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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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PATRICK SCOTT BAKER, ET AL Docket No. CA 03-749
 Plaintiff,
 v. Washington, D.C.
 May 7, 2010
 9:30 a.m.

GREAT SOCIALIST PEOPLES OF
LIBYAN ARAB JAMAHIRYA, ET AL
 Defendant.

-----X
JACKIE PFLUG, Docket No. CA 08-505
 Plaintiff,

 v.
GREAT SOCIALIST PEOPLES OF
LIBYAN ARAB JAMAHIRYA, ET AL
 Defendant.

-----X
CERTAIN UNDERWRITERS AT LLOYDS Docket No. CA 06-731
LONDON, ET AL
 Plaintiff,

 v.
GREAT SOCIALIST PEOPLES OF
LIBYAN ARAB JAMAHIRYA, ET AL
 Defendant.

-----X

EVIDENTIARY HEARING
BEFORE THE HONORABLE JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:
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11 Proceedings recorded by mechanical stenography, transcript
 12 produced by computer.

14 *-*-*-*

15 C O N T E N T S

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:30 A.M.; OPEN COURT.)

3 THE DEPUTY CLERK: This is Civil Case 03-749,
4 08-505, 06-731 and 08-504, Patrick Scott Baker, et al, Jackie
5 Pflug, Certain Underwriters at Lloyds London, et al versus
6 Great Socialist Peoples of Libyan Arab Jamahiriya, et al.

7 This is an evidentiary hearing.

8 The attorneys representing the Plaintiff is Richard
9 Heideman, Ed MacAllister, Tracy Kalik, Noel Nudelman and
10 Steven Perles.

11 THE COURT: You may proceed, Counsel.

12 MR. HEIDEMAN: Thank you, Your Honor. Good morning.

13 THE COURT: Good morning.

14 MR. HEIDEMAN: May it please the Court. Yesterday,
15 as the Court well recalls, and I won't belabor this, we
16 introduced and moved into evidence and you admitted into
17 evidence the six affidavits related to the Certain
18 Underwriters. For the convenience and ease of the Court, I
19 will make some brief comments about them, starting with
20 Exhibit 86, which is in evidence.

21 It's an affidavit of Neil R. McGilchrist who studied
22 law and is a barrister in and solicitor in the United Kingdom.
23 He worked for an entity called Beaumont & Son, and from the
24 late -- in his capacity as a solicitor from 1982 until 2005.
25 That's paragraphs 2 and 3 of his affidavit.

1 Accordingly, on November 23rd, 1985, when the Abu
2 Nidal terrorists hijacked the EgyptAir aircraft, which he
3 identifies as Registration No. SU-AYH and Serial No. 211191
4 following its departure from Athens, it indicates that in his
5 affidavit in paragraph 6 that, as his background was in
6 aviation disaster law and he worked on hundreds of aviation
7 damage claims, including, quote, the November 23rd, 1985
8 hijacking of EgyptAir owned Boeing 737-200 ADV passenger
9 airplane with the registration and serial numbers I've already
10 recited, he then states, quote, the EgyptAir aircraft, quoting
11 from paragraph 6, designated SU-AYH landed in Malta and was,
12 quote, damaged beyond repair during an attempt to retake
13 control of the airplane at the Malta airfield.

14 On page 2 of his affidavit, he indicates, in
15 pertinent part, that as he was a solicitor at Beaumont & Son,
16 he was, quote, instructed to advise and assist the M-I-S-R,
17 MISR Insurance Company being the original insurer of the
18 hijacked aircraft, quote, that was owned by EgyptAir, unquote.

19 And in the context of his comment that he was
20 advised -- he was instructed to advise and assist them, that
21 includes MISR's, and again that's all caps, M-I-S-R,
22 reinsurers, and quote, their appointed loss adjustors in
23 connection with the insurance claim for the loss of the
24 aircraft.

25 Paragraph 8, he indicates that, quote, the total

1 loss of the EgyptAir aircraft, unquote, resulted -- I'm
2 paraphrasing -- in him being tasked to assist in the, quote,
3 settlement of the EgyptAir claim under the MISR policy for the
4 loss of the aircraft, end quote. And also, to end, quote,
5 obtaining possession of the remains of the aircraft in Malta
6 for the purposes of salvage disposal, unquote.

7 He indicates, therefore, that he, quote,
8 communicated and negotiated with on behalf of the reinsurers
9 of the aircraft, the London Aviation Insurance Broker, Leslie,
10 L-e-s-l-i-e, and Godwin, G-o-d-w-i-n, that facilitated the
11 reinsurance of the policy, comma, the Government of Malta,
12 comma, the MISR Insurance Company, comma, the original
13 insurance of the aircraft and with all the underwriters,
14 including the, quote, Certain Underwriters who are Plaintiffs
15 in this action to cover their sustained loss, end quote.

16 In paragraph 9 he indicates that he learned that,
17 quote, EgyptAir, the owner of the airplane with registration
18 SU-AYH and Serial No. 211191 had contracted with an Egyptian
19 insurance company, MISR Insurance Company located in Cairo,
20 Egypt which then sought to reinsure its risk by contracting
21 with Certain Insurance Underwriters through the London broker,
22 Leslie & Godwin, period. Leslie & Godwin facilitated this
23 complex transaction by communicating and contracting the
24 reinsurance of MISR with many syndicate underwriters at Lloyds
25 and surrounding insurance companies, period. A number of

1 those -- these underwriters who contracted to reinsure the
2 MISR policy are now the Plaintiffs in this litigation, end
3 quote, from paragraph 9 on page 2.

4 He indicates in paragraph 10 that there was, quote,
5 extensive damage occurred to the plane that the reinsurers
6 declared the airplane a total constructive lost, end quote.

7 At paragraph 11 he indicates that MISR and EgyptAir,
8 quote, agreed to a memorandum of settlement whereby payment
9 was made by MISR Insurance Company to EgyptAir under the
10 aviation policy of 14 million U.S. dollars and released MISR
11 from and against any and all claims arising from the damage to
12 the airplane and clear title to the salvage remains of the
13 airplane vested with MISR, and, quote, and he references
14 Exhibit A which is an attachment and which I won't go into as
15 it speaks for itself.

