

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; CHRISTOPHER JOHN)
CUMMOCK; MATTHEW DAVID)
CUMMOCK; and ASHLEY)
MICHELLE CUMMOCK,)

Plaintiffs,)

v.)

Case No. 96-CV-1029 (CKK)

THE SOCIALIST PEOPLE'S LIBYAN)
ARAB JAMAHIRIYA; LIBYAN)
EXTERNAL SECURITY)
ORGANIZATION, a/k/a JAMAHIRIYA)
SECURITY ORGANIZATION; LIBYAN)
ARAB AIRLINES; ABDEL-BASSET)
ALI AL-MEGRAHI, a/k/a MR. BASET,)
a/k/a AHMED KHALIFA ABDUSAMED,)
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.)

FOURTH AMENDED COMPLAINT

M. Victoria Cummock, in her own right, as personal representative of the Estate of her deceased husband, John Cummock, and the children of John and Victoria Cummock, Christopher John Cummock, Matthew David Cummock and Ashley Michelle Cummock, complaint against the Defendants and allege as follows:

PARTIES

1. Plaintiff M. Victoria Cummock ("Cummock") is a citizen of the United States, and resides in the city of Miami, Florida. As described more fully below,

Cummock's husband John Cummock was killed while an airline passenger, in the bombing of Pan Am Flight 103. At the time of his death, John Cummock was a citizen of the United States and a resident of Coral Gables, Florida.

2. Plaintiffs Christopher John Cummock, Matthew David Cummock, and Ashley Michelle Cummock (“the Cummock children”) are citizens of the United States. The Cummock children all reside in Miami, Florida. The Cummock children were minors at the time of their father's death and the initial filing of this complaint, but are now all aged eighteen or above. As described more fully below, the Cummock children’s father John Cummock was killed while an airline passenger, in the bombing of Pan Am Flight 103. At the time of his death, John Cummock was a citizen of the United States and a resident of Coral Gables, Florida.

3. Defendant The Socialist People's Libyan Arab Jamahiriya ("Libya") is a foreign nation located on the Mediterranean coast of North Africa.

4. Defendant Libyan External Security Organization, a/k/a Jamahiriya Security Organization (the "JSO"), is the Libyan intelligence service through which Libya conducted acts of extrajudicial killing, aircraft sabotage and other acts of terrorism, including the acts described herein.

5. Defendant Libyan Arab Airlines ("LAA") is Libya's state-owned airline, which was used by Libya to perpetrate or facilitate the acts of extrajudicial killing, aircraft sabotage and other acts of terrorism described herein.

6. Defendants Abdel Basset Ali Al-Megrahi, a/k/a Abdelbaset Ali Mohamed, a/k/a AbdelBaset Ali Mohamed Al Megrahi, a/k/a Mr. Baset, a/k/a Ahmed Khalifa Abdusamad, and a/k/a Abd al-Basit al-Magrahi ("Al-Megrahi"), and Lamem Kalifa

Fhimah, a/k/a Al Amin Khalifa Fhimah, a/k/a Mr. Lamin ("Fhimah"), are citizens of Libya, and at all relevant times were employees and agents of Libya and the JSO. At all relevant times, Al-Megrahi and Fhimah acted in both their official and personal capacities.

JURISDICTION AND VENUE

In General

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1330(a), 1331, 1332(a)(2) and 1350, and 18 U.S.C. § 2334(b). The amount in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs.

8. Libya, the JSO and LAA are subject to suit in the courts of the United States under and in accordance with the provisions of 28 U.S.C. § 1330(b), 28 U.S.C. §§ 1604, 1605(a)(1), (5) and (7), and Section 589 of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104-208 (Sept. 30, 1996), 28 U.S.C. § 1605, note ("*Flatow* Amendment").

9. Al-Megrahi and Fhimah are subject to suit in the courts of the United States under and in accordance with the provisions of 28 U.S.C. § 2334(b) and 28 U.S.C. § 1350, note.

