LEGAL LIABILITY ISSUES FOR PORT SECURITY DIRECTORS

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✓ FIRST, THE BAD NEWS

-We Live In America; Anyone Can Get Sued



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< NOW, THE GOOD NEWS

- It Is Relatively Rare for Individual Employees To Be Sued In Tort In Their Personal Capacity
- -But, If You Are sued Personally, The Law Offers Certain Protections



KEY PROTECTIONS FOR INDIVIDUALS SUED IN TORT

-BASIC PRINCIPLE: To The Extent The Port Authority Itself Enjoys Immunity From Tort Suits, An Employee "Derives" Same Immunity Unless His Acts Are Manifestly **Outside The Scope Of Work Or Official** Responsibilities Or Were With Malicious Purpose, In Bad Faith Or In A Wanton Or **Reckless Manner**

– The First Question is: Does Your Particular Port Authority Employer Enjoy Full Immunity, Partial Immunity, No Immunity From Tort?

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 Check Local Listing – statutes, by-laws, caselaw. E.g., Port Authority of NY/NJ; Private Ports (Port of Texas City) – The Second Question is: Even If My Port Authority Employer's Immunity Is "Uncertain," Can I still Avoid Liability If I Get Sued?

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 Using "Belt And Suspenders" Approach, Employee Should Affirmatively Ensure His Employment Contract Contains Some Or All Of The Following Written Clauses

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- Employer's Duty to Defend and Indemnify
- Right to Choose Your Own Individual Legal Counsel

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- Cooperation Clause for Timely Access to Witnesses and Documents
- "Substitution" or Sole Employer Remedy Provision

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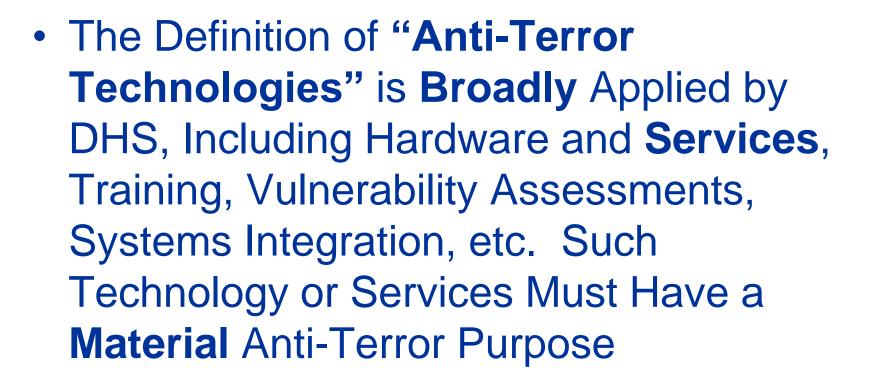
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IN ADDITION, THE SAFETY ACT CAN MITIGATE OR ELIMINATE TORT LIABILITY FOR YOUR EMPLOYER AND YOU FOLLOWING ACTS OF TERRORISM

 As Part of the Homeland Security Act of 2002, U.S. Congress Passed the SAFETY Act The SAFETY Act is Landmark Legislation, Eliminating or Minimizing Tort Liability for Sellers or Providers of Anti-Terror Technology (ATT) Approved By The U.S. Department of Homeland Security (DHS) Should Suits Arise in the U.S. After An Act of Terrorism

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 The SAFETY Act States That Following An Act Of Terror, The Only Appropriate Entity To Sue Is The Holder Of The SAFETY Act Award – That's Good News For Individual Employees

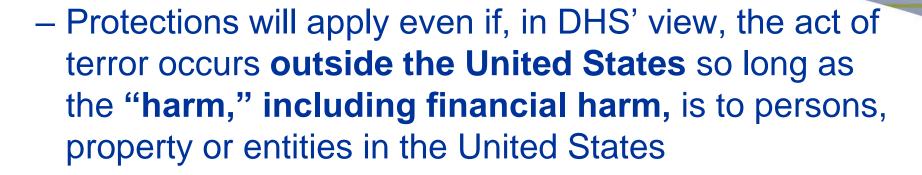
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- CERTIFICATION The Highest Form Of Protection
 - Presumption that seller/provider of ATT is immediately dismissed from the suit unless clear and convincing evidence that seller acted fraudulently or with willful misconduct in submitting data to DHS during application process; no punitives; suit can be filed only in federal court; any liability capped at agreed upon limit, usually your terror insurance coverage limits