16 In paragraph 12, he indicates that on July 8, 1986,
17 the owners of the airplane -- of the -- dot, dot, dot, the
18 EgyptAir insurers, dot, dot, dot, signed an agreement with the
19 government of Malta, dot, dot, dot, whereby the, quote,
20 insurers committed to providing a similar airplane for use by
21 the Court convened for the criminal trial of the sole
22 remaining hijacker Omar Ali Rezaq so that the airplane owned
23 by insurers could be released by the Court for salvage sale by
24 the insurers, period. The insurers agreed to pay the
25 government of Malta 10 percent of the gross receipt, or

1 300,000 U.S. dollars, whichever was greater, end quote, and he
2 references Exhibit B, which also speaks for itself.

3 In paragraph 13, he indicates that the salvage
4 amount was \$3,502,033, therefore, quote, \$300,000 was paid to
5 the government of Malta, end quote, and references Exhibit C.

6 In paragraph 14, he references that the costs of the
7 attorneys hired by the reinsurers, being his firm Beaumont &
8 Sons, and, quote, incurred by the underwriters was 36,848.86
9 British pounds as of June 1987, period.

10 He further indicates, quote, in accordance with the
11 documents of insurance that insured the EgyptAir aircraft,
12 recoverable loss includes costs and attorney's fees, end
13 quote. He then expresses the further conclusion, quote, said
14 underwriting insurance documents further permit the, quote,
15 recovery of such additional costs and attorney's fees as may
16 reasonably be awarded by the Court for costs of collection of
17 the loss, interest, costs, and attorney's fees allowed herein,
18 and, quote, and he references Exhibit D.

19 Paragraph 15 he indicates that Aon, A-o-n, is the
20 corporate successor to Leslie & Godwin and there -- dot, dot,
21 dot, and therefore is the, quote, holder of the broker records
22 concerning the contractual arrangements with insurers and
23 reinsurers, end quote. He further indicates that, quote, the
24 underwriters' recoverable loss includes costs expended in the
25 claims survey and adjustment process, including attorneys'

1 fees, end quote.

2 He then states that, quote, recoverable additional
3 costs incurred by the underwriters, therefore, include a
4 charge of 87,036.58 British pounds and references Exhibit E,
5 end quote.

6 He states the conclusion that, quote, the
7 underwriters are further permitted the recovery of such
8 additional costs and attorney fees as may reasonably be
9 awarded by the Court for costs of collection of the loss,
10 interest, costs, and attorneys' fees allowed herein, end
11 quote.

12 In paragraph 16 he references Exhibit F of being the
13 insurance policy, and in paragraph 17 he states his opinions
14 based upon his training, experience, knowledge, skills, and
15 expertise that, A, quote, the Plaintiffs in this action,
16 including but not limited to the Certain Underwriters as
17 named, have incurred an actual loss which their proportion of
18 the January 1986 payout under the policy of \$14 million less
19 the salvage value paid for the aircraft. B, quote, said loss
20 would not have happened except for the hijacking of the
21 aircraft by the Abu Nidal Organization on November 23rd,
22 1985. C, quote, the Plaintiffs are entitled to recover their
23 loss plus interest from date of loss through date of judgment,
24 plus additional attorney fee, slash, costs incurred as a
25 result of the claims process as against the sponsors of the

1 ANO terrorist hijacking of EgyptAir Flight 648, end of quote
2 and end of the opinions from Barrister and Solicitor Neil
3 McGilchrist, which I hope the Court finds helpful. Exhibit 86
4 with the attachments are already in evidence.

5 THE COURT: Thank you.

6 MR. HEIDEMAN: Thank you, Your Honor. Also,
7 similarly, briefly as to Exhibit 85, which are actual original
8 documents, we've put those into evidence yesterday. The Court
9 admitted them, but as to those documents, the affidavit in
10 evidence as Exhibit 85 with attachments is that of Neil
11 Darvill, D-a-r-v-i-l-l, who indicates in paragraph 2 that he
12 started his career in the aviation insurance market in 1977,
13 but in 1982 he joined Leslie & Godwin becoming an associate
14 director four years later, and he apparently continued with
15 them until 1993 in accordance with paragraph 2.

16 Let me therefore comment that during the operative
17 period, Your Honor, of the EgyptAir hijacking, he was with
18 Leslie & Godwin, which is the very company that was referred
19 to in the previous affidavit of Mr. McGilchrist.

20 In paragraph 3, Mr. Darvill indicates that he is
21 now, quote, the claims leader directly responsible for clients
22 in Europe, Middle East, and Africa, unquote.

23 Paragraph 4, that Aon, A-o-n, is the name of the
24 corporation that acquired Leslie & Godwin.

25 Paragraph 5, that he worked at Leslie & Godwin

1 during 1985 and thereafter continuing to be with the company
2 after its acquisition by Aon, and he therefore indicates he
3 is, quote, uniquely placed to discuss the chain of custody of
4 the five documents regarding the Plaintiffs' claims arising
5 from the destruction of the Boeing 737-200 ADV passenger
6 airplane with Registration No. SU-AYH and Serial No. 21191,
7 which I -- end quote, which I state to the Court is the
8 aircraft involved, the EgyptAir aircraft involved.

9 In paragraph 6, he indicates that Leslie & Godwin
10 placed, quote, the reinsurance of MISR as custodian of records
11 for those Certain Underwriters -- Strike my comment.

12 Paragraph 6 indicates that Leslie & Godwin who
13 placed the reinsurance of MISR is, quote, custodian of records
14 for those Certain Underwriters of Lloyds of London, and,
15 quote, and the named insurance companies pertaining to the
16 placement of the reinsurance which includes this airplane, end
17 quote. He comments that all records are held by the broker,
18 that the file contains communications between MISR, the
19 broker, and the underwriters. The broker acts as the
20 intermediary between the client, and the file also includes
21 reports from the adjustors instructed to survey the aircraft.

22 The -- later in the paragraph 6 he indicates, quote,
23 this file also contains agreements as to payment under the
24 policy, if agreed, and for any sale of remaining salvage by
25 the adjuster LAD, end quote.

1 Accordingly, this affidavit of Neil Darvill
2 authenticates the documents relating to the insurance of the
3 aircraft owned by EgyptAir, insured and reinsured, and
4 accordingly, all these documents are now in evidence as
5 Exhibit 85, and I hope that is helpful to the Court.

