the applicability of other sources of law, § 1606 provided that foreign states were expressly exempt from liability for punitive damages.” (citation omitted)).

afforded the opportunity to rely on a state cause of action under the pass-through approach, which in many cases did permit recovery of punitive damages.⁴⁰

B. Pass-Through Approach or Cause of Action: Divergent Paths to Justice, Recovery of Punitive Damages, and Liability of Foreign States

When claims filed pursuant to the original state-sponsored terrorism exception began filling the federal district courts, court opinions revealed the queries regarding statutory gaps in the new FSIA exception.⁴¹ Beyond the question of punitive damages discussed *supra*, courts were no longer certain as to whether § 1605(a)(7) solely asserted jurisdiction over foreign state defendants or whether it created a new cause of action.⁴² Congress quickly addressed this question by passing the Civil Liability for Acts of State Sponsored Terrorism (known as the Flatow Amendment) as part of the Omnibus Consolidated Appropriations Act.⁴³ The Flatow Amendment affirmatively extended § 1605(a)(7) to include a cause of action, wherein those who were injured in an act of state-sponsored terrorism could recover both compensatory *and* punitive damages.⁴⁴ As such, § 1605(a)(7) and the Flatow Amendment worked in concert to assert jurisdiction and to provide a limited cause of action for injured plaintiffs to seek relief under state or foreign tort law against a foreign state official, employee, or agent responsible for the act of state-sponsored terrorism.⁴⁵

In *Flatow v. Islamic Republic of Iran*, the United States District Court for the District of Columbia analyzed the cause of action created by the Flatow Amendment, finding that Congress had taken the state-sponsored terrorism exception to an unprecedented height in the realm of foreign sovereign immunity.⁴⁶ This reasoning led the court to hold for the first time that “Iran itself [was] liable under a theory of *respondeat superior*, and [the court] awarded compensatory as well as punitive

40. *Id.*

41. *See, e.g.*, Caplan, *supra* note 29, at 411-12 (“[T]he extraterritorial aspects of the 1996 amendment have created substantial confusion [for federal courts].”).

42. *Price v. Socialist People’s Libyan Arab Jamahiriya*, 294 F.3d 82, 87-89 (D.C. Cir. 2002).

43. Pub. L. No. 104-208, § 589, 110 Stat. 3009, 3009-172 (formerly codified as 28 U.S.C. § 1605 note (repealed 2008)); ELSEA, *supra* note 12, at 7.

44. *See, e.g.*, ELSEA, *supra* note 12, at 7 & n.22.

45. *Id.* at 7 & n.18.

46. 999 F. Supp. 1, 14 (D.D.C. 1998).

damages.”⁴⁷ By expressly creating a cause of action and permitting recovery of punitive damages, the Flatow Amendment pursued the primary goal of the FSIA to deter state-sponsored terrorism, although this time Congress actively sought to influence the substantive law that determined foreign state liability in situations where immunity was waived.⁴⁸

However, the enactment of the Flatow Amendment did not eliminate confusion among the courts as Congress had intended.⁴⁹ While the Flatow Amendment created a cause of action against “an official, employee, or agent of [a] foreign state [designated as a state sponsor of terrorism] while acting within the scope of his or her office, employment, or agency,” the court in *Flatow* stretched the statute by holding the foreign state itself liable.⁵⁰ This decision sparked some courts to interpret “§ 1605(a)(7) and the Flatow Amendment, read in tandem, as creating a federal cause of action [directly] against the foreign state sponsor of terrorism.”⁵¹

Six years after the *Flatow* decision, the United States Court of Appeals for the District of Columbia Circuit rejected the interpretation that the two statutes, taken separately or together, created a federal private right of action against a foreign state government.⁵² In *Cicippio-Puleo v. Islamic Republic of Iran*, the D.C. Circuit referred to a Supreme Court decision which, although not directly addressing the FSIA, clarified that “[t]here is a clearly settled distinction in federal law between statutory provisions that [merely] waive sovereign immunity [such as § 1605(a)(7)] and those that create a cause of action.”⁵³ Relying on this

47. ELSEA, *supra* note 12, at 24 (footnote omitted).

48. *See id.*; *cf.* First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611, 620-21 (1983) (holding that the FSIA “was not intended to affect the substantive law”).

