

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. VICTORIA CUMMOCK, in her own right, and as
personal representative of the ESTATE OF JOHN
CUMMOCK, deceased, and CHERRY PEIRCE, in her
own right, and as personal representative of the ESTATE
of PETER PIERCE, deceased, and DANIELLE FODOR,
and TORI KWIATKOWSKI, and JOELLEN
BIRKENKAMP, and all other similarly situated,
Plaintiffs,

-against-

THE SOCIALIST PEOPLE'S LIBYAN ARAB
JAMAHIRIYA, THE LIBYAN EXTERNAL
SECURITY ORGANIZATION, a/k/a JAMAHIRIYA
SECURITY ORGANIZATION, LIBYAN ARAB
ARAB AIRLINES; ABDEL-BASSET ALI AL-MEGRAHI,
a/k/a MR. BASET, a/k/a AHMED KHALIFA
ABDUSAMED, a/k/a ABDEL BASSET A. MOHMED,
a/k/a ABD AL-BASIT AL-MAQRAHI, and LAMEN
KHALIFA FHIMAH, a/k/a AL AMIN KHALIFA
FHIMAH, a/k/a MR. LAMIN

Defendants

*Let it be filed
Judge CKK - V. Kelly
2/1/05*

**DEFENDANT ABDEL
BASSET ALI
AL-MEGRAHI'S
ANSWER TO THIRD
AMENDED COMPLAINT**

1:96CV01029 *CKK*
JURY TRIAL
DEMANDED

Defendant Abdel-Basset Ali Al-Megrahi by his attorneys, Mattioni, Ltd., specially appears and, as and for his Answer to the purported Third Amended Class Action Complaint of Plaintiffs herein, the "Complaint", on information and belief alleges as follows:

- 1-5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1 and 5 of the Complaint.
- 6. Admits the allegation contained in Paragraph 6 of the Complaint.
- 7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint. Otherwise denies.
- 8. Denies knowledge or information sufficient to form a belief as to ownership of LAA.

Otherwise denies.

9. Answering Defendant Al-Megrahi admits that he is a citizen of Libya. Otherwise denies.
10. Admits that the amount in controversy exceeds \$75,000. Otherwise denies.
11. This allegation calls for conclusions of law to which no response is required. Further, it does not pertain to answering defendant.
12. This allegation calls for conclusions of law to which no response is required.

Otherwise denies.

13. Denies that there is jurisdiction over him and that venue is proper.
14. This allegation calls for conclusions of law to which no response is required. Further, it is vague and lacks the requisite specificity and particularity. Further, it does not pertain to Answering Defendant.
15. This allegation calls for conclusions of law to which no response is required. Further, it does not pertain to Answering Defendant.
16. Denies the allegations contained in Paragraph 16 of the Complaint.
17. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-16 above, as if fully set further anew. Denies knowledge or information sufficient to form a belief as the JSO and the allegations made in Paragraph 17 of the Complaint, which call for conclusions of law to which no response is required. Further, Answering Defendant denies any connection with or any complicity in the alleged acts.
18. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-17 above, as if fully set further anew. Denies knowledge or information sufficient to form a belief as to

the ownership of LLA, and its alleged agency or instrumentality of Libya and the other allegations made in Paragraph 18 of the Complaint, which call for conclusions of law to which no response is required. Further, these allegations do not pertain to Answering Defendant. Answering Defendant denies any connection with or any complicity in the alleged acts.

19. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-18 above, as if fully set further anew. Denies the allegations contained in Paragraph 19 of the Complaint.

20-27. The allegations contained in Paragraphs 20-27 are conclusions of law to which no response is required. Defendant further denies that this action should be treated as or permitted to proceed as a class action and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint except admits that Pan Am Flight 103 crashed in or about Lockerbie, Scotland.

30. Admits that the passengers and crew of Pan Am Flight 103 perished as well as other persons who were in or around Lockerbie, otherwise denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 30 of the Complaint.

31. Admits that indictment was brought, otherwise denies.

32-33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 32-33 of the Complaint.