10. Venue is proper in this district under 28 U.S.C. § 1391 and 18 U.S.C. § 2334(a).

Libya

11. Plaintiffs incorporate herein all preceding paragraphs.

12. Libya has long organized, instigated, assisted and participated in terrorist acts in other States, on the high seas, and in international airspace, and has provided

material aid and assistance in the perpetration of such activities by others, particularly activities directed against the United States and other targets in Western nations. These activities, which have included sabotage of and other attacks on unarmed civilian aircraft, attacks on embassies and diplomatic personnel, piracy on the high seas, and the murder of innocent civilians in a wide variety of settings ranging from nightclubs to synagogues to aircraft, constitute violations of the law of nations and of many international agreements, including but not limited to the following:

- (1) The Universal Declaration of Human Rights, Dec. 10, 1958 G.A. Res 217A (III), U.N. Doc. A/810, at 71 (1948);
- (2) The International Covenant of Political and Civil Rights, art. 6 (right to life), U.N. Doc. A/6316, 999 U.N.T.S. (1992);
- (3) The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, 28 U.S.T. 1975, T.I.A.S. No. 8532 (1977), implemented in 18 U.S.C. § 112;
- (4) The General Assembly Resolutions on Measures to Prevent International Terrorism, G.A. Res. 40/61 (1985) and G.A. Res. 42/159 (1987);
- (5) The Convention on Offenses and Certain Other Acts Committed on Board Aircraft, 20 U.S.T. 2941, T.I.A.S. No. 6768 (1963);
- (6) The Convention on the High Seas, arts. 14-22 (piracy), 13 U.S.T. 2312, T.I.A.S. No. 5200 (1962).

13. Under 28 U.S.C. § 1605(a)(7), foreign states lack sovereign immunity before United States courts when money damages are sought for acts of extrajudicial killing and aircraft sabotage, as in the case of Pan Am Flight 103. Libya was designated by the United States as a state sponsor of terrorism in 1979 under § 6(j) of the Export

Administration Act of 1979, 50 U.S.C. App. § 2405(j), and § 630A of the Foreign Assistance Act of 1961, 22 U.S.C. § 2371, and remained designated as such on December 21, 1988. The destruction of Pan Am Flight 103 constituted aircraft sabotage as that term is defined in Article 1 of the Convention for the Suppression of unlawful Acts Against the Safety of Civil Aviation, and constituted extrajudicial killing within the meaning of the Torture Victim Protection Act of 1991 (“Torture Victim Protection Act”), Pub. L. 102-256 (Mar. 12, 1992), and constituted international terrorism within the meaning of the Antiterrorism Act of 1992 (“Antiterrorism Act”), 18 U.S.C. § 2331 *et seq.*

14. In addition to their direct involvement and participation in the acts of extrajudicial killing and aircraft sabotage alleged herein, Libya the JSO and SAA, through various officials, employees and agents acting within the scope of their office, employment and agency, and in combination and conspiracy with other persons to commit these acts, knowingly provided material support and resources for such acts to these employees, agents and co-conspirators. Among other things, Libya knowingly provided Fhimah, Al-Megrahi and unknown others with money, labor, intelligence information, explosives, equipment and other supplies used to commit the acts that proximately caused the destruction of Pan Am Flight 103.

Jamahiriya Security Organization

15. Plaintiffs incorporate herein all preceding paragraphs.

16. The JSO is an agency or instrumentality of Libya that actively and knowingly participated in the acts of extrajudicial killing and aircraft sabotage alleged herein. The jurisdictional and related principals described above apply to the JSO.

Libyan Arab Airlines

17. Plaintiffs incorporate herein all preceding paragraphs.

18. LAA, a government-owned airline, is an agency or instrumentality of Libya that actively and knowingly participated in the acts of extrajudicial killing and aircraft sabotage alleged herein. The jurisdictional and related principles described above apply to LAA.

Abdel Basset Ali Al-Megrahi and Lamén Khalifa Fhimah

19. Plaintiffs incorporate herein all preceding paragraphs.

20. Al-Megrahi and Fhimah actively and knowingly participated in the acts of extrajudicial killing and aircraft sabotage alleged herein. This Court has jurisdiction over the tortious and otherwise wrongful acts committed by Al-Megrahi and Fhimah that resulted in the destruction of Pan Am Flight 103 and in injury and loss to plaintiff. This jurisdiction applies whether Al-Megrahi and Fhimah are found to be acting in their capacity as agents of Libya, in their individual capacities, or both.