6 THE COURT: Thank you.

7 MR. HEIDEMAN: Thank you.

8 As to Exhibit 88, it's an affidavit of Robert J.
9 Burge, B-u-r-g-e. It's been moved and admitted into evidence.
10 He indicates that he has, quote, worked in the London aviation
11 insurance market since 1969 as an insurance adjuster and later
12 served in more senior roles, end quote.

13 He indicates that he, quote, in paragraph 5, worked
14 with Lloyds of London for approximately ten years initially as
15 a surveyor, subsequently promoted to senior surveyor working
16 around the world on aircraft losses, reporting back to the
17 London market and negotiating claims and investigating causes
18 on their behalf, end quote.

19 He indicates that he joined London's Aviation
20 Department as Senior Surveyor in 1985, eventually being
21 promoted, as indicated in paragraph 7, to Deputy Principal
22 Surveyor, and then -- Strike that. I said 1985, it should
23 read 1981. 1981.

24 THE COURT: Okay.

25 MR. HEIDEMAN: And then, quote, in 1985 was promoted

1 to the position of Principal Surveyor responsible for the
2 department, reporting to the market and being part of the
3 senior management of the corporation of Lloyds, end quote.

4 On page 2 of his affidavit he indicates in paragraph
5 10 that Lloyds Aviation Department, which is, I share with the
6 Court, the abbreviation L-A-D, Lloyds Aviation Department, LAD
7 referenced in other affidavits.

8 Paragraph 10. Lloyds Aviation Department was
9 appointed by insurers to investigate the claims, and I'm
10 quoting, arising from the hijacking and resulting damage to
11 EgyptAir flight hijacked by Abu Nidal terrorists on
12 November 23rd, 1985, end quote.

13 He indicates that he dispatched a surveyor to Malta
14 to perform a survey of the damage and investigate the
15 circumstances of the loss. He further indicates in paragraph
16 10 that, quote, while on the ground, Egyptian commandos
17 attempted to retake control of the airplane which was
18 destroyed in the process, end quote.

19 He then indicates, quote, the subsequent decision by
20 the reinsurers was then made to declare a, quote, constructive
21 total loss, unquote, of the airplane and the documents created
22 during this course of events.

23 In paragraph 10, he confirms that on
24 November 23rd, 1985, quote, EgyptAir owned a Boeing 737 ADV
25 passenger airplane with the registration and serial number

1 already in evidence, and he references Exhibit A.

2 In the paragraph 12, he indicates that he knows that
3 EgyptAir, quote, the owner of the airplane, dot, dot, dot,
4 contracted with an Egyptian insurance company, MISR Insurance
5 Company located in Cairo, which then sought to reinsure its
6 risk by contracting with several insurance underwriters
7 through the London broker Leslie & Godwin, end quote.

8 He further references Exhibit B, which are documents
9 involving the contract of insurance, and he indicates in
10 paragraph 13 that the insured value of the airplane, being the
11 EgyptAir flight -- EgyptAir which operated Flight 648 was,
12 quote, 14 million U.S. dollars and references Exhibit A.

13 On page 3 of this five-page affidavit, he indicates
14 information about the hijacking that's already in evidence,
15 including a destination -- quote, detonation of the charges
16 and smoke bombs and the subsequent firefight with the
17 terrorists resulted in severe damage and the sufficient
18 destruction of the airplane, end quote. And then states that
19 the Senior Surveyor, quote, found that repairs would be to be
20 costly and recommended the plane be deemed a total
21 constructive loss, end quote. And he references Exhibit A and
22 C to his affidavit.

23 He indicated in paragraph 15 that there was a
24 14-million-dollar reserve considering the airplane was
25 potentially to be deemed, quote, a total constructive loss,

1 end quote, and detailed the salvage potential from the
2 undamaged components of the airplane, referencing Exhibit A
3 and C. He then states that Lloyds Aviation Department was
4 responsible for performing those functions.

5 In paragraph 16, he indicates that Lloyds aviation
6 survey report of December 4, 1985, which is about ten days or
7 so after the hijacking, and that survey report being Exhibit
8 A, he indicates that it shows a insured value of \$14 million
9 and then a reserve figure of \$10,577,000, which, quote,
10 represents the Leslie & Godwin placement of the risk of
11 75.55 percent of the insured value, end quote.

12 And let me depart from the affidavit for a moment
13 and indicate that's exactly -- those are the numbers, the
14 \$14 million, and the percentage, 75.55 percent, about which
15 Dr. Markham testified yesterday.

16 In paragraph 17, that Leslie & Godwin, quote,
17 requested funds to cover their proportion of the loss.

18 Page 4, Item 18, he indicates that the memorandum,
19 quote, Memorandum of Settlement created as an agreement
20 between the parties states that upon payment by MISR Insurance
21 Company to EgyptAir of the \$14 million, EgyptAir agreed to
22 release the MISR from and against any and all claims, dot,
23 dot, dot, referencing Exhibit E.

24 Accordingly, he states definitively, quote, MISR
25 Insurance Company and its reinsurers and underwriters incurred

1 an actual 14-million-dollar U.S. dollar financial loss as a
2 result of the destruction of the airplane, less the salvage
3 value indicated below, end quote.

4 Paragraph 19, he states about the salvage value,
5 that it was sold, the airplane was sold on April 28, 1987 by
6 Lloyds Aviation Department initially for the sum of, quote,
7 \$33,000,502 -- Strike that.

8 3,502,033 U.S. dollars to Air, slash, Ground
9 Equipment Sales in West Baylon, B-a-y-l-o-n, in New York, and
10 that the figure he indicates was subsequently, quote, reduced
11 with the market agreement to reflect missing avionics from the
12 cockpit and a refund of 45,000 U.S. dollars was made.

13 He then states definitively, quote, the net salvage
14 figure therefore achieved was, U.S. dollars, \$3,457,033, end
15 quote. He then references the Malta agreement through
16 Beaumont & Son already in evidence of \$300,000 paid, quote, by
17 insurers to the Maltese government to reflect their costs
18 incurred as a result of this incident, end quote.

19 And he indicates in conclusion in paragraph 19,
20 quote, the net return, therefore, allowing for refund on the
21 initial salvage offer and the 300,000-dollar payment to
22 Malta -- payment, dot, dot, dot, to Malta, dot, dot, dot, then
23 reduced, paren, the salvage, close paren, to, quote,
24 \$3,157,033, end quote, and he references Exhibit F.