34-37. Denies knowledge or information sufficient to form a belief as to the truth of the

allegations contained in Paragraphs 34-37 of the Complaint.

38. Denies knowledge or information sufficient to form a belief as to the ownership of LLA. Otherwise denies.

39. Undersigned counsel does not represent Fhimah and Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations. Otherwise denies.

40. Admits only that Mr. Al-Megrahi was Head of Airline Security for LLA and worked in that capacity for approximately one and one half years ending in the latter part of 1986. Otherwise denies.

41. Undersigned counsel does not represent LLA or JSO and Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations. Otherwise denies.

42. Undersigned counsel does not represent Fhimah and Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 42 of the Complaint. In fact, Fhimah was acquitted. Otherwise denies.

43. Admits only that Mr. Al Megrahi traveled from Libya to Malta on December 7, 1988, stayed at a Holiday Inn, and would have been correctly designated as a flight dispatcher, and that he departed Malta for Zurich on or about December 8, 1988. Otherwise denies.

44. Admits only that Mr. Al-Megrahi traveled from Zurich to Luqa Airport, Malta, and then to Tripoli, on December 17, 1988. As to the remaining allegations, undersigned counsel does not represent Fhimah and Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Complaint. Otherwise

denies.

45. Admits only that in Malta, Air Malta was the handler for LAA and in Tripoli, LAA was the handler for Air Malta. Otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Complaint. Further, the allegations are conclusory in nature, to which no response is due.

46. Admits only that on either December 18 or 19, 1988, Mr. Al-Megrahi and Mr. Fhimah met, and that on December 20, 1988, traveled back to Malta together. Otherwise denies.

47 -49. Denies the allegations contained in Paragraphs 47-52 of the Complaint.

50. Admits that Mr. Al-Megrahi attempted a telephone call to Fhimah from the Holiday Inn in Malta on the morning of December 21, 1988, but that there was no connection because Mr. Fhimah was not at home at the time. Also admits that Mr. Al-Megrahi left Malta that day for Tripoli. Otherwise denies.

51-52. Denies the allegations contained in Paragraphs 51-52 of the Complaint.

53-54. Admits that Pan Am Flight 103 departed Heathrow for New York and crashed in Scotland and the passengers and crew were killed. Otherwise denies.

55. Admits that indictments were filed against Mr. Al-Megrahi and Fhimah, but denies that there is any truth to the allegations brought against Mr. Al-Megrahi.

56-60. Undersigned counsel does not represent Libya and Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 56-60 of the Complaint.

61. Denies that Mr. Al-Megrahi performed or conspired to perform the criminal acts alleged in Paragraph 61 of the Complaint.

AS AND FOR AN ANSWER TO COUNT I: CIVIL CONSPIRACY

62. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-61 above, as if fully set forth anew.

63-64. Answering Defendant denies the allegations in Paragraph 63 which are directed to him, and refers all questions of law to the Court.

65. Paragraph 65 is not an allegation but rather a hypothesis (“If”) and additionally speculates about “others whose identities are unknown at this time.” As such, no response is required. Otherwise denies.

AS AND FOR AN ANSWER TO COUNT II: WRONGFUL DEATH

66. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-65 above, as if fully set forth anew.

67-68. Answering Defendant denies the allegations in Paragraphs 67 and 68 of the Complaint which are directed to him, and refers all questions of law to the Court.

AS AND FOR AN ANSWER COUNT III: BATTERY

69. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-68 a above, as if fully set forth anew.

70-71. Answering Defendant denies the allegations in Paragraphs 70-71 of the Complaint which are directed to him, and refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO COUNT IV: INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS ON VICTIMS**

72. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-71

above, as if fully set forth anew.

73-74. Answering Defendant denies the allegations in Paragraphs 73-74 of the Complaint which are directed to him, and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO COUNT V: INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS ON SURVIVORS

75. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-74 above, as if fully set forth anew.

