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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEBORAH D. PETERSON, et al.,

Plaintiffs,

No. C 08-80030-MISC JSW

v.

ISLAMIC REPUBLIC OF IRAN, et al.,

Defendants.

**ORDER REJECTING REPORT  
AND RECOMMENDATION ON  
PLAINTIFFS' MOTION FOR AN  
ORDER COMPELLING  
ASSIGNMENT OF RIGHTS  
INVOLVING CMA CGM**

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This matter comes before the Court upon consideration of Magistrate Judge Zimmerman's Report and Recommendation re: Plaintiffs' motion for an order compelling assignment of rights involving CMA CGM. In his Report and Recommendation, Magistrate Judge Zimmerman recommends that this Court grant Plaintiffs' motion for assignment of rights, but limit the assignment in certain respects. Judge Zimmerman recommends that the assignment be limited to property in the United States that was used for commercial activity, that only the Islamic Republic of Iran, the judgment debtor, be required to make the assignment, and that the assignment be limited to existing payment rights. Both Plaintiffs and non-party CMA CGM have filed objections and motions for *de novo* review of the Report. The motions are fully briefed and ripe for decision. The Court finds these motions suitable for disposition without oral argument. *See* Civ. L.R. 7-1(b). Accordingly, the hearing set for December 19, 2008 is VACATED.

1 For the reasons set forth in the remainder of this Order, the Court REJECTS Magistrate  
2 Judge Zimmerman’s Report. CMA CGM raises concerns about Iran’s sovereign immunity. In  
3 his Report, Judge Zimmerman held that any issue of sovereign immunity would be better raised  
4 by Iran than by non-party CMA CGM and thus does not decide this issue. However, the  
5 absence of sovereign immunity is a prerequisite to subject matter jurisdiction. Therefore, the  
6 Court has an obligation to examine this issue, even where Iran has not appeared to assert it. *See*  
7 *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370, 373 (7th Cir. 1985) (“Because the  
8 absence of sovereign immunity is a prerequisite to subject matter jurisdiction, the question of  
9 immunity must be considered by a district court even though the foreign country whose  
10 immunity is at issue has not entered an appearance.); *see also See Verlinden B.V. v. Central*  
11 *Bank of Nigeria*, 461 U.S. 480, 493 n. 20 (1983) (“[E]ven if the foreign state does not enter an  
12 appearance to assert an immunity defense, a District Court still must determine that immunity is  
13 unavailable under the [FSIA].”).

14 The Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330. 1601-11 (“FSIA”) provides  
15 “the sole basis for jurisdiction over foreign sovereigns in the United States.” *Kirschenbaum v.*  
16 *Islamic Republic of Iran*, 572 F. Supp. 2d 200, 209 (D.D.C. 2008) (citing *Argentine Republic v.*  
17 *Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989)). The exceptions to immunity from  
18 execution and attachment of property under the FSIA are contained in sections 1610 and 1611.  
19 *See* 28 U.S.C. §§ 1609-1611; *see also Philippine Export and Foreign Loan Guarantee Corp. v.*  
20 *Chuidian*, 218 Cal. App. 3d 1058, 1094 (1990); *Rubin v. Islamic Republic of Iran*, 2008 WL  
21 192321, \*5 (N.D. Ill. Jan. 18, 2008) (noting that “a plaintiffs ability to obtain a judgment does  
22 not necessarily entail the right to enforce that judgment; in some cases, the FSIA may creat a  
23 right without a remedy”). Pursuant to section 1610, only property located in the United States  
24 of a foreign state and that is or was used for commercial purposes is exempt from sovereign  
25 immunity for attachment or execution. *See* 28 U.S.C. § 1610.<sup>1</sup>

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27 <sup>1</sup> Plaintiffs’ reliance on 28 U.S.C. §§ 1605A and 1610(g)(1) to reach property outside  
28 of the United States is misplaced. Even to the extent Plaintiffs construction of this statute  
were correct, which appears doubtful, these provisions are inapplicable to Plaintiffs’ action.  
The National Defense Authorization Act for the Fiscal Year 2008 (“NDAA”), Pub.L No.