25 He therefore states in paragraph 20 that according

1 to his expertise and experience in the industry, it is his
2 actual opinion, based upon knowledge of the facts and review
3 of the documents, that the reinsurers on the relevant policy
4 for the hijacked and destroyed airplane, quote, incurred a
5 loss of 10,842,967 U.S. dollars which is calculated at
6 \$14 million as the payout less the net salvage value of
7 \$3,157,033, end quote.

8 He states in paragraph 21 that the costs incurred by
9 the underwriters for his work were, British pounds, 87,036.58,
10 and in paragraph 22, the costs incurred by the underwriters
11 for Beaumont & Sons, the attorneys, were British pounds,
12 \$36,848.86 as of June 1987. And departing from that I'll --
13 end quote.

14 And departing from that affidavit, I'll state to the
15 Court that I believe that those are the numbers that conform
16 to other affidavits and to the testimony yesterday of
17 Dr. Markham.

18 He states on page -- the last page of his affidavit,
19 his opinions in paragraph 23 as follows, based upon his,
20 quote, experience, knowledge and skills, that, A, the
21 Plaintiffs in this action being the Certain Underwriters as
22 named have incurred an actual loss of 10,842,967 U.S. dollars;
23 B, said loss is a direct proximate result of the terrorist
24 attack by the Abu Nidal Organization, to wit, the tragedy of
25 EgyptAir Flight 648 on the 23rd day of November, 1985.

1 Continuing to, quote, C, the Plaintiffs are entitled
2 to recover their loss plus interest from date of loss through
3 date of judgment and for date of judgment through collection
4 at the legal rate as against the sponsors of the ANO terrorist
5 hijacking of EgyptAir Flight 648, end quote.

6 And that completes the affidavit already in evidence
7 with attachments that I won't comment on as they're available
8 to the Court and speak for themselves being Exhibit 88.

9 Next, Your Honor, is an affidavit at Exhibit 87
10 already in evidence which is from Pascal, P-a-s-c-a-l, Onfray,
11 O-n-f-r-a-y, from La Reunion where he states that he is -- in
12 paragraph 1, quote, the head of the claims department at La
13 Reunion Aerieenne. And I'll spell that for the court reporter.
14 L-a, space, R-e-u-n-i-o-n, space, A-e-r-i-e-n-n-e, and the
15 "L," the "R," and the "A" are each capitalized letters in the
16 name -- a French corporation which operates as an aviation
17 insurance underwriter in France.

18 He states, in paragraph 2, his experience of 33
19 years, and he states at paragraph 3 that in 1985 LRA
20 contracted with MISR Insurance Company of Cairo to underwrite
21 a portion of the risk on the EgyptAir fleet. And he states,
22 quote, that including the B737 SU-AYH, end quote, which I
23 represent to the Court is the code on the tail of this
24 aircraft, I believe.

25 He then states, quote, LRA's percentage of the

1 insurance on MISR's insurance policy was 8.85 percent, and
2 quote, he indicates in paragraph 4 that, quote, when
3 syndicates of reinsurers paid EgyptAir for the total
4 constructive loss of that insured aircraft in 1985, LRA
5 covered 8.5 percent of the payment, end quote.

6 He references the in-house records and IT system at
7 LRA, and in context, not quoting, he indicates that that
8 system was used in the ordinary course and normal course of
9 business to maintain records about their insurance and
10 underwriting activities. And he attaches as an exhibit a
11 photo of the ORACLE software produced, Exhibit A, which is a
12 snapshot that references EgyptAir 1985 MISR Insurance Company
13 with the client name of EgyptAir, and that completes Exhibit
14 87, which is already in evidence.

15 Continuing briefly, Your Honor, to the other two
16 affidavits. They are both from Ian, I-a-n, Durrant,
17 D-u-r-r-a-n-t. I understand that one of the originals may not
18 yet have arrived. I'm incorrect. By the time we put it in
19 evidence yesterday, we had received the second original, which
20 is Exhibit 94, so I'm now going to reference, with the Court's
21 permission, both Exhibit 84 and then Exhibit 94 as they're
22 both affidavits from the same person, Ian Durrant.

23 Starting with Exhibit 84, may it please the Court,
24 Mr. Durrant indicates that he, in paragraph 2, started working
25 as an insurance claims man for a Lloyds broker in the London

1 insurance market in 1978. According to paragraph 3, he has 32
2 years of claims experience working for insurance companies.

3 Paragraph 4, he comments that in London there is on
4 every risk underwritten a, quote, loss leader to whom the
5 following insurance underwriters on risk look for the -- to
6 for guidance and decision making on the handling strategy of
7 the claim.

8 Further, in paragraph 4, he indicates that his,
9 quote, expertise includes determining the nature and extent of
10 the loss and determination of the identity of the parties
11 entitled to recover in accordance with the applicable
12 reinsurance and policy documents, end quote.

13 He indicates in paragraph 5 that he did that -- has
14 done that in various other matters, including the property
15 damage and other claims in the Lockerbie bombing plus other
16 claims.

17 In paragraph 6, he indicates he's presently employed
18 by X, that starts with a capital X, changing, one word,
19 Xchanging Claims Services as the Deputy Chief Adjuster in the
20 Aviation team, dot, dot, dot, and indicates he is, quote, well
21 placed to discuss the Lloyds of London and insurance company
22 markets' complex and unusual daily workings, end quote.

23 Paragraph 7 indicates that in 1985 there were,
24 quote, syndicates employ Underwriters who underwrite risks for
25 the syndicate in this aviation business, end quote.

1 In paragraph 8, that, quote, owners of aircraft in
2 dot, dot, dot, insure their airplanes against loss and damage
3 by contracting directly with Lloyds' syndicates via broker or
4 as in this EgyptAir hull war risk, a reinsurance of the
5 initial local insurance company, the MISR, and, quote, he then
6 describes that there's a reinsurance and placement of the risk
7 procedure with an underwriting procedure in -- further on in
8 paragraph 8.