49. *See, e.g.*, Joseph Keller, *The Flatow Amendment and State-Sponsored Terrorism*, 28 SEATTLE U. L. REV. 1029, 1031-32 (2005) (highlighting the divide between courts as to whether the Flatow Amendment created a new cause of action that is applicable to foreign states themselves, or only their employees). *But see, e.g.*, Strauss, *supra* note 18, at 312-13 (finding that the majority of federal district courts did not find these statutes to extend liability directly to the foreign government, but rather its agents or employees, and thus, only those individuals, as well as certain agencies and instrumentalities of the state, could be liable for punitive damages under the majority interpretation).

50. 28 U.S.C. § 1605(a)(7) (2006) (repealed 2008); *Flatow*, 999 F. Supp. at 24-27 (rejecting the head of state immunity defense and finding that a foreign state could be vicariously liable for punitive damages under the principles of *respondeat superior* given that the Flatow Amendment uses similar language to identify actionable conduct).

51. *Estate of Doe v. Islamic Republic of Iran*, 808 F. Supp. 2d 1, 11 (D.D.C. 2011) (citation omitted); *see, e.g.*, *Cronin v. Islamic Republic of Iran*, 238 F. Supp. 2d 222, 231 (D.D.C. 2002) (finding that the Flatow Amendment created a cause of action against a foreign state itself).

52. *See Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024, 1033 (D.C. Cir. 2004).

53. *Id.*

reasoning, the D.C. Circuit held that the while the Flatow Amendment created a cause of action, it was strictly against the individual employees of a foreign state who committed the act of terrorism.⁵⁴ The D.C. Circuit acknowledged, however, that a plaintiff was still permitted to seek recovery of damages directly from a foreign state if such a viable cause of action existed under state or foreign law.⁵⁵ After this decision, plaintiffs were often instructed to amend their complaint to provide a substantive cause of action that relied on a source of law outside of the FSIA.⁵⁶ In effect, the *Cicippio-Puleo* holding required plaintiffs to rely once again on the pass-through approach under § 1606.⁵⁷

C. From Judge-Made to Legislative Modifications: The New Statutory Exception and Remaining Questions

The judicial determination in *Cicippio-Puleo* regarding the parameters of the Flatow Amendment naturally created further confusion among courts because plaintiffs could now file claims based on the FSIA state-sponsored terrorism exception using the pass-through approach to establish causes of action under applicable state laws.⁵⁸ Revival of the pass-through approach reopened the door to inconsistent recoveries determined by the substantive state law applicable to each plaintiff.⁵⁹ Because these outcomes revealed that the FSIA state-sponsored terrorism exception had yet again failed to achieve its intended purpose, Congress decided to start fresh and clearly spell out answers to the questions

54. *Id.*

55. *Id.* at 1036.

56. *See, e.g.*, *Dammarell v. Islamic Republic of Iran*, 370 F. Supp. 2d 218, 220-21 (D.D.C. 2005) (requiring plaintiffs to amend the complaint to plead specific causes of action).

57. *See Estate of Doe v. Islamic Republic of Iran*, 808 F. Supp. 2d 1, 11 (D.D.C. 2011) (“[F]ollowing *Cicippio-Puleo*, the FSIA ‘terrorism exception’ began to serve as ‘a ‘pass-through’ to substantive causes of action against private individuals that may exist in federal, state or international law.” (citation omitted)); *Rux v. Republic of Sudan*, 672 F. Supp. 2d 726, 732 (E.D. Va. 2009) *aff’d in part, appeal dismissed in part*, 410 F. App’x 581 (4th Cir. 2011) (“For suits against foreign governments, the *Cicippio-Puleo* decision returned the law to a pre-Flatow-Amendment state, and forced plaintiffs to rely on state or federal laws other than FSIA to establish their causes of action.”).

58. *See In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 40, 46-48 (D.D.C. 2009) (discussing the various setbacks that arose for plaintiffs in the course of litigation after the decision in *Cicippio-Puleo*).