21. Al-Megrahi and Fhimah were agents and officials of the Libyan government. They knowingly participated in the acts of extrajudicial killing and aircraft sabotage alleged herein at the behest of Libya. They are subject to jurisdiction and liability in both their official and personal capacities in that such an act of extrajudicial killing, murder and aircraft sabotage cannot be defended on the basis that an employer or sovereign entity ordering such an act can absolve the individual participant of liability in their personal capacity.

FACTS OF THE CASE

Summary of the Case

22. Plaintiffs incorporate herein all preceding paragraphs.

23. On or about December 21, 1988, John Cummock was a passenger on board Pan Am Flight 103, an aircraft with United States registration having a scheduled departure from Heathrow Airport, London, England and destined for arrival in the United States at John F. Kennedy International Airport, New York.

24. At or about 1903 hours, Greenwich Mean Time, an explosion occurred in the forward baggage compartment of Pan Am Flight 103 causing the aircraft to decompress, explode and crash to the ground below in the area of Lockerbie, Scotland.

25. Two hundred forty-three passengers, including John Cummock, 16 crew members and 11 residents of Lockerbie, perished as a result of the deliberate bombing of Pan Am Flight 103.

26. On or about November 14, 1991, the United States of America and the United Kingdom simultaneously and in conjunction with each other filed criminal indictments against Al-Megrahi and Fhimah in their capacity as Libyan agents, charging them with planning and implementing the deliberate destruction of Pan Am Flight 103 and the deaths of 270 persons, of which 189 were Americans.

27. Libya has continually failed to assist with the resolution of the issues surrounding the deliberate destruction of Pan Am Flight 103 despite international mandates to do so, all of which have been ignored. The Libyan government has, however, guaranteed payment of any judgments entered against Al-Megrahi and/or Fhimah.

28. The governments of the United States and of the United Kingdom have concluded and affirmed that Libya bears full responsibility, through its own acts and those of its instrumentalities and agents, for the deliberate destruction of Pan Am Flight

103 and, therefore, for the death of John Cummock, upon whose behalf Cummock and the Cummock children bring this action.

Specific Facts

29. Plaintiffs incorporate herein all preceding paragraphs.

30. In or about 1984 or 1985, Said Rashid Kisha ("Said Rashid") was the JSO's Assistant Manager of the Technical Administration. The Technical Administration's responsibilities included assisting other Libyan agencies and instrumentalities in developing technical equipment and providing support to terrorist operations within and outside the territory of Libya.

31. In 1985, Said Rashid asked Edwin Bollier, of the Swiss firm of Meister et Bollier ("MEBO"), to develop specialized timers for use in explosive devices to be utilized by the Libyan government. MEBO is a company located in Zurich, Switzerland, and MEBO maintained a close relationship with the Libyan intelligence and military establishment as both a manufacturer and supplier of technical equipment. At the request of the Libyan government, 20 prototype digital electronic timers, Model MST-13, which are capable of causing the detonation of an explosive device, were manufactured by MEBO.

32. The MST-13 timers were delivered to a Libyan governmental official, Izzel Din Al Hinshiri, who at one time or another held the following positions within Libya's government: Minister of Transportation, Minister of Justice, Secretary General to the People's Committee for Justice, and Director and Assistant Director of the Central Security Administration of the JSO.

33. At various times during 1988, the JSO issued Semtex explosives containing the substances RDX and PETN, electric blasting caps and detonators and MST-13 digital timers to JSO operatives who engaged in covert terrorist operations outside of Libya.

34. LAA is the national state-owned airline of Libya and was utilized by the JSO to perpetrate and facilitate acts of terrorism and repression. According to the United States Department of State up to 30% of LAA's employees were intelligence agents of Libya and the JSO. LAA's management knew or should have known that LAA aircraft were being utilized for activities that violated Libya's domestic laws, the laws of the United States and the law of nations. LAA conducted air service between Tripoli, Libya and Luqa Airport, Malta, and elsewhere in 1988, and other relevant periods.

