

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Certain Underwriters at Lloyds, )  
London, *et al.*, )  
Plaintiffs, )

v. )

Civil Action No. 06-cv-731 (GK)

Great Socialist People's Libyan )  
Arab Jamahiriya, *et al.*, )  
Defendants. )

\_\_\_\_\_ )

Certain Underwriters at Lloyds )  
London, *et al.*, )  
Plaintiffs, )

v. )

Civil Action No. 08-cv-504 (GK)

Socialist People's Libyan Arab )  
Jamahirya, et al. )  
Defendants. )

\_\_\_\_\_ )

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' SUPPLEMENTAL MOTION TO  
DISMISS**

COME NOW the Plaintiffs, and hereby file their opposition to the Libyan Defendants' Supplemental Motion to Dismiss. In support of said Opposition, the Plaintiffs state:

1. On July 31, 2008 Congress passed and on August 4, 2008 the President signed the Libyan Claims Resolution Act ("LCRA"), Pub. L. No. 110-301 (2008). See Exhibit A attached to Defendants' Motion.

2. On August 14, 2008, the United States and Libya entered into a Claims Settlement Agreement. See Exhibit B attached to Libyan Defendants' Motion.

3. The Claims Settlement Agreement encompasses

**all pending suits**...if such claim or suit is against Libya or its agencies or instrumentalities, or against officials, employees or agents thereof (whether such officials, employees or agents are sued in an official and/or personal capacity) ...and such claim or suit is brought by or on behalf of the [United States'] nationals (including natural or juridical persons) or such suit is brought on behalf of others (including natural or juridical persons); and such claim or suit or suit arises from personal injury (whether physical or non-physical, including emotional distress), death, or **property loss** caused by any of the following acts occurring prior to June 30, 2006 (a) an act of torture, extrajudicial killing, aircraft sabotage, hostage taking or detention or other terrorist act, or the provision of material support or resources for such an act.....

Claims Settlement Agreement at Art. I. (emphasis added).

4. On October 31, 2008, the Secretary of State provided the Certification of receipt of funds as required by the Claims Settlement Agreement and Section 5(a)(2) of the LCRA. The President of the United States subsequently signed an Executive Order which espoused and settled Plaintiffs' claims against the Libyan Defendants pursuant to the Claims Settlement Agreement in any pending suit in any court. See Exhibits C and D attached to Defendants' Motion.

5. Specifically, the Executive Order dictates in Section 1 that "[a]ll claims within the terms of Article I of the Claims Settlement Agreement are settled." This includes all claims of United States nationals (Ex D. Executive Order 13,477 at §1(a)) and claims of foreign nationals against the Libyan Defendants within the terms of Article I (Ex. D. Executive Order 13,477 at §1(b))

6. Plaintiffs are the Certain Underwriters of insurers of the EgyptAir jetliner, seeking to recover the amounts they expended to pay the property loss claims to reimburse the value

of the destroyed airplane hull which was damaged in the hijacking of Egypt Air Flt 648, and as the various companies comprising the group of Certain Underwriters, are both U.S. Nationals and foreign nationals, their claims are encompassed by Art. I of the Claims Settlement Agreement.

7. Plaintiffs have not, as of the date of the filing of this Opposition, been provided by the Secretary of State with procedures relating to their pending claims against the Libyan Defendants nor with an alternative forum for the pending claims of each of the Plaintiffs and object to this Court dismissing Plaintiffs' claims against the Libyan Defendants. Plaintiffs particularly object to the dismissal of their claims against the Libyan Defendants prior to the Secretary of State providing the Plaintiffs in these suits who are United States nationals with the required alternative forum and procedures for applying for compensation of their property loss claims against the Libyan Defendants, as required by the Executive Order. See Exhibit D, Sec. 1(a)(iii).
8. Moreover, despite being encompassed in the Claims Settlement Agreement, the Executive Order is deficient in that it does not state that any alternative forum for the foreign-based (non-U.S.) insurers will be provided through which they may pursue their property loss claims against the Libyan Defendants, which creates an issue of deprivation of constitutional due process. (Ex. D., Compare Executive Order 13,477 at §1(a)(iii) and Executive Order 13,477 at §1(b))
9. In addition, the State Department has provided no assurance or commitment that the foreign-based insurers will be able to recover from the funds certified as having been received and to the contrary has indicated to Plaintiffs' counsel that their valid claims will not be paid pursuant to the Claims Settlement Agreement.

10. The Foreign Sovereign Immunity Act, 28 U.S.C. §1605A, does not restrict the class of potential plaintiffs to only United States nationals. It allows a private right of action for the insured property loss that was a foreseeable result of aircraft sabotage, such as the hijacking of Egypt Air Flt. 648. See 28 U.S.C. §1605A(d).
11. The ability of third-party foreign insurers to bring claims pursuant to the FSIA was recently affirmed by the D.C. Circuit in *La Reunion Aerienne v. Socialist People's Libyan Arab Jamahiriya*. 533 F.3d 837 (D.C. Cir. 2008).
12. Thus, any exclusion of the foreign-based insurers from recovery is arbitrary, capricious, unconstitutional and a denial of the due process rights of the Plaintiffs. This is especially true as the State Department has already paid from the funds received \$162 million (\$2 million apiece) to the families of the 81 foreign victims of the Pan Am 103 bombing. By paying the Pan Am 103 foreign victims, but denying compensation to the foreign-based insurers of Egypt Air Flt 648, the State Department is clearly acting arbitrarily and capriciously and is on its face applying arbitrary guidelines for its decision making process.
13. Plaintiffs, accordingly, file this opposition to Libyan Defendants' Motion to Dismiss, as no alternative forum for the adjudication of their claims has been provided. Should no alternative forum be provided, a serious constitutional question on behalf of these Plaintiffs will be raised as to whether the United States may extinguish Plaintiffs cognizable FSIA claims without providing an alternative forum to pursue their rights to recover for the injuries they sustained from the Libyan Defendants. *Dames & Moore v. Regan, Secretary of Treasury*, 453 U.S. 654 (1981).

14. Plaintiffs do not concede that this Court has been divested of jurisdiction as argued by the Libyan Defendants. This Court should request from the Department of State clarification and assurance that the settlement reached is fair, proper and constitutionally permissible, given the valid claims of these Plaintiffs.
15. If this Court should determine that it has been so divested of jurisdiction as to the Plaintiffs' claims against the Libyan Defendants as argued by the Libyan Defendants and grant Libyan Defendants' Motion to Dismiss, and the United States does not provide an alternative forum to adjudicate Plaintiffs' claims, and the Court does not receive assurances that the Plaintiffs' claims will be properly heard in an alternative forum, Plaintiffs do not waive and expressly reserve all their rights to assert any and all claims against the United States and do not waive any rights or claims which they may have against the United States Government or others responsible to the Plaintiffs.

WHEREFORE, for the reasons set forth above, Plaintiffs' are opposed to the dismissal of their claims against the Libyan Defendants, as requested by the Libyan Defendants.

Dated: December 1, 2008

Respectfully Submitted,

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