



## S. 2040, the *Justice Against Sponsors of Terrorism Act (JASTA)*

The *Justice Against Sponsors of Terrorism Act (JASTA)* passed the House under suspension of the Rules by voice vote on September 9, 2016. It passed the Senate by voice vote on May 17, 2016. Last week, President Obama vetoed the legislation.

- JASTA essentially makes two changes to existing federal law:
  - It amends the *Foreign Sovereign Immunities Act (FSIA)* to add an exception to foreign sovereign immunity for acts of international terrorism sponsored by a foreign government that cause physical harm within the United States. (There are currently nine exceptions to foreign sovereign immunity in FSIA.)
  - It amends the *Anti-Terrorism Act (ATA)* to make clear that any person who aids, abets, or conspires with a State Department designated foreign terrorist organization is subject to civil liability for injury to a U.S. person.
- These changes to the FSIA and the ATA close loopholes that currently allow those who provide material support to terrorist organizations to escape liability.
- Under the FSIA, as currently written, a country that sponsors a terrorist attack against the United States could escape liability if all of the support it provided occurred overseas. For example, if the intelligence agency of a foreign government handed a terrorist a bag of cash in London to support an attack on U.S. soil, no liability would attach. However, if the foreign government gave the terrorist a bag of cash in New York City in support of an attack on U.S. soil, the country would be liable. This is because under the FSIA's entire tort rule, the entire tort must occur on U.S. soil for a foreign government to be liable.
- JASTA closes this loophole by creating an exception based on where the damage occurs, rather than looking at where the material support was provided. Thus, under JASTA, if there is an attack on U.S. soil, a foreign government can be held liable in U.S. court for material support it provided in furtherance of the attack.
- This is limited legislation. Because the physical injury must occur on U.S. soil, concerns that JASTA will open up a whole host of lawsuits against friendly foreign governments are misplaced.
- Finally, the amendments JASTA makes to the ATA are merely a clarification aimed at cleaning up a split among the federal circuit courts of appeal as to whether those who aid and abet terrorist organizations are subject to liability. JASTA makes clear that if someone knowingly aids and abets a designated foreign terrorist organization in carrying out a terrorist attack, a U.S. person who is injured as a result may bring a civil suit to recover damages.