35. Fhimah was utilized by Libya and the JSO in various cover positions including Station Manager and representative for LAA at Luqa Airport, Malta.

36. Al-Megrahi was utilized by Libya and the JSO in various positions including Chief of the Airline Security Section, Operations Division, and as such was familiar with international airline security procedures. During the approximate two-year period of 1985-87, Al-Megrahi was Chief of the Airline Security Section, and Said Rashid was Director of Operations Administration.

37. In or around 1987, Al-Megrahi became the Director of the Center for Strategic Studies, a unit that served the JSO and Libya's Department of Military Procurement, and was involved in such activities as procuring chemical weapons precursors, aircraft and aircraft components for the Libyan military, and setting up travel

agencies and other front companies to facilitate the travel and movement of goods and personnel for intelligence purposes.

38. The Airline Security Section was responsible for providing physical security for LAA's aircraft and passengers on domestic and international flights. The Section oversaw the covert placement and intelligence operations of the JSO's operatives as employees of LAA in various countries, including the Republic of Malta.

39. In or about the Summer of 1988, Fhimah stored a quantity of plastic explosives provided to him by the JSO in his office at LAA's station at Luqa Airport, Malta.

40. On or about December 7, 1988, Al-Megrahi traveled on LAA from Libya to Malta and registered at the Holiday Inn, Sliema, Malta under the name "Abdel Basset A. Mohamed," stating he was a "Flight Dispatcher" [sic] for LAA. Later that day Al-Megrahi purchased items of clothing from Mary's House, a retail store located approximately 300 yards from the Holiday Inn. Al-Megrahi departed Malta for Zurich, Switzerland, on or about December 9, 1988.

41. On or about December 15, 1988, Fhimah noted in his diary that "Abdel Bassett is coming from Zurich with Salvu," and that he was to "take taggs [sic] from Air Malta." An additional entry in the diary indicated "bring the tags from the Airport (Abdel Basset-Abdul Salem)." On or about December 17, 1988, Al-Megrahi did travel from Zurich, Switzerland to Luqa Airport, Malta, after which he continued to Tripoli, Libya.

42. Air Malta is the national airline of the Republic of Malta, and was the handling agent for LAA's flights to and from Luqa Airport, and as such utilized Air Malta baggage tags on baggage destined for LAA flights were assisted by representatives of

LAA. Fhimah, as the Station Manager for LAA, had access to Air Malta baggage tags and all facilities used to board passengers and baggage.

43. On or about December 18, 1988, Fhimah traveled from Malta to Libya for a meeting with Al-Megrahi. Fhimah returned to Malta on or about December 20, 1988, with Al-Megrahi, who utilized the false identity of "Ahmed Khalifa Abdusamad." The two men brought a large, brown Samsonite suitcase to Malta with them.

44. During the month of December 1988, Fhimah and Al-Megrahi, as officers and operatives of the JSO, utilized the resources and facilities provided by Libya and LAA to carry out plans to destroy an American aircraft -- Pan Am Flight 103 -- by means of an explosive device.

45. Fhimah and Al-Megrahi, with unknown others, constructed an improvised explosive device consisting of plastic explosives containing the substances RDX and PETN, which had been purchased by Libya and provided to them by the JSO, and an MST-13 prototype digital electronic timer, which had been specially manufactured for and purchased by Libya.

46. This explosive device was placed and purposely concealed inside a portable Toshiba radio cassette layer which was then packed inside the large, brown Samsonite suitcase brought to Malta by Fhimah and Al-Megrahi. The items of clothing purchased by Al-Megrahi at Mary's House were placed in the suitcase to give the appearance of a normal travel bag.

47. On or about December 21, 1988, at approximately 7:11 a.m., Central European Time, Al-Megrahi placed a telephone call from the Holiday Inn in Malta to Fhimah. Between 8:15 a.m. and 9:15 a.m. the Defendants caused the suitcase to be

introduced as part of the interline baggage onto Air Malta Flight KM-180 destined for Frankfurt, Germany. Air Malta operated flights in and out of Tripola, Libya, and LAA routinely used Air Malta interline tags to route bags on to other airlines. The placing of the unaccompanied bag onto the aircraft was the result of Fhimah and Al-Megrahi's knowledge and access gained as a result of their relationship with LAA and the JSO. This relationship allowed them to deliberately circumvent and evade Maltese customs and airline security at Luqa Airport and elsewhere. Al-Megrahi left Malta later that day under an assumed name on LAA Flight LN-147 destined for Tripoli, Libya.