9 In paragraph 9 he indicates that he has reviewed,
10 quote, Leslie & Godwin's original file on the reinsurance of
11 EgyptAir -- EgyptAir's Boeing 737-200 ADV passenger airplane
12 with Registration No. SU-AYH and Serial No. 211191 and its
13 subsequent hijacking on November 23rd, 1985 by Abu Nidal
14 Organization terrorists and later destruction, end quote.

15 He then confirms the following in this case, quote,
16 EgyptAir, the owner of the airplane with the above
17 registration number and serial number, contracted with an
18 Egyptian insurance company, MISR Insurance Company located in
19 Cairo, Egypt which then sought to reinsure its risk by
20 contracting with several insurance underwriters through the
21 London broker Leslie & Godwin. He then comments on -- end
22 quote.

23 He then comments on the role of Leslie & Godwin and
24 the insurance and reinsurance of the particular aircraft.
25 Further, in that paragraph 6, he indicates that the

1 reinsurer's name in the amended complaint as Plaintiffs in
2 this case are, and then he lists those who are listed there
3 and then states, quote, these reinsurers make up a very large
4 majority of the 75.55 percent of the total risk reinsured by
5 MISR through Leslie & Godwin, referencing .12, and then states
6 the percentage of risk reinsured by Plaintiffs in this case
7 also includes a proportion, paren, 8.5 percent, close paren,
8 ceded, which I comment he's already defined as being reinsured
9 with or to a, quote, French company, unquote, which I
10 represent to the Court is La Reunion and ties to the other
11 affidavits and testimony in this case.

12 He indicates in paragraph 10 that some of the
13 corporate names of the London reinsurers, dot, dot, dot, have
14 changed since 1985, and he states at the bottom of paragraph
15 10, quote, the new corporate identities of the Plaintiffs are
16 accurately reflected above, each of whom are entitled to
17 recover their percentage share of the loss as indicated in the
18 chart below, end quote, referencing point 12.

19 He indicates that some of the Plaintiffs use the
20 terms, quote, formerly known as, unquote, or, quote, f, slash,
21 k, slash, a, unquote, and he comments on the various corporate
22 names of entities, including one of them being Mutual Marine
23 New York which was its name at the time of the incident but
24 apparently is now MMO, slash, New York Marine & General as
25 indicated in paragraph 10.

1 In paragraph 11, he states that from the file I know
2 that insurance policy numbered 1709/85 covered EgyptAir in
3 1985 for loss to its airfleet occurring from, and he quotes,
4 the document paragraph -- a subparagraph (c), quote, any act
5 of one or more persons, whether or not agents of a sovereign
6 power, for political or terrorist purposes and whether the
7 loss or damage resulting therefrom is accidental or
8 intentional, end quote.

9 And he references that this document is the MISR
10 Insurance -- is, quote, the MISR Insurance Company hull war
11 risk policy, dot, dot, dot, originated by London broker Leslie
12 & Godwin, dot, dot, dot.

13 He indicates that the wording of the MISR policy is,
14 quote, therefore familiar to me as commonly used Lloyds
15 Insurance language, end quote, and he references paragraph --
16 attachment B.

17 On the next page, continuing in paragraph 11 of his
18 affidavit, he indicates that, quote, the policy presented here
19 does not just cover the B737 airplane with the above
20 registration number, but, quote, the policy would have covered
21 the entire EgyptAir fleet of aircraft, end quote. He then
22 states, quote, the reinsurance leader in London at the time of
23 the loss, comma, syndicate 824, comma, would have been
24 presented with the schedule of aircraft by the broker Leslie &
25 Godwin to prove coverage for this particular aircraft and its

1 value, 14 million United States dollars.

2 He then references that LAD was, quote, surveyed the
3 damage of the aircraft after learning of the hijacking
4 incident resulting in a report by the surveyor, end quote, and
5 references Exhibit C and then references the agreement with
6 the Malta government as Exhibit D.

7 In paragraph 12, he indicates that the Plaintiff
8 underwriter -- quote, the Plaintiff underwriters in the
9 litigation, with the exception of La Reunion Aerienne,
10 combined to reinsure almost all of the 75.55 portion of the
11 risk, reinsured through Leslie Godwin, end quote. And then he
12 indicates a chart of those percentages listing different
13 syndicates and companies and policies.

14 And on the next page, continuing in paragraph 12, he
15 specifically lists all the entities and then indicates that as
16 to the above list, quote, the amount of the risk this policy
17 represented was 75.55 percent of the original risk carried by
18 MISR, but then reinsured through Leslie & Godwin, end quote.
19 He then states, quote, of this 75.55 percent, comma,
20 70.919 percent was placed with Lloyds' syndicates, dot, dot,
21 dot.

22 In paragraph 12, he references a 9.088 --
23 9.088 percent share of the risk, quote, placed by the separate
24 Lloyds' broker Sedgwick Forbes under a stated policy.

25 On the next page, paragraph 14, he states the,

1 quote, the MISR Insurance Company signed a memorandum of
2 settlement with EgyptAir declaring the Boeing 737 airplane,
3 dot, dot, dot, as insured, dot, dot, dot, and reinsured by,
4 quote, Certain Underwriters via Leslie & Godwin, Limited,
5 London and others, end quote, dot, dot, dot, as a, quote,
6 constructive total loss at Malta on or about November 24,
7 1985, and quote, as a result of the hijacking and subsequent
8 damage on the ground, end quote, referencing Exhibit F.

9 Therefore, he concludes in paragraph 15 that the
10 loss of, quote, \$14 million, U.S. dollars, would have been
11 distributed among the reinsurers in accordance with their
12 percentage of the risk, end quote. And he outlines that both
13 as to stating, quote, the Plaintiffs who carried 75.55 percent
14 of the risk would have paid to EgyptAir 75.55 percent of
15 \$14 million, and La Reunion Aerienne, which reinsured a
16 further 8.5 percent of the risk, would have been obligated to
17 pay 8.5 percent of the \$14 million in the last part of -- end
18 quote.

19 The last part of paragraph 15 he references the
20 salvage value of \$3,502,033 resulting in a, quote, net loss of
21 \$10,467,967 plus the amount paid by Underwriters to the
22 Maltese government, quote, plus interest from date of loss to
23 date of judgment and interest hereon from date of judgment
24 through date of collection, end quote.