59. *See, e.g.*, *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 44-45 (D.D.C. 2007) (dismissing intentional infliction of emotional distress claims of plaintiffs domiciled in Pennsylvania and Louisiana, the tort laws of which required the claimant to be present at the site of the event causing emotional distress, while awarding damages to plaintiffs domiciled in other states for injuries arising out of the same act of state-sponsored terrorism); *see also ELSEA, supra* note 12, at 26 & nn.89-90.

perplexing the courts.⁶⁰ Congress repealed both § 1605(a)(7) and the Flatow Amendment, replacing them with § 1605A, the current provision for the state-sponsored terrorism exception.⁶¹ Enacted under § 1083 of the 2008 National Defense Authorization Act (NDAA), § 1605A retains the original grant of jurisdiction from § 1605(a)(7).⁶²

In addition, the new exception contains aspects that will likely be “more advantageous to [a larger group of potential] plaintiffs in several respects.”⁶³ Section 1605A(c) creates an express private right of action for recovery of compensatory and punitive damages against a foreign state itself, as well as its officials, employees, agencies, or instrumentalities.⁶⁴ It also broadens jurisdiction to permit new categories of potential claimants, including members of U.S. armed forces, employees or contractors of the U.S. government, and the legal representatives of U.S. citizens.⁶⁵ The new statute also offers expanded remedies to facilitate recovery for plaintiffs, such as attaching assets of state sponsors of terrorism in order to collect awarded damages.⁶⁶ Finally, the NDAA amendment creates an opportunity for plaintiffs to either bring a new action under § 1605A in limited circumstances where they previously tried their case pursuant to § 1605(a)(7), or to bring a second action applying § 1605A to pending § 1605(a)(7) actions.⁶⁷ By opening the avenues for plaintiffs to bring claims in a more uniform fashion, the 2008 revised FSIA terrorism exception “effectively overrule[d] the decision of the United States Court of Appeals for the District of Columbia Circuit in *Cicippio-Puleo*.”⁶⁸

While § 1605A sought to address many of the queries courts have had regarding this FSIA terrorism exception, the new statute still appears to be “anything but a model of clarity” with respect to interpreting

60. See, e.g., Kreindler & Benett, *supra* note 25, at 19.

61. 28 U.S.C. § 1605A (2006 & Supp. 2012).

62. National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338-44.

63. *Oveissi v. Islamic Republic of Iran*, 573 F.3d 835, 840 (D.C. Cir. 2009) (internal quotation marks omitted).

64. 28 U.S.C. § 1605A(c). Recognizing that the state may be vicariously liable for acts committed by its officials, agents, or instrumentalities also gives plaintiffs greater access to possible recovery for their injury. See Strauss, *supra* note 18, at 328-31.

65. 28 U.S.C. § 1605A(c). This category opens the door to more claims from foreign national family members of American victims, like the Leibovitch family in the noted case. See Strauss, *supra* note 18, at 331.

66. 28 U.S.C. § 1605A(c)-(e), (g).

67. *Id.* § 1605A(a)(2).

68. Strauss, *supra* note 18, at 329.

Congress's intent.⁶⁹ The noted case raises the question of whether Congress intended § 1605A to retain original jurisdiction over new claims brought under the pass-through approach, or whether the pass-through approach was consequently repealed with § 1605(a)(7) and the Flatow Amendment.⁷⁰ Because Congress did not expressly mention the use of the pass-through approach when it passed § 1605A, the question of jurisdictional parameters under the FSIA terrorism exception has shifted its focus from foreign states as defendants themselves, to foreign national family members as claimants on behalf of an American relative and victim of an act of state-sponsored terrorism.⁷¹

The United States District Court for the District of Columbia has reviewed several cases invoking the new FSIA exception, although foreign national family members of an American citizen have been claimants in just one.⁷² In *Estate of Doe v. Islamic Republic of Iran*, the district court held § 1605A did not “displace” the pass-through approach and that it allows claimants ineligible for relief under the new federal cause of action to still seek recovery through other applicable state or foreign law.⁷³ Given the trend of uncertainty among the courts regarding the FSIA state-sponsored terrorism exception, it is unlikely that this query will be the final source of confusion for the 2008 version of the exception.⁷⁴