48. LAA's Flight LN-147, on which Al-Megrahi was a passenger, was boarding while Air Malta Flight KM-180 was still open for baggage check-in and, therefore, was easily accessible to Al-Megrahi. Flight KM-180 arrived at Frankfurt Airport at approximately 12:50 p.m., Central European Time. At approximately 4:00 p.m., Pan Am Flight 103A, with connecting service to London's Heathrow Airport and Pan Am Flight 103 departed Frankfurt with the suitcase Fhimah and Al-Megrahi had placed on board Flight KM-180 in Malta.

49. After landing at Heathrow Airport, London, Pan Am Flight 103A's baggage was transferred to Pan Am Flight 103 between 5:40 p.m. and 6:07 p.m., Greenwich Mean Time. The suitcase containing the explosive device and timer was among the baggage transferred to Pan Am Flight 103's forward cargo hold as a result of Al-Megrahi and Fhimah's efforts.

50. At approximately 6:20 p.m., Pan Am Flight 103 departed Heathrow Airport for John F. Kennedy International Airport, New York.

51. At approximately 7:03 p.m., the explosive device in the suitcase placed by Al-Megrahi, Fhimah and unknown others detonated. As a result of the explosion, the aircraft broke apart in Scottish airspace while at an altitude of 31,000 feet and then crashed to the ground.

52. All passengers and crew were killed, including John Cummock. Eleven residents of the Scottish town of Lockerbie also were killed.

53. In or around June 1990, members of the United Kingdom's Royal Armament Research and Development Establishment, who were assisting with the investigation of the bombing of Pan Am Flight 103, discovered a tiny piece of micro-circuitry among the wreckage of Pan Am Flight 103, which was subsequently identified as being part of the explosive device's triggering mechanism. This circuitry was linked to electronic time delay devices taken from suspected Libyan intelligence agents arrested on or about February 19, 1988, at Dakar Airport, Senegal. These individuals were also found to be carrying arms and explosives, including nine kilos of Semtex-H. Ultimately, the piece of recovered micro-circuitry was identified as having been a part of an MST-13 digital electric timer.

54. In or around February 1991, Al-Megrahi was identified by the shopkeeper at Mary's House as the Libyan who purchased the clothing found among the Pan Am Flight 103 wreckage.

55. On or about November 14, 1991, the United States and the United Kingdom simultaneously and in conjunction with each other filed criminal indictments against Al-Megrahi and Fhimah personally and in their capacity as Libyan intelligence

agents, charging them with deliberately planning and carrying out the destruction of Pan Am Flight 103.

56. On or about January 21, 1992, the United Nations Security Council adopted Resolution 731 strongly deploring Libya for not responding to the demands of the United States and United Kingdom to surrender the two suspects, Al-Megrahi and Fhimah, for prosecution, and urging Libya to respond immediately.

57. On or about February 27, 1992, Libyan Secretary of People's Committee for Foreign Liaison and International Cooperation, Ibrahim M. Bishari, delivered a letter to UN Secretary-General Boutros Boutros-Ghali in which Libya guaranteed payment of any civil judgments against Al-Megrahi and Fhimah.

58. On or about March 31, 1992, the United Nations Security Council adopted Resolution 748 mandating compliance by Libya with Resolution 731 and adopting specific economic sanctions in response to Libya's failure to respond to previous demands.

59. On or about November 11, 1993, the United Nations Security Council adopted Resolution 883 extending and further strengthening the international sanctions imposed upon Libya due to its continuing and willful failure to comply with Resolutions 731 and 748.

60. Libya has failed to comply with United Nations Security Council Resolutions 731, 748 and 883 and has perpetuated a pattern of deceit, and has circumvented all serious attempts to resolve Pan Am Flight 103 issues, and has failed to meet its responsibilities under the law.