25 Paragraph 16, he indicates that the Plaintiffs,

1 being the, quote, Certain Underwriters of Lloyds of London,
2 comma, named insurance companies and La Reunion Aerieenne are
3 entitled to recover their costs incurred incident to said
4 recovery and collection as well as an award of reasonable
5 attorneys' fees incurred -- as to be incurred pursuant to
6 seeking and obtaining a judgment and collection herein, end
7 quote.

8 He further continues, quote, said attorneys' fees,
9 in my expert opinion, are not less than one-third of the
10 amount recovered plus all attorneys' fees and costs incurred
11 incident to collection of any judgment to be awarded by the
12 Court, end quote.

13 In paragraph 18, the last paragraph, he states,
14 quote, in my expert opinion and based upon my training,
15 experience, skills, actual knowledge and review of all
16 documents relating to the insurance loss incurred by the
17 Plaintiffs, the Certain Underwriters of Lloyds of London as a
18 result of the Abu Nidal Organization terrorist hijacking which
19 caused the loss of EgyptAir Flight 648 on November 23rd,
20 1985, he continues, it, quote, is my opinion that the loss
21 would not have happened except for the terrorist hijacking,
22 and the reinsurer should recover in the amounts detailed
23 above, end quote.

24 And that's -- I refer the Court to the attachments,
25 which I won't comment on further, and that concludes reference

1 into the record of Exhibit 84.

2 Lastly, with the Court's permission, I'll reference
3 Exhibit 94.

4 THE COURT: Go ahead.

5 MR. HEIDEMAN: Thank you, Your Honor. This
6 affidavit is from the same person, Ian Durrant, and in
7 paragraph 4 he states that as I attested to in my original
8 affidavit, quote, Plaintiff La Reunion reinsured a further
9 8.5 percent of the risk above the 75.55 percent identified on
10 pages 5 and 6 at point 12, end quote.

11 He then indicates in paragraph 8, referencing his
12 original affidavit at page 3 and point 9, quote, Tower
13 Insurance Limited, care of Pro Insurance is also a -- Pro
14 Insurance solutions, comma, Limited is also a Plaintiff in
15 this litigation, end quote. And then he references some of
16 the names of the insurers, reinsurers having changed as a
17 result of mergers, and he comments on that. I won't take the
18 time to cover it.

19 He indicates in paragraph 11, therefore, quote,
20 English and American actually only held 65 percent of the
21 risk. The rest of the stamp was held 20 percent being
22 underwritten by Nippon, 10 percent being underwritten by Swiss
23 and 5 percent being underwritten by National Insurance New
24 Zealand, comma, now Tower Insurance, Limited, care of Pro
25 Insurance Solutions, end quote.

1 Paragraph 12, to supplement point 12, page 5 in his
2 original affidavit, he states that, quote, English and
3 American did not pay out a full 3.635 percent of the
4 75.55 percent of the compensation paid to EgyptAir as a result
5 of the loss from the incident, end quote. Instead, he says,
6 quote, English and American paid only 65 percent of this, or
7 2.36275 percent of the 75.55 percent. The remainder was paid
8 by the other companies outlined above of the English and
9 American underwriting stamp, end quote.

10 He states in paragraph 13, in my expert opinion and
11 based upon his training, experience, skills, and actual
12 knowledge, dot, dot, and review of all documents relating to
13 the insurance loss incurred by the Plaintiffs as attested to
14 in his original affidavit of May 4, 2010, the Certain
15 Underwriters of Lloyds of London, as a result of the Abu Nidal
16 Organization terrorist hijacking which caused the loss of
17 EgyptAir Flight 648 on November 23rd, 1985, and concludes,
18 quote, it is my opinion that the loss would not have happened
19 except for the terrorist hijacking and that the reinsurers
20 should recover in the amounts detailed above, end quote.

21 Let me lastly remind the Court that we filed what I
22 believe was Exhibit 94A which simply corrected the
23 typographical error in page 9 of -- Strike that.

24 In point 9 of exhibit in evidence 94, and that was
25 corrected yesterday through Dr. Markham, and the specific

1 point that was corrected was that last number of
2 .0635 percent, which was corrected by Dr. Markham to be a
3 number that's reflected on Exhibit 94A.

4 And I believe that concludes all of the testimony on
5 all of the issues relating to Certain Underwriters of Lloyds
6 of London.

7 THE COURT: Thank you.

8 MR. HEIDEMAN: Thank you very much, Your Honor.

9 Just one moment, please.

10 (PAUSE.)

11 MR. HEIDEMAN: May it please the Court. At the
12 conclusion of yesterday, we discussed with the Court reviewing
13 the exhibits with the Court's clerk and we did so, and as we
14 understand it, the records reflect that all exhibits have been
15 moved into evidence.

16 In the event there is any question in the record, as
17 I believe and hope the Court will agree, we've been thorough
18 with each of these exhibits, both in their preparation and in
19 their introduction. I would just like to do an omnibus motion
20 to move in all exhibits which have been referenced or tendered
21 or filed with the Court or referenced in the testimony,
22 including those supplemental exhibits that we will be
23 receiving and the Court has already indicated can be filed as
24 if they were tendered here in the courtroom as the foundation
25 for each was fully discussed during the testimony of each

1 witness, and I would accordingly move the admission of all
2 exhibits in this case as indicated in the comments I just
3 made.

4 THE COURT: So ordered.

5 MR. HEIDEMAN: Thank you very much. If we could
6 perhaps take just a few minutes before we proceed to closing
7 argument, if that would be agreeable to the Court.

8 THE COURT: Yeah. 10:30, please.

9 MR. HEIDEMAN: Thank you.

10 THE COURT: You contemplate about an hour, sir?

11 MR. HEIDEMAN: Yes.

12 THE COURT: Thank you.

13 MR. HEIDEMAN: Thank you.

14 THE DEPUTY CLERK: Court stands in recess for 10
15 minutes, till 10:30.

16 (A BRIEF RECESS WAS TAKEN.)

17 THE DEPUTY CLERK: The Court is back in session.
18 You may be seated, please. Remain seated.

19 THE COURT: Please proceed, Counsel.

20 MR. HEIDEMAN: Thank you, Your Honor.

21 May it please the Court. When we began this case
22 and in my opening statement, I believe my first words were,
23 quote, this is a very compelling and straightforward case, end
24 quote. There is no question that EgyptAir of Cairo, Egypt
25 owned the airplane that operated EgyptAir Flight 648, and in

1 accordance with Exhibit 3, being that particular EgyptAir
2 aircraft that bears, as noted in the bottom right photograph
3 of Exhibit 3, the tail number, I believe it's referred to as
4 SU-AYH.