69. Roeder v. Islamic Republic of Iran, 742 F. Supp. 2d 1, 13 (D.D.C. 2010) (internal quotation marks omitted).

70. See, e.g., Oveissi v. Islamic Republic of Iran, 573 F.3d 835, 844 (D.C. Cir. 2009) (holding that plaintiffs *can* use the federal cause of action if they meet the statutory requirements, without expressly rejecting the possibility for plaintiffs who do not meet those requirements from filing a claim); Estate of Heiser v. Islamic Republic of Iran, 659 F. Supp. 2d 20, 23 (D.D.C. 2009) (“Thus, plaintiffs proceeding under § 1605A *can* forgo the pass-through approach that controlled in the wake of *Cicippio-Puleo* and *may* assert claims on the basis of the new federal statute alone.” (emphasis added)); cf. Estate of Doe v. Islamic Republic of Iran, 808 F. Supp. 2d 1, 20 (D.D.C. 2011) (“Although § 1605A created a new cause of action, it did not displace a claimant’s ability to pursue claims under applicable state or foreign law upon the waiver of sovereign immunity.” (citation omitted)).

71. Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338-44; see *infra* Part III.

72. See Harrison v. Republic of Sudan, No. 10-1689 RCL, 2012 WL 1066683 (D.D.C. Mar. 30, 2012) (discussing claims brought by members of the U.S. armed forces); Owens v. Republic of Sudan, 826 F. Supp. 2d 128, 133 (D.D.C. 2011) (discussing claims brought by foreign national employees of the U.S. government and their immediate family members). *But see Estate of Doe*, 808 F. Supp. 2d at 6 (addressing claims brought by foreign national family members).

73. 808 F. Supp. 2d at 20.

74. See Laurel Pyke Malson et al., *The Foreign Sovereign Immunities Act: 2009 Year in Review*, 17 LAW & BUS. REV. AM. 39, 68-70, 72, 75-79 (2011) (highlighting the limitations on claims, constitutional concerns, problems with enforcement, and other practical issues that may still arise with respect to the NDAA amendment of the FSIA terrorism exception).

III. THE COURT'S DECISION

In the noted case, the Seventh Circuit followed the reasoning of the court in *Estate of Doe* and held that § 1605A conferred subject matter jurisdiction over the foreign national family members' claims.⁷⁵ Judge Williams wrote the opinion for the three-judge panel, which ultimately determined that the plain language and legislative history of § 1605A suggested the pass-through approach was still intended to provide an avenue for victims of terrorism to seek justice.⁷⁶ The Seventh Circuit held that by relying on the traditional pass-through approach, the Leibovitch family members were entitled to have their emotional distress claims addressed according to Israeli law because their injuries stemmed from harm caused to S.L., a U.S. citizen relative who was the victim of an act of state-sponsored terrorism.⁷⁷

At the outset of its analysis, the Seventh Circuit noted that the state-sponsored terrorism exception of the FSIA has a complex history and considered the succession of changes made to the exception that impacted the extent of subject matter jurisdiction afforded under the rule today.⁷⁸ The court used this history to engage in a structured analysis of statutory interpretation and congressional intent to determine whether the foreign national family members were entitled to have their claims heard.⁷⁹ The Seventh Circuit also acknowledged that it would be the first appellate court to address this particular issue since Congress replaced § 1605(a)(7) and the Flatow Amendment with the new statute, § 1605A.⁸⁰

A. *Plain Meaning and Structure of § 1605A*

First, the Seventh Circuit looked to the plain language of § 1605A(a)(2)(A)(ii), finding that a court shall now hear a claim in “cases where *either* ‘the claimant *or* the victim was, at the time of the [terrorist] act’ a [U.S.] citizen. The claimant and victim need not *both* be American citizens.”⁸¹ The court noted that the language of § 1605A did not greatly change from that of § 1605(a)(7).⁸² The Seventh Circuit also

75. *Leibovitch v. Islamic Republic of Iran*, 697 F.3d 561, 572 (7th Cir. 2012).

76. *Id.* at 562, 570.

77. *Id.* at 563, 570.

78. *Id.* at 563.

79. *Id.*

80. *Id.* at 569.

81. *Id.* at 570 (emphasis added) (“Denying jurisdiction over family members’ claims for American victims would require us to ignore the disjunctive structure of § 1605A(a)(2)(A)(ii).” (footnote omitted)).