76-77. Answering Defendant denies the allegations in Paragraphs 76-77 of the Complaint which are directed to him, and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO COUNT VI: LOSS OF CONSORTIUM

78. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-77 above, as if fully set forth anew.

79-80. Answering Defendant denies the allegations in Paragraphs 79-80 of the Complaint which are directed to him, and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO COUNT VII: TORTURE VICTIM PROTECTION ACT

81. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-80 above, as if fully set forth anew.

82. Paragraph 82 of the Complaint is a conclusion of law to which no response is required. Denies.

83-84. Answering Defendant denies the allegations contained in Paragraphs 83-84 which are directed to him, and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO COUNT VIII: ANTITERRORISM ACT

85. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-84 above, as if fully set forth anew.

86-87. Paragraph 86-87 of the Complaint are conclusions of law to which no response is required. Denies.

88. Answering Defendant denies the allegations contained in Paragraph 88 which are directed to him, and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO COUNT IX: LIBYAN GUARANTY

89. Answering Defendant respectfully incorporates the Answers in Paragraphs 1-88 above, as if fully set forth anew.

90. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 90 of the Complaint.

AS FOR A FIRST AFFIRMATIVE DEFENSE

91. There is a lack of jurisdiction over the person of Answering Defendant Al-Megrahi.

SECOND AFFIRMATIVE DEFENSE

92. Process is insufficient.

THIRD AFFIRMATIVE DEFENSE

93. Service of process is insufficient.

FOURTH AFFIRMATIVE DEFENSE

94. Venue is improper.

FIFTH AFFIRMATIVE DEFENSE

95. Forum non conveniens.

SIXTH AFFIRMATIVE DEFENSE

96. The Complaint fails to state a claim upon which relief can be granted.

SEVENTH AFFIRMATIVE DEFENSE

97. Indispensable parties have not been joined.

EIGHTH AFFIRMATIVE DEFENSE

98. There is lack of subject matter jurisdiction.

TENTH AFFIRMATIVE DEFENSE

99. The Complaint is barred by the relevant statute of limitations and/or laches.

ELEVENTH AFFIRMATIVE DEFENSE

100. There has been improper joinder of plaintiffs.

TWELFTH AFFIRMATIVE DEFENSE

101. The plaintiffs lack capacity to sue and/or are not authorized to sue in a representative capacity.

THIRTEENTH AFFIRMATIVE DEFENSE

102. The allegations of the Complaint have not been pled with the requisite particularity.

FOURTEENTH AFFIRMATIVE DEFENSE

103. Items of special damage have not been specifically stated.

FIFTEENTH AFFIRMATIVE DEFENSE

104. Plaintiffs and each of them lack standing to bring this action.

SIXTEENTH AFFIRMATIVE DEFENSE

105. 28 U.S. C. 1350 provides no jurisdiction for suits against Defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

106. The Complaint fails to state a claim for relief against Defendant under international

law or any of the international agreements set forth in the Complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

107. The Complaint fails to state a claim for relief against Defendant for intentional infliction of emotional distress of the deceased.

NINETEENTH AFFIRMATIVE DEFENSE

108. The Complaint fails to state a claim against Defendant for intentional infliction of emotional distress of the survivors

TWENTIETH AFFIRMATIVE DEFENSE

109. Plaintiffs recovery of any compensatory damages must be reduced by prior recoveries.

TWENTY-FIRST AFFIRMATIVE DEFENSE

110. The Complaint fails to state a claim under 28 U.S. C. 1331 and/or 332.

TWENTY-SECOND AFFIRMATIVE DEFENSE

111. The Complaint fails to state a claim under 18 U.S. C. 2331 and 2333.

TWENTY-THIRD AFFIRMATIVE DEFENSE

112. The Complaint fails to state a claim for relief for the alleged violation of the Torture Victims Protection Act.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

113. The Complaint fails to state a claim under the doctrine of vicarious liability and/or for Civil Conspiracy.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

114. All the Defendants including Mr. Al-Megrahi are sovereignly immune.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

115. Service has not been properly made pursuant to the Foreign Sovereign Immunities Act, and relevant treaties, accords and Conventions.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

116. The alleged Co-Conspirator Lamén Khalifa Fhimah was Acquitted.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

117. The deaths, injuries and losses suffered by the Plaintiff as alleged were not due to or caused by any fault on the part of the Answering Defendant.