5 And there is no question, may it please the Court,
6 that on November 23rd, 1985, EgyptAir Flight 648, operating
7 from the Athens airport, departed at approximately 9:05 Athens
8 time on a normal routine flight to Cairo, Egypt, and there is
9 no question about the facts that at that time that aircraft
10 owned by EgyptAir was insured by MISR Insurance Company and
11 reinsured through the London broker Leslie & Godwin as
12 indicated in the most recent testimony reviewed by the Court
13 at the conclusion of the trial.

14 And there is no question, may it please the Court,
15 that in accordance with insurance company standards, EgyptAir
16 insured its entire fleet, including but not limited to this
17 particular Boeing 737 aircraft bearing SU-AYH, and there is no
18 question, may it please the Court, that each and every one of
19 those insurers and reinsurers and underwriters suffered a loss
20 as a result of the heinous, unconscionable, outrageous conduct
21 of the government of Syria and the Syrian Air Force
22 Intelligence in hosting, welcoming, supporting, sponsoring,
23 and providing all types of material support to the Abu Nidal
24 Organization from as far back as 1981 when the government of
25 Syria officially invited and welcomed Abu Nidal to relocate

1 the Abu Nidal Organization, a foreign terrorist organization,
2 to Syria.

3 And there is no question, may it please the Court,
4 that Syria, from 1981 to 1983, during the period when Abu
5 Nidal did relocate the Abu Nidal Organization to Syria, there
6 is no question that Syria welcomed Abu Nidal with open arms.

7 And there is no question, may it please the Court,
8 that during that time period Syria knew that the Abu Nidal
9 Organization was the most violent, most brutal, most
10 notorious, at the time, terrorist organization in the world.

11 There is no question, as indicated by the deposition
12 of Colonel Schweitzer, which is in evidence, that the Abu
13 Nidal Organization, as far back as 1977, had actually even
14 committed attacks upon Syria.

15 And there is no question, may it please the Court,
16 that Syria knew, when it invited the Abu Nidal terrorist
17 organization to relocate to Syria, that it was welcoming,
18 wanting, willing to support and willing to have not just as
19 its proxy but as its official governmental terrorist arm, the
20 international terrorist organization known as the Abu Nidal
21 Organization.

22 May it please the Court, there is no question that
23 from the time the Abu Nidal terrorist organization actually
24 moved its headquarters to Damascus, Syria, and its training
25 camps to the Baqaa Valley in Lebanon, that at that time and

1 through all of the time period in question, there is no
2 question that the government of Syria had what I believe has
3 already been testified to as many as 35,000 troops. I repeat,
4 35,000 troops, Syrian troops in Lebanon.

5 And there is no question that for the time period
6 from 1981, when I believe the name referred to was General Al
7 Khuli, K-h-u-l-i, extended the official invitation to the Abu
8 Nidal Organization to relocate to Damascus and to Syria and to
9 establish its camps in Syrian controlled Baqaa Valley, there
10 is no question that when General Al Khuli did so, the
11 testimony is clear and unequivocal that it was done not only
12 in the name of General Al Khuli as the head of Syrian Air
13 Force Intelligence, but that this authoritarian dictatorship,
14 operated at the time by President -- and headed at the time by
15 President Hafiz Assad of Syria, there is no question that such
16 an invitation by General Al Khuli on behalf of Syrian Air
17 Force Intelligence was an invitation on behalf of the Syrian
18 government because the testimony, may it please the Court,
19 makes it clear that there is no question but that Syria, as a
20 government, headed at the time by President Hafiz Assad, had
21 full control over all aspects of not just governmental affairs
22 in Syria, not just Syria's domination, absolute domination at
23 the time of Lebanon and Lebanese government and all activities
24 in Lebanon, but that there is no question that the Syrian
25 government under Hafiz Al-Assad had and still today under his

1 son, his successor, Bashar Assad, has full control over Syria,
2 and that nothing in Syria occurs in this police state except
3 with the involvement, the support, the approval of the Syrian
4 government and its intelligence arms, Syria Air Force
5 intelligence, as well as military Army intelligence.

6 And there is no question, Your Honor, that the
7 Defendants herein, the -- which I will together refer to as
8 the Syrian defendants, at the time period leading up to and
9 even after the EgyptAir hijacking of November 23rd, 1985,
10 and the Rome and Vienna airport attacks of December 27, 1985,
11 there is no question that leading up to that period, may it
12 please the Court, that Syria was not only in full control of
13 everything in Syria, but it was in full control of Lebanon and
14 the Baqaa Valley in Lebanon referred to as -- by everyone,
15 including the State Department, as Syrian controlled Lebanon
16 and specifically Syrian controlled Baqaa Valley.

17 And so there is no question, Your Honor, that when
18 the Abu Nidal Organization was invited to come, that that
19 carried with it an open invitation to operate, to train, to
20 have headquarters, to establish safe houses, to establish
21 training camps, to receive weapons training, to receive for
22 its operatives, its terrorist operatives, passports, and
23 identity cards, special identity cards.

24 There is no question that the Syrian defendants were
25 in full control of the military highways that moved between

1 the Baqaa Valley and between the Abu Nidal Organization
2 terrorist camps in Syrian controlled Baqaa Valley and their
3 needed ability to move to Damascus and to the Damascus airport
4 as well as their needed ability to move to Beirut and the
5 Beirut airport.

6 May it please the Court, there is no question that
7 each and every act committed in Syria by the Abu Nidal
8 Organization in the time period from 1981 and as they
9 emboldened themselves and further entrenched themselves in
10 1983 and continuously from 1983 through and including and even
11 beyond the EgyptAir hijacking of November 1985 and the Rome
12 and Vienna attacks of December 1985, there is no question that
13 at that time the government of Syria was a U.S. Department of
14 State officially listed state sponsor of terrorism.