82. Under the original 1996 exception enacted under the AEDPA, a foreign state defendant would be protected by sovereign immunity if “*neither* the claimant *nor* the victim was a

highlighted that it must infer by the unique structure of § 1605A, as a statute that both “confers jurisdiction [and] also includes a private right of action, a remedy not offered under any other exception to sovereign immunity[,]” that Congress intended to keep the questions of subject matter jurisdiction and the private right of action as distinct, requisite inquiries.⁸³

The court reasoned that because Congress knew foreign national family members would not be eligible to seek relief under the federal cause of action, if such claimants could still satisfy requirements of jurisdiction, they should not be de facto prohibited from having their claim heard.⁸⁴ Thus, the Seventh Circuit found that the district court’s refusal to hear a case brought by foreign nationals for injury caused to an American family member during a terrorist act ignored the plain language and grammatical structure of the statute, and in effect, the intent of Congress.⁸⁵

B. Congressional Intent Behind the FSIA State-Sponsored Terrorism Exception

The Seventh Circuit determined Congress’s intent by reviewing a formal report that Congress issued shortly after it first enacted the FSIA terrorism exception.⁸⁶ The report clarified that in addition to the goal of deterrence of state-sponsored terrorism, the statute was intended to provide avenues for foreign national family members to bring claims and possibly recover for injuries caused to American family members who were victims of terrorism.⁸⁷ Moreover, the Seventh Circuit acknowledged that the various legislative changes to the exception resulted from “[a] principal objective [to permit] massive judgments of civil liability against nations that sponsor terrorism” as a deterrence mechanism.⁸⁸ With this goal in mind, the Seventh Circuit determined that by the time Congress established a private right of action against foreign states with the 2008

national of the United States . . . when the act upon which the claim is based occurred.” *Id.* (citation omitted) (internal quotation marks omitted).

83. *Id.* at 570-71.

84. *Id.* at 571.

85. *Id.* at 570 (“If Congress intended a jurisdictional scope coterminous with that of § 1605A(c)’s private right of action for [U.S.] nationals, there would have been no need to include the word ‘victim.’”).

86. *Id.*

87. *Id.* In particular, the clarification was made to “benefit several of the Pan Am 103 families [of victims of the bombing] who could potentially lose their claims.” *Id.* (internal quotation marks omitted).

88. *Id.* at 571.

amendment, it intended to keep the benefits of § 1605A's predecessors.⁸⁹ Thus, the court found that in addition to the plain language of the statute, congressional intent and legislative history further supported the interpretation that § 1605A was meant to confer jurisdiction over the Leibovitch family's claims regarding S.L.'s injuries as an American citizen and the victim of the PIJ attack.⁹⁰

Without delving into the "policy considerations" and "political dilemmas" behind using private civil suits as a deterrence mechanism for state-sponsored terrorism, the Seventh Circuit ultimately held that neither the plain language of the statute nor congressional intent provided "evidence to support the conclusion that Congress intended to foreclose claims by noncitizen family members when it [created the private right of action under § 1605A]."⁹¹ To bolster its conclusion, the Seventh Circuit referred to the decision in *Estate of Doe*, which addressed a similar question.⁹² The Seventh Circuit agreed that regardless of the most recent legislative amendments, the FSIA statute still "operates as a 'pass-through'" for foreign nationals to "pursue claims under applicable state and/or foreign law."⁹³

Specifically, the court found that S.L.'s foreign national family members provided sufficient evidence to meet the elements that established subject matter jurisdiction.⁹⁴ The Israeli family members sought money damages against a foreign state for intentional infliction of emotional distress arising from injuries caused by the PIJ's extrajudicial killing.⁹⁵ Moreover, as the district court originally found, although S.L. was not a fatal victim, she was nevertheless a victim of the extrajudicial killing of N.L., her Israeli sister.⁹⁶ Therefore S.L., an American relative of the claimants, became a victim of an *act* of state-sponsored terrorism.⁹⁷

On a final note, the court "vacate[d] the district court's hypothetical determination" that because Israeli law might not recognize the

89. *Id.* ("[T]he legislative history suggests that § 1605A(c) was intended to extend punitive damages to foreign nations sponsoring terrorism and thereby allow the massive liability judgments the original drafters hoped would deter state support for terrorism.").

90. *Id.*

91. *Id.*

92. *Id.* at 572. In that case, the court held that although § 1605A(c) did not allow the foreign national family members to have their claim heard under the new federal cause of action, they were nevertheless permitted to file claims by way of the pass-through approach. *Id.* (citing *Estate of Doe v. Islamic Republic of Iran*, 808 F. Supp. 2d 1, 20 (D.D.C. 2011)).