61. Libya, the JSO, LAA, Al-Megrahi and Fhimah conspired together and acted in concert to commit the sabotage and destruction of Pan Am Flight 103 and the extrajudicial killing of its passengers and crew, as alleged herein. In addition, and on information and belief, the Defendants conspired and acted in concert with others, whose identities presently are unknown, to commit such acts.

62. On April 5, 1999, Libya handed over Al-Megrahi and Fhimah to the Scottish authorities to stand trial for their role in the destruction of Pan Am Flight 103.

63. The trial was held at Camp Zeist in the Netherlands and was prosecuted by the Scottish Lord Advocate before a three-judge panel of the Scottish High Court of Justiciary.

64. On January 31, 2001, the Scottish High Court of Justiciary at Camp Zeist issued its opinion in *Her Majesty's Advocate v. Abdelbaset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah, Prisoners in the Prison of Zeist, Camp Zeist (Kamp van Zeist), The Netherlands*, Case No. 1475/99. The Court applied the criminal standard that “before either [Al-Megrahi or Fhimah] could be convicted we would have to be satisfied beyond reasonable doubt as to his guilt and that evidence from a single source would be insufficient.” Opinion of the Court at para. 83. The Court unanimously found Al-Megrahi guilty of 270 counts of murder. The Court acquitted Fhimah due to “insufficient corroboration for any adverse inference that might be drawn from” certain circumstantial evidence.

65. In the unanimous Opinion of the Court issued on January 31, 2001, the following findings of fact were made:

- (a) “the cause of the disaster was the explosion of an improvised explosive device;”

- (b) “that device was contained within a Toshiba radio cassette player;”
- (c) the Toshiba radio cassette player was contained “in a brown Samsonite suitcase along with various items of clothing;”
- (d) “that clothing had been purchased in Mary’s House, Sliema, Malta;”
- (e) “the initiation of the explosion was triggered by the use of an MST-13 timer;”
- (f) “that the primary suitcase containing the explosive device was dispatched from Malta, passed through Frankfurt and was loaded onto [Pan Am Flight 103] at Heathrow;”
- (g) the purchaser of the clothing at Mary’s House in Malta was a Libyan [Defendant Megrahi];
- (h) “a substantial quantity of [MST-13] timers had been supplied to Libya;
- (i) “the conception, planning and execution of the plot which led to the planting of the explosive device was of Libyan origin;”
- (j) Al-Megrahi “was a member of the JSO, occupying posts of fairly high rank” including head of airline security and military procurement;
- (k) Al-Megrahi’s visit to Malta on December 20, 1988 under the false name of Ahmed Khalifa Abdusamad “was a visit connected with the planting of the device;” and
- (l) Al-Megrahi was associated with one of the principals of MEBO and with “members of the JSO or Libyan military who purchased MST-13 timers.”

66. On March 14, 2002, a five-judge panel of the Appeal Court of the Scottish High Court of Justiciary upheld the trial court’s determination of guilt as to Al-Megrahi.

67. On August 15, 2003, the Chargé D’Affaires of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations issued a letter to the President of the United Nations Security Council stating that Libya “[h]as facilitated the bringing to justice of the two suspects charged with the bombing of Pan Am 103 and accepts responsibility for the actions of its officials.” United Nations Doc. No. S/2003/818.

COUNT I

CIVIL CONSPIRACY

68. Plaintiffs incorporate herein all preceding paragraphs.

69. Defendants Libya, the JSO, LAA, Al-Megrahi, Fhimah and, upon information and belief, others whose identities presently are unknown, did knowingly and willfully conspire and agree to commit the following offenses:

- (a) the deliberate and wrongful death of John Cummock as set forth herein;
- (b) battery upon John Cummock as set forth herein;
- (c) intentional infliction of emotional distress on John Cummock as set forth herein;
- (d) intentional infliction of emotional distress on Cummock and the Cummock children as set forth herein;
- (e) loss of consortium on Cummock as set forth herein;
- (f) violation of the Torture Victims Protection Act as set forth herein;
- (g) violation of the Antiterrorism Act as set forth herein; and
- (h) violation of the *Flatow* Amendment as set forth herein.