1 Plaintiffs bear the burden to demonstrate the existence of specific property for  
2 attachment and that sovereign immunity as to such property has been waived. *See Autotech*  
3 *Technologies LP v. Integral Research & Development Corp.*, 499 F.3d 737, 749-50 (7th Cir.  
4 2007). As the court in *Auotech* explained:

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6 First is the question whether [the plaintiff] identified any specific property on  
7 which it wished to execute its judgment. The FSIA says that immunity from  
8 execution is waived only for specific “*property*.” As a result, in order to  
9 determine whether immunity from execution or attachment has been waived, the  
10 plaintiff must identify specific property upon which it is trying to act. ... A court  
11 cannot give a party a blank check when a foreign sovereign is involved.... The  
12 only way the court can decide whether it is proper to issue the writ is if it knows  
13 which property is targeted.

14 *Id.* at 750 (internal citation omitted) (emphasis in original); *see also Glencore Grain Rotterdam*  
15 *B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1127 (9th Cir. 2002) (“the *sine qua non* of  
16 basing jurisdiction on a defendant’s assets in the forum is the identification of some asset”); *cf*  
17 *Chuidian*, 218 Cal. App. 3d at 1099 (holding that a court may only compel a debtor to assign  
18 rights under California Code of Civil Procedure 708.510 that a creditor may legally execute  
19 upon in satisfaction of the judgment). Thus, Plaintiffs must demonstrate that specific property  
20 of the judgement debtor that is or was used for commercial purposes exists in the United States.  
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22 110-181, 122 Stat. 3, enacted into law on January 28, 2008, revised the FSIA terrorism  
23 exception to sovereign immunity by repealing section 1605(a)(7) and replacing it with a new  
24 section codified at section 1605A and adding section 1610(g). However, section 1083(c) of  
25 the NDAA provides that amendments to the FSIA made by section 1083 shall apply to any  
26 action that (1) was brought under § 1605(a)(7) before January 28, 2008; (2) relied upon that  
27 provision as creating a cause of action; (3) has been adversely affected on grounds that §  
28 1605(a)(7) fails to create a cause of action against the foreign state; and (4) as of the date of  
enactment (January 28, 2008), is before the courts in any form, including on appeal or  
motion under rule 60(b) of the Federal Rules of Civil Procedure. Judgment was entered on  
September 7, 2007 and, thus, Plaintiffs’ action against Iran was not “before the courts in any  
form” as of January 28, 2008. Therefore section 1605A is inapplicable. *See Blais v. Islamic*  
*Republic of Iran*, 567 F. Supp. 2d 143, 144 (D.D.C. 2008) (finding section 1605A  
inapplicable to case where final judgment had been entered in 2006); *Holland v. Islamic*  
*Republic of Iran*, 545 F. Supp. 2d 120, 121 (D.D.C. 2008) (same).

1 Based on the admissible evidence before the Court, Plaintiffs have failed to meet their burden.<sup>2</sup>  
2 Therefore, the Court finds that it lacks jurisdiction to order the requested assignment.

3 Moreover, even if an exception to sovereign immunity were applicable here, the FSIA  
4 provides that personal jurisdiction over a non-immune sovereign exists only where service has  
5 been accomplished pursuant to section 1608. *See* 28 U.S.C. § 1608; *see also* *Kirschenbaum*,  
6 572 F. Supp. 2d at 209. It is not clear that Plaintiffs have complied with the service  
7 requirements set forth in 28 U.S.C. § 1608. The Court finds that Plaintiffs' apparent failure to  
8 serve pursuant to the statutory requirements provides an independent reason to deny Plaintiffs'  
9 motion for an order compelling assignment of rights involving CMA CGM. The Court  
10 therefore REJECTS the Report and DENIES Plaintiffs' motion for an order compelling  
11 assignment of rights involving CMA CGM.

12 **IT IS SO ORDERED.**

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14 Dated: November 24, 2008

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17 JEFFREY S. WHITE  
18 UNITED STATES DISTRICT JUDGE  
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27 <sup>2</sup> Pursuant to Judge Zimmerman's rulings on the evidentiary objections to the Cook  
28 Declaration, much of Plaintiffs' evidence in support of their motion is inadmissible.  
Moreover, even if the Court were to consider all of Plaintiffs' evidence, Plaintiff has not  
submitted *any* evidence to demonstrate the existence of specific property owned by the  
Islamic Republic of Iran that is or was used for commercial purposes in the United States.