93. *Id.* at 570, 572 (internal quotation marks omitted).

94. *Id.* at 572.

95. *Id.* at 562, 572.

96. *Id.* at 572.

97. *Id.*

emotional distress claims, S.L.'s Israeli relatives would not be entitled to relief in any event.⁹⁸ The Seventh Circuit analogized this determination to the historically prohibited advisory opinion, finding "that a court may not presume hypothetical jurisdiction in order to decide a question on the merits."⁹⁹ As such, the Seventh Circuit determined that the Leibovitch family members were entitled to have their claims heard, even though the federal cause of action was not a permissible avenue for recovery; the court then remanded the case for the district court to consider the emotional distress claims under Israeli law.¹⁰⁰

IV. ANALYSIS

In addressing a matter of first impression for the federal courts of appeals, the outcome of the noted case follows the path of congressional intent that seeks to provide justice for victims of state-sponsored terrorism through "massive judgments of civil liability."¹⁰¹ This holding extends to foreign national family members the continued right to seek justice under the pass-through approach of the FSIA on behalf of their American relatives who were victims of an act of state-sponsored terrorism.¹⁰² Thus, the judgment does not greatly diverge from outcomes of prior case law, both under the repealed and amended FSIA statute.¹⁰³

In beginning its analysis, the court heeded the well-settled practice that it must first look to the plain language and ordinary meaning of the

98. *Id.* at 572-73. Rather than dismissing the claims based on a hypothetical determination, the choice of law analysis employed under the traditional pass-through approach would lead the court to apply and assess whether Israeli law permits S.L.'s Israeli family members to recover for the "solatium or grief claims based on injury to a relative." *Id.* at 563, 573 (internal quotation marks omitted).

99. *Id.* at 573 (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998)).

100. *Id.*

101. *Id.* at 571.

102. *Id.* at 569-72 ("[S]everal factors suggest that Congress intended to confer jurisdiction over the Leibovitchs' emotional distress claims. . . . [B]y bringing a claim against Iran under Israeli law, S.L.'s family members would be making traditional use of the FSIA. . . . Rejecting jurisdiction over claims brought by foreign national family members would be at odds with Congress's goal of expanding liability of state sponsors of terrorism. . . . We . . . conclude that the plaintiffs have established subject-matter jurisdiction over their claims for emotional distress arising out of the injuries inflicted upon S.L., a U.S. citizen victim of the terrorist attack." (footnote omitted) (citation omitted)).

103. *See, e.g.,* *Estate of Doe v. Islamic Republic of Iran*, 808 F. Supp. 2d 1 (D.D.C. 2011) (hearing claims from foreign national family members post-NDAA amendment); *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25 (D.D.C. 2007) (hearing claims from foreign national family members of U.S. servicemen killed in an act of state-sponsored terrorism prior to the NDAA amendment); *see also* *Kreindler & Benett*, *supra* note 25, at 20 ("For all its good intentions, the new Section 1605A leaves plaintiffs where they were with the old Section 1605(a)(7) . . .").

statute in its context so as to “respect[] the words of Congress.”¹⁰⁴ After the court considered the two main paths of congressional intent behind the FSIA terrorism exception, it ultimately found the original purpose of the statute’s existence to carry greater weight than the subsequent intent to address the problem of inconsistent recovery under the pass-through approach.¹⁰⁵ Because the plain language of the amended statute failed to repeal the pass-through approach, and the principal objective of the exception was to deter terrorism and provide justice for victims by expanding liability, the Seventh Circuit inferred that Congress did not intend “to narrow the original scope of jurisdiction” that was traditionally available under the original FSIA terrorism exception when it enacted § 1605A.¹⁰⁶ Given that the Israeli family members witnessed the extrajudicial killing and experienced the act of state-sponsored terrorism alongside their American relative, the court’s decision to grant them an opportunity to have their claim heard seems to be a particularly reasonable outcome.¹⁰⁷