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- DESIGNATION Includes All Of The Above Except Presumption Of Immediate Dismissal
- Importantly, these Certification and Designation protections also apply to seller/provider's subs, vendors, distributors and CUSTOMERS, including the U.S. Port Authorities and Foreign Customers, commercial or governmental, deploying SAFETY Act approved technologies



- Coverage usually awarded for 5 years from date of decision. However, DHS has also awarded SAFETY Act protections to apply retroactively to past deployments of substantially equivalent ATT
- To obtain these tort protections, it is CRUCIAL that you demonstrate to DHS the "PROVEN EFFECTIVENESS" of your ATT

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– Major U.S. Homeland Security Procurements are Incorporating the SAFETY Act into Their Terms and Conditions, i.e., ASP; SBI; C&B 3rd Party Validation Pilot Program; Port of LA/Long Beach's Cargo Security RFP; Metropolitan Washington Airports Authority's RFP for the Registered Traveler Program. Even Local **Government** Procurements are Incorporating SAFETY Act into RFP's, e.g., "Crisis **Management**" Contracts for School Districts.

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OBTAINING SAFETY ACT COVERAGE - - THE PORT AUTHORITY MUST APPLY FOR IT!

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 The Board Runs The Cincinnati/Northern Kentucky Airport

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 The Board Obtained Certification Coverage For, Among Other Things:

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- Its security management plan, including physical and electronic security tools and procedures
- Its operations and training procedures for its airport police and rescue and firefighting personnel

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Its operation procedures for its Emergency
 Operations Center

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- Its selection and integration of technical physical and technical security systems and procedures
- Its maintenance procedures for its physical and technical security measures
- Its airport security plans



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 This Significant Award Reflects That DHS Considers The SAFETY Act An Important Tort Risk Mitigation Tool For First Responders Like Airports Even Though They May Already Have Some Level of Sovereign Immunity



EXAMPLES OF OTHER ATT PROVIDERS WHO ALREADY OBTAINED SAFETY ACT COVERAGE IN RELEVANT MARKETS

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- STAY AHEAD OF THE CURVE
- Our Firm Has Obtained SAFETY Act Coverage for More Entities (U.S. and Foreign) Than Anyone in the U.S., Including in the Following Markets

Ports and Borders

- Northrop Grumman's Systems Engineering
 Design and Integration Services Used in
 Inspection and Detection of Cargo
- Washington Group's Cargo Inspection Services
- SAIC's VACIS Cargo Inspection System

<u>Airports</u>

- Siemens' Checked Baggage Inspection System
- The Wackenhut Corporation's Consulting, Risk Management and Physical Security Services
- Verified Identity Pass' Biometrically Secured, Airport Identification and Access System Under the Registered Traveler Program

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Transit Systems

- Michael Stapleton Associates' X-ray
 Screening, Bomb and Hazardous Materials
 Detection System
- Raytheon's Perimeter Intrusion Detection
 System
- Northrop Grumman's Secure Broadband
 Wireless Communications Infrastructure for
 Connecting Devices to Databases and Command
 and Control Structures

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 Obtain SAFETY Act Coverage for Its Anti-Terror Security Planning and Decisionmaking Procedures and Processes, e.g., Port Authority of NY/NJ SAFETY Act Coverage for Tunnel Erosion Protection Project; Kenton County's Coverage for Its Airport Security Systems and Plans Include In RFPs for Anti-Terror Products or Services a Clause Requiring Vendors to Have SAFETY Act Coverage for Such Technologies, e.g., Port of LA/Long Beach Cargo Security RFP; Metropolitan Washington Airports Authority RFP for Registered Traveler Program

 Encourage Its Vendors and Suppliers to Obtain SAFETY Act Coverage for the Anti-Terror Products and Services Sold to the Ports

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CONCLUSION – Employees Of Port Authorities Can Lessen Or **Eliminate Their Tort Exposure** Liability By Proactively Building In **Key Provisions Into Their Employment Agreements And Assisting Their Employer In** Obtaining The Port's Own **SAFETY Act Coverage**



This **"Layered"** Approach Should Dramatically Reduce Or Eliminate Your Individual Exposure As Well As Your Employer's