TWENTY-NINTH AFFIRMATIVE DEFENSE

118. The accident upon which Plaintiffs' cause of action is based is solely the result of acts, or the failure to act, of persons over which Answering Defendant had no supervision, direction or control.

THIRTIETH AFFIRMATIVE DEFENSE

119. Plaintiff's claims are barred by the doctrine of *res judicata* and/or collateral estoppel.

THIRTY-FIRST AFFIRMATIVE DEFENSE

120. The Complaint is defective as it is neither a short and plain statement of the claims nor simple, concise and direct, as mandated by the Federal Rules of Civil Procedure, seeks to raise inflammatory matter, pleads evidence and, because of its form, is virtually impossible to answer.

THIRTY-SECOND AFFIRMATIVE DEFENSE

121. If the incident alleged in the Complaint and the damages, if any, alleged to have been sustained by the plaintiffs resulting therefrom were caused, in whole or in part, by the culpable conduct of the Answering Defendants, which is expressly denied, then any damages which the plaintiffs may have sustained are to be reduced by any awards, settlements, judgments or other payments the plaintiffs have received.

THIRTY-THIRD AFFIRMATIVE DEFENSE

122. The 1996 amendments to the Foreign Sovereign Immunities Act are constitutionally deficient and without force and effect.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

123. The proposed class is not so numerous that joinder of all members is impracticable.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

124. The questions of law or fact particular to the class members predominate over those questions of law or fact common to the proposed class.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

125. The claims of the representative parties are not typical of the claims of the proposed class, particularly as to the damages.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

126. The representative parties will not fairly and adequately protect the interests of the proposed class.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

127. The prosecution of the separate actions by the individual members of the proposed

class, will not result in inconsistent or varying adjudications.

THIRTY-NINTH AFFIRMATIVE DEFENSE

128. The prosecution of separate actions by the individual members of the proposed class will not create a risk of adjudications that as a practical matter would be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

FORTIETH AFFIRMATIVE DEFENSE

129. A class action is not superior to other available methods for the fair and efficient adjudication of the controversy.

FORTY-FIRST AFFIRMATIVE DEFENSE

130. The interest of members of the class in individually controlling the prosecution of their actions will not be served by a class action.

FORTY-SECOND AFFIRMATIVE DEFENSE

131. Litigation concerning the controversy has already been commenced by members of the putative class and significantly advanced.

FORTY-THIRD AFFIRMATIVE DEFENSE

132. It is not desirable to concentrate the foreign claims and the domestic claims of domiciliaries of nearly the Fifty States in one forum.

FORTY-FOURTH AFFIRMATIVE DEFENSE

133. Significant difficulties are likely to be encountered in management of the class


action.

WHEREFORE, Answering Defendant Al-Megrahi respectfully requests that the proposed class action not be certified, that Plaintiffs' claims be dismissed, and that judgment be entered in his favor with attorney fees and costs. It is specifically denied that Plaintiffs are entitled to any damages, compensatory, punitive, treble or otherwise, as well as any equitable relief.

Respectfully submitted,

MATTIONI, LTD.

January 27, 2005

BY: 

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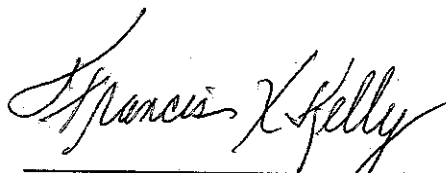
CERTIFICATE OF SERVICE

I, FRANCIS KELLY, Esquire, hereby certify that true and correct copy of the Answer to Third Amended Complaint were Delivered on January 27, 2005, on the following attorneys:

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FRANCIS X. KELLY, ESQUIRE (FXK #24618)