However, by determining that Congress did not intend to repeal the pass-through approach under § 1605A, the Seventh Circuit dismissed Congress’s subsequent intention to develop a more uniform system of recovery under the FSIA exception with respect to damages for claimants and victims.¹⁰⁸ If § 1605A is to ever effectively fulfill its purpose of providing justice to U.S. victims of state-sponsored terrorism and their surviving family members of either U.S. or foreign descent, Congress’s recent intention to improve recovery and enforcement must be addressed as a counterpart to the original drafters’ intentions.¹⁰⁹

Whether or not the Seventh Circuit’s holding will remain uncontested, it is unlikely that the particular issue addressed will be the last of the queries for the FSIA state-sponsored terrorism exception given its convoluted history and its inherently political nature.¹¹⁰ Assuming

104. *Leibovitch*, 697 F.3d at 570 (quoting *Lamie v. U.S. Tr.*, 540 U.S. 526, 536 (2004) (internal quotation marks omitted)).

105. *See id.* at 571.

106. *Id.*; *see also supra* text accompanying note 35 (discussing the original use of the pass-through approach).

107. *Leibovitch*, 697 F.3d at 562, 572.

108. *See id.* at 570.

109. *See Strauss, supra* note 18, at 336.

110. *See In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 80-82, 121 (D.D.C. 2009).

[T]he FSIA is a far-reaching, retrospective law—the statute reaches conduct by foreign powers that long predates its enactment and it directly addresses sensitive matters of foreign relations, which . . . are inherently subject to ‘current political realities and relationships’ . . .

arguing that Congress agrees with the Seventh Circuit's interpretation of § 1605A as a matter of first impression, federal courts could, at a minimum, benefit from an express confirmation from Congress regarding the role of the pass-through approach.¹¹¹ That said, it appears that with each amendment and clarification to the FSIA terrorism exception, Congress falls short of providing any sound clarification for courts to conduct a uniform analysis of law.¹¹²

Since its inception, courts have struggled over the interpretation and application of the statute, and the outcome of the noted case will quite possibly lead to yet another amendment to the FSIA terrorism exception.¹¹³ Because the principal purpose of the FSIA terrorism exception has been to provide justice to victims of state-sponsored terrorism through massive civil liability judgments, even though § 1605A has opened the door for more types of plaintiffs to have their claims heard, no amendment has ensured that plaintiffs can successfully enforce favorable judgments and receive awarded compensation.¹¹⁴ While the NDAA amendment brings plaintiffs closer to recovering damages in some instances, enforcement remains seemingly impossible in many cases.¹¹⁵ This reality appears to render the FSIA terrorism exception

....
 Important questions concerning how best to deal with state sponsors of terrorism will most certainly be a topic of ongoing debate and discussion between the Legislative and Executive Branches for many years to come

....
 ... Thus, § 1083 is just the latest chapter in what has been a longstanding political debate over how best to achieve some measure of justice for these victims.

Id. (footnote omitted) (citation omitted).

111. *See, e.g., supra* text accompanying notes 37-39 (discussing how the lack of an express choice of law provision led to confusion among the courts, inferring that express guidance from Congress would avoid misinterpretations of legislative intent).

112. *See supra* text accompanying notes 39, 41-42, 49, 51, 71 (discussing the judicial uncertainties that arose after each amendment to the FSIA terrorism exception).

113. "The new terrorism exception—§ 1605A—clears away a number of legal obstacles, including adverse court rulings, that have stifled plaintiffs' efforts to obtain relief in civil actions against designated state sponsors of terrorism." *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 40. "Unless these actions are to exist in perpetuity as empty promises—which drain the resources of our courts and undercut the foreign affairs prerogative of the President—then some alternative to the private litigation approach must be found." *Id.* at 120.

114. *See supra* text accompanying notes 63-67 (highlighting advantages for plaintiffs under § 1605A). *But see infra* text accompanying note 115 (highlighting challenges for plaintiffs throughout history of the FSIA terrorism exception).

