

## **Supreme Court refuses to hear Toth case thereby permitting the 50% penalty for willful failure to file FBAR to stand**

On January 23, the U.S. Supreme Court in Toth v. United States has denied certiorari in a case where it would have needed to decide if the excessive-fines clause under the Eighth Amendment prevents a 50% penalty for foreign bank account reporting (“FBAR”)

In Toth, there was a penalty of \$2,173,703 (plus late fees and interest) for willfully failing to file an FBAR on her 2007 return. The District Court and then the First Circuit had previously upheld the penalties the government applied under 31 U.S.C. 5321(a)(5)(C) – (D) holding that she did not qualify for constitutional excessive-fine protections.

The IRS had determined that the account information was purposefully not disclosed, prompting the more severe penalty equal to 50% of the account balance. Justice Gorsuch in dissent stating the case “would have been well worth our time.”

Word to the wise - if you hold financial assets out of the country, you should consult with counsel to discuss the requirements for FBAR filing and determine a proper course.