70. The objects of this conspiracy were the sabotage and destruction of Pan Am Flight 103, the foreseeable resulting deaths of, among others, John Cummock, the intentional infliction of emotional distress on the survivors of John Cummock, and through the suffering of the survivors, the traumatization of the entire nation. The destruction of the plane, the deaths of the passenger and crew, and the emotional distress of the survivors were proximately caused by this conspiracy.

71. All Defendants were acting pursuant to the actual or apparent authority or color of law of Libya, and are liable for conspiring to commit the aforementioned

offenses. Defendants Megrahi and Fhimah were also acting in their personal capacity by carrying out these criminal acts. All Defendants are liable for conspiring to commit the aforementioned offenses among themselves as well as with others whose identities are unknown at this time.

COUNT II

WRONGFUL DEATH

72. Plaintiffs incorporate herein all preceding paragraphs.

73. Defendants' actions, for which they are jointly and severally liable, caused the deliberate and wrongful death of Cummock's husband and the Cummock children's father John Cummock by causing the willful and premeditated destruction of Pan Am Flight 103 on December 21, 1988.

74. Such acts were wrongful and in violation of the Florida and D.C. wrongful death statutes, the Antiterrorism Act, the Torture Victim Protection Act, the international laws and treaties set forth herein, and applicable state statutes and federal common law.

COUNT III

BATTERY

75. Plaintiffs incorporate herein all preceding paragraphs.

76. The death of John Cummock was proximately caused by a battery inflicted upon John Cummock due to the destruction of Pan Am Flight 103 by the Defendants, for which they are jointly and severally liable.

77. Such act was in violation of the federal statutes set forth herein, the international laws and treaties set forth herein, and applicable state and federal common and statutory law.

COUNT IV

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

78. Plaintiffs incorporate herein all preceding paragraphs.

79. The Defendants, through their extreme and outrageous conduct, for which they are jointly and severally liable, intentionally or, at the least, recklessly, caused John Cummock to suffer extreme pain, suffering and emotional distress prior to his death.

80. Such acts were in violation of the federal statutes set forth herein, the international laws and treaties set forth herein, and applicable state and federal common and statutory law.

COUNT V

**INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS ON SURVIVORS**

81. Plaintiffs incorporate herein all preceding paragraphs.

82. The Defendants, through their extreme and outrageous conduct, for which they are jointly and severally liable, intentionally willfully and wantonly caused Cummock and the Cummock children to suffer extreme emotional distress.

83. Such acts were in violation of the federal statutes set forth herein, the international laws and treaties set forth herein, and applicable state and federal common and statutory law.

COUNT VI

LOSS OF CONSORTIUM

84. Plaintiffs incorporate herein all preceding paragraphs.

85. As a result of the Defendants' willful acts, for which they are jointly and severally liable, Cummock has been deprived of the assistance, society and consortium of her spouse, all of which has been to her great loss and detriment.

86. Such acts were in violation of the federal statutes, the international laws and treaties set forth herein, and applicable state and federal common and statutory law.

COUNT VII

LOSS OF COMPANIONSHIP, SOCIETY AND SERVICES

87. Plaintiffs incorporate herein all preceding paragraphs.

88. As a result of the Defendants' willful acts, for which they are jointly and severally liable, Cummock children have been deprived of the services, assistance, society, comfort, care and companionship of their father, all of which have been to their great loss and detriment.

89. Such acts were in violation of the federal statutes set forth herein, the international laws and treaties set forth herein, and applicable state and federal common and statutory law.

COUNT VIII

TORTURE VICTIM PROTECTION ACT

90. Plaintiffs incorporate herein all preceding paragraphs.

91. The Torture Victim Protection Act provides a cause of action to a decedent's representative, or to any person who may be a claimant in an action for wrongful death, for "extrajudicial killing" perpetrated by any individual acting under the actual or apparent authority or color of law of any foreign nation. The Presidential

Signing Statement notes that this Act was intended to signify America's continuing commitment to advancing respect for and protection of human rights worldwide.

92. Al-Megrahi and Fhimah, acting pursuant to the actual or apparent authority or color of law of Libya, are liable for their actions under the Torture Victims Protection Act.