115. *See In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d at 120 ("The most difficult issues confronting this unique area of the law relate to how plaintiffs in these FSIA terrorism cases might enforce their court judgments against the Islamic Republic of Iran. While this highly charged topic of debate has been the subject of numerous legislative proposals and enactments over the last decade—and is again the subject of many of the most recent reforms implemented by the 2008 NDAA—very little has been achieved. Today, the overwhelming

largely ineffectual in a practical sense and suggests either the need for another overhaul of the statute or else a complete repeal.¹¹⁶

Scholars in the legal community have long criticized the FSIA terrorism exception, arguing that it seeks to address matters through the courts that instead require greater legislative and executive attention.¹¹⁷ Further, the deterrence mechanism of massive civil liability judgments behind the statute has not proven fruitful; it seems that after more than a decade of attempts to improve the FSIA exception, state-sponsored terrorism will not likely be solved through these means alone.¹¹⁸ While the U.S. legal system relies on Supreme Court decisions as the highest authority, it is unlikely that any case brought pursuant to the FSIA terrorism exception will ever reach the Supreme Court. This is due to the frequency of default judgments entered at the district court level, likely a result of the fact that foreign state defendants generally do not acknowledge the U.S. law's implementation of a restrictive sovereign immunity theory.¹¹⁹ As such, opinions addressing questions that arise under § 1605A will therefore likely come from the appellate courts, such as the decision set forth by the Seventh Circuit in the noted case.¹²⁰ Perhaps for the first time an answer from within the court system can create a better sense of stability and clarity for future judgments.

In any case, whether the future of the FSIA terrorism exception changes by legislative, judicial, or even executive means, it is clear that the statute must still be restructured. The noted case is a reminder that

majority of successful FSIA plaintiffs with judgments against Iran still have not received the relief that our courts have determined they are entitled to under the law." (footnote omitted)).

116. *Id.* at 128 ("While this Court will not go so far as to call for an outright repeal of the terrorism exception, . . . substantial reforms in the law are needed with respect to civil actions against Iran [in particular]. [T]his Court has grown increasingly troubled by the fact that no matter how hard they struggle—and struggle they must—it is virtually impossible for the victims in these terrorism cases to collect on the civil judgments . . .").

117. *See id.* at 129-30 & n.53; Danica Curavic, *Compensating Victims of Terrorism or Frustrating Cultural Diplomacy? The Unintended Consequences of the Foreign Sovereign Immunities Act's Terrorism Provisions*, 43 CORNELL INT'L L.J. 381, 385 (2010) ("[I]t is not sound policy to allow victims of terrorism to sue foreign sovereigns at a time when the executive's foreign policy goals include the use of cultural diplomacy as a bridge to connect with countries that may be subject to the exception's waiver of immunity. . . . Congress should repeal the FSIA's terrorism provisions entirely, especially in light of the exception's limited compensatory and deterrence effects.").

118. *See* Strauss, *supra* note 18, at 356 ("In conclusion, it is only through the active role of the UN and other organizations, including the courts worldwide, that the international community can bring to fruition this struggle to reclaim the world from the clutches of terrorism.").

119. *See, e.g.,* ELSEA, *supra* note 12, summary ("The Supreme Court has not directly addressed the FSIA terrorism exception . . ."); *see also supra* text accompanying note 21 (discussing default judgments).

120. *See* Leibovitch v. Islamic Republic of Iran, 697 F.3d 561, 569 (7th Cir. 2012).

many individuals of U.S. and foreign nationality are affected by acts of state-sponsored terrorism, and the issue must continually be developed as the international scene changes in order for victims and their surviving family members to achieve justice.

V. CONCLUSION

Rather than setting new precedent that would completely bar foreign national family members of U.S. citizens from seeking recovery under the FSIA state-sponsored terrorism exception, the Seventh Circuit effectively extended the same rights to these claimants that existed under the original FSIA terrorism exception, albeit in a more limited fashion. The practical effect of this decision means that when plaintiffs are not entitled to bring their claim under the § 1605A federal cause of action, the federal district courts will continue to hear claims under the pass-through approach, conduct choice of law analyses, and assess whether the plaintiffs are entitled to other recovery under applicable state or foreign substantive law.

If the Seventh Circuit's holding remains unchallenged and no future amendments are made to § 1605A, it is likely that claims dependent upon the pass-through approach will continue to fill federal district court dockets, particularly against Iran. Even though plaintiffs will continue to struggle with recovering damages awarded by the court, sometimes a verdict holding a defendant liable can be an equally significant step toward a plaintiff's overall recovery. Thus, the Seventh Circuit's decision is a victory in this regard for foreign national family members of U.S. citizens seeking justice under the FSIA state-sponsored terrorism exception in the future.

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