

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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ETHEL HURST, et al.,

Plaintiffs,

-against-

THE SOCIALIST PEOPLE'S LIBYAN ARAB
JAMAHIRIYA, et al,

Defendants.
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02 Civ. 2147 (HHK)

**DECLARATION OF
RICHARD D. EMERY**

RICHARD D. EMERY, an attorney admitted to practice before this Court,
declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and
correct:

1. I am a member of the law firm of Emery Celli Brinckerhoff & Abady LLP,
counsel for plaintiffs. I submit this declaration in response to the Court's April 27, 2009 Order
that Plaintiffs show cause why this case should not be dismissed for lack of subject matter
jurisdiction. [Doc. No. 106]

2. Plaintiffs are the mothers and siblings of individuals who were killed on Pan Am
Flight 103 by a terrorist attack carried out by Libyan agents on December 21, 1988. For more
than twenty years, these family members have been seeking justice and accountability from
Libya and its actors.

3. On October 31, 2002, plaintiffs commenced this lawsuit seeking, among other things, compensation for their extreme emotional distress caused by the murder of their family member. Their case was referred to the Eastern District of New York where it was consolidated with the pending Multi-District Litigation case (“MDL case”).

4. The MDL case settled for \$10 million per estate, but Plaintiffs, who are not estate representatives nor direct beneficiaries of decedents’ estates, were shut out of the settlement and denied any compensation. To date, Plaintiffs have received no compensation for the loss.

5. Following the settlement of the MDL case, this case was remanded to this Court, where Plaintiffs have aggressively litigated their claims against Libya, including, among other things, (1) obtaining a liability finding against defendant Al-Megrahi, *see* Memorandum Order and Opinion, dated February 1, 2007 [Docket No. 43]; (2) successfully defending against Libya’s motion to dismiss Plaintiffs’ claims, *id.*; and (3) taking the *de bene esse* deposition of Mary Diamond, the 80-year old mother of decedent Walter Porter, to preserve her testimony for trial, *see* Minute Order, dated February 22, 2008 (granting leave to take videotaped *de bene esse* depositions).

6. Throughout this case, Plaintiffs – who were denied participation in the MDL case settlement and who are the *only* plaintiffs to have obtained a liability finding against a Libyan actor for the bombing of Pan Am Flight 103 – have sought two things: to hold Libya accountable in a U.S. court and to have their losses honored by an appropriate compensation. Recently congressional action, however, has foreclosed the opportunity to attain these goals.

7. In 2008, Congress passed, and President Bush signed, the Libyan Claims Settlement Act, P.L. 110-301, 122 Stat. 2999 (2008) (the “Act”). The Act grants Libya legal protection from civil liability for terrorism-related claims by retroactively removing Libya from the list of state-sponsors of terrorism and thereby restoring Libya’s sovereign immunity. The Act presumptively terminates this action and Plaintiffs have no defense against the dismissal of their case.

8. The Department of State has since transferred Plaintiffs’ claims to the Foreign Claims Settlement Commission (“FCSC”), where they can apply for compensation. *See* Exhibit A (DOS Referral Letter).

9. Despite judgments entered in federal courts, including this one, *see Pugh v. Socialist People’s Libyan Arab Jamahiriya*, 530 F. Supp. 2d 216 (D.D.C. 2008) (HHK), awarding between \$2.5-\$8 million to plaintiffs with emotional distress claims for the death of children and siblings – like Plaintiffs’ claims here – the Department of State has recommended that the FCSC award only \$200,000 per emotional distress claimant. Ex. A.

10. We believe that this level of compensation is inconsistent with awards on similar claims in federal court, unfair in light of the recovery recommended by the Department of State on wrongful death, physical injury and unlawful detention claims (\$10 million, \$3 million and \$1 million, respectively), and fails to adequately honor Plaintiffs’ significant loss.

11. Plaintiffs are deeply troubled by the extinguishment of their claims based on what appears to be U.S. foreign policy considerations and believe that the U.S. government has undervalued their injury and the significance of their lost opportunity to prove their case in federal court.

12. We hope that this Court will, upon dismissing this case, issue an opinion acknowledging the validity of Plaintiffs' claims and identifying factors that this Court believes are appropriate for consideration when awarding compensation for emotional distress claims arising out of terrorist cases. This information, we believe, is necessary and important to assist the FCSC to evaluating these claims given that its experience is almost uniformly limited to awards related to property damage.

13. I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 5, 2009
New York, New York

EMERY CELLI BRINCKERHOFF
& ABADY LLP

_____/s/_____
Richard D. Emery