93. The death of John Cummock and the personal injuries and loss suffered by Cummock and the Cummock children were proximately caused by the willful and deliberate activities of Al-Megrahi and Fhimah.

COUNT IX

ANTITERRORISM ACT

94. Plaintiffs incorporate herein all preceding paragraphs.

95. The Defendants herein engaged in acts of international terrorism; activities that involve violent acts dangerous to human life that are in violation of the criminal law of the United States and appear to be intended to intimidate or coerce a civilian population; to influence policy of a government by intimidation or coercion; or to affect the conduct of a government by assassination.

96. This activity transcends international boundaries in terms of the means by which they are accomplished, the persons they appear to intend to intimidate or coerce, or in terms of the locale in which the perpetrators operate or seek asylum.

97. The Plaintiffs are nationals of the United States injured in their persons, property or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, and sue therefore to recover threefold the damages they sustained and the costs of suit, including attorneys fees.

98. As set forth herein, Defendants, jointly, severally and proximately caused the death and injuries complained of through and by reason of acts of international terrorism, the aiding and abetting international terrorism, conspiring to commit an act of international terror and/or providing material support and sponsorship of international terrorism.

99. As set forth above, Defendants aided, abetted, conspired, or otherwise engaged in or provided material support for an act of international terrorism, and in so doing proximately causing the bombing of Pan Am Flight 103 and the death of John Cummock.

100. As a result of Defendants' acts in furtherance of international terrorism, including but not limited to financial sponsorship, training, travel, logistical or any other material support, Plaintiffs suffered damages as set forth herein.

101. Pursuant to the Antiterrorism Act, 18 U.S.C. §2332 *et. seq.*, the estates, survivors and heirs of the decedents are entitled to recover threefold the damages they have sustained and the cost of suit, including attorneys' fees.

COUNT X

LIBYAN GUARANTY

102. Plaintiffs incorporate herein all preceding paragraphs.

103. Libya, in consideration of greater international respectability and improved relations with the members of the United Nations, has guaranteed payment of any civil judgments entered against Defendants Al-Megrahi and Fhimah, as a result of the conduct and activities alleged herein, and as such, Libya has rendered Cummock and the Cummock children beneficiaries to such guaranty.

COUNT XI

FLATOW AMENDMENT

104. Plaintiffs incorporate herein all preceding paragraphs.

105. Al-Megrahi and Fhimah, as agents of Libya, a designated state-sponsor of terrorism, acting in their official and personal capacities, did engage in extrajudicial killing and aircraft sabotage as set forth in 28 U.S.C. § 1605(a)(7).

106. The death of John Cummock and the personal injuries, solatium, grief and losses suffered by Cummock and the Cummock children were proximately caused by the willful and deliberate activities of Al-Megrahi and Fhimah acting in their personal and official capacities.

WHEREFORE, Plaintiff M. Victoria Cummock, in her own right, on behalf of the estate of John Cummock deceased, and Plaintiffs Christopher John Cummock, Matthew David Cummock, and Ashley Michelle Cummock respectfully request a trial by jury or by this Court, judgment and damages in an amount to be determined at trial (in excess of \$100,000,000.00 per beneficiary) survival damages, compensatory damages, loss of consortium, society and services, treble damages, punitive and solatium damages, attorneys fees, costs, (jointly and severally against all Defendants) and any further relief as the Court may deem just and proper.

Dated: Mount Pleasant, South Carolina
February 4, 2005

MOTLEY RICE LLC

/S/
Ronald L. Motley, Esq. (SC Bar No. 4123)
Mary F. Schiavo, Esq. (DC Bar No. 440175)
Jodi Westbrook Flowers, Esq. (SC Bar No. 66300)

Donald A. Migliori, Esq. (RI Bar No. 4936;
MA Bar No. 567562; MN Bar No. 0245951)
Michael E. Elsner, Esq. (NY Bar No. ME-8337;
VA Bar No. 41424; SC Bar No. 72893)
Elizabeth Smith, Esq. (SC Bar No. 68246)
Justin B. Kaplan, Esq. (TN Bar No. 022145)
John M. Eubanks, Esq. (MD Bar)
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465
Tel: (843) 216-9000