15 There is no question, may it please the Court, that
16 in the official opinion of the United States Government, and
17 not just the Secretary of State at the time, but the President
18 of the United States and the official policy of the United
19 States Government, when it, on December 29, 1979, issued its
20 first official list of state sponsors of terror, there is no
21 question that at that time Syria was on that list, and there
22 is no question, Your Honor, that Syria has remained on the
23 list of state sponsors of terrorism on the State Department
24 list right up to and including today.

25 There is no question, and it was referenced in

1 testimony just yesterday, I believe, that the President of the
2 United States recently continued, the press reported and it
3 was confirmed in testimony, Syria on the State Department list
4 of state sponsors of terrorism and under sanctions by the U.S.
5 Government.

6 There is no question, therefore, may it please the
7 Court, that when Syria, as a designated state sponsor of
8 terror, invited the Abu Nidal Organization, which hereafter I
9 will properly refer to as the Abu Nidal terrorist
10 organization, to move to Syria, that it did so in order to
11 advance specifically Syria's interest in foreign policy
12 considerations in and governmental plan and design to utilize
13 terrorist attacks as part of it's governmental policy.

14 There is no question that Syria and the Syrian
15 defendants, in furtherance of that governmental policy
16 supporting terrorism for all these many decades, from 1979
17 until now, was, without question, classified as one of the
18 world's worst sponsors of terrorism.

19 And there is no question, may it please the Court,
20 that Syria used the Abu Nidal terrorist organization from at
21 least 1983 until 1987 as its arm, its governmental arm,
22 quasi-governmental arm, used the Abu Nidal terrorist
23 organization to commit on behalf of the Syrian government acts
24 of international terrorism outside of Syria with a particular
25 focus on acts of terrorism which the Syrian government wanted

1 for its governmental purposes to support targeting Western
2 Europe, targeting Egypt and targeting the United States of
3 America and our citizens.

4 There is no question that the strength of the Abu
5 Nidal Organization, may it please the Court, was clearly that
6 of doing heinous, brutal, violent acts of international
7 terrorism, and there is no question that that's exactly what
8 the Syrian government wanted to use the Abu Nidal terrorist
9 organization to do in the mid 1980s.

10 There is no question under the testimony that not
11 only did the Syrian government provide support to the Abu
12 Nidal terrorist organization inside Syria, inside Lebanon, in
13 Syrian controlled Baqaa Valley, in Damascus, but that they
14 provided the ability for Abu Nidal terrorists and operatives
15 to transit to Damascus, to safe houses, to headquarters, and
16 from Damascus, not only back to Syrian controlled Baqaa
17 Valley, but also out from Damascus to points where terrorist
18 attacks would take place.

19 And there is no question but that the Syrian
20 government also permitted and enabled in every possible
21 respect, at the highest level of terrorist sponsorship, the
22 Abu Nidal terrorist organization to have its operatives come
23 back in through the Damascus airport and come back into the
24 training camps and prepare for new missions and go back out
25 again as has been testified to by Khaled Ibrahim, the Abu

1 Nidal terrorist convicted and in a Rome prison, the Rebibbia
2 Prison, having been convicted of the Rome airport attack of
3 December 27, 1985.

4 There is no question, Your Honor, that this transit
5 in and out of Damascus was absolutely crucially important, and
6 there is no question, Your Honor, that Omar Ali Rezaq, the
7 convicted terrorist of the EgyptAir hijacking, in his
8 testimony that is in evidence before the Court, made it clear,
9 as the Court will see when it has the opportunity to read that
10 testimony, from a courtroom right here in this courthouse
11 before now Chief Judge Royce Lamberth who did -- sat as the
12 judge on the criminal trial of Rezaq back many years ago when
13 he was convicted in this courthouse of air piracy.

14 And in accordance with that testimony, there is no
15 question, may it please the Court, that he, Mr. -- shouldn't
16 use the word "mister," but I will because I'm in this
17 courthouse, that Rezaq, the hijacker, had a special identity
18 card, he said, and that that card permitted him, as an Abu
19 Nidal terrorist operative, transit in and through Syria
20 without, he says, being stopped by Syrian customs, and also in
21 and through Lebanon without, he says, being stopped by
22 Lebanese customs in Beirut or elsewhere.

23 And there is no question, Your Honor, that the
24 official Syrian government policy was, in addition to being in
25 full control of Syria, to be in control of Lebanon and to be

1 in control and it was in control of that important also but
2 lesser important Beirut International Airport, and there is no
3 question that the Abu Nidal terrorists, for different
4 missions, transited through Beirut as well as the evidence in
5 this case makes it clear that there is no question.

6 And the experts who come before Your Honor have made
7 it clear that there is no question that without the support of
8 Syria as a designated state sponsor of terror, that without
9 the support of Syria, that the hijacking of EgyptAir Flight
10 648 by the Abu Nidal terrorist organization could not have
11 happened.

12 There is no question, Your Honor, in accordance with
13 the testimony, that Syria not only provided support to the Abu
14 Nidal terrorist organization for both the EgyptAir attack and
15 one month later the Rome airport attack, and at the same day
16 and at the same minute, 9:00 a.m. in the morning, in
17 accordance with the testimony, there is no question that the
18 Syrian government supported the Abu Nidal terrorist
19 organization in all aspects of its preparation, its training,
20 its money, its logistics, its safe houses, its headquarters,
21 its transit in Syria, in Lebanon, out of Damascus, out of
22 Beirut, into Europe, to focus on attacking targets in Western
23 Europe, there is no question, Your Honor, that that was fully
24 and unquestionably supported by the government of Syria.

25 And there is also no question, Your Honor, in

1 accordance with the testimony we've received, that the
2 government of Syria and its official arms provided support
3 outside of Syria for the Abu Nidal terrorist organization.

4 There was testimony, may it please the Court, that
5 Syrian government people supported the activities of the Abu
6 Nidal Organization in relation to activities in the countries
7 where actual attacks took place or where Abu Nidal terrorist
8 operatives transited. And of course, as the Court knows from
9 the testimony, the Abu Nidal terrorist organization also had
10 support, a different kind of support, different support but
11 material support as well separately from the government of
12 Libya, which is clear, and there is no question about that,
13 but it is not the subject of this trial and I won't comment on
14 it further because there is no question about that either.

15 There is no question that state sponsors of terror
16 supported in all respects the Abu Nidal terrorist organization
17 but that it took Syria to have the control over Damascus and
18 its airport, the Baqaa Valley and the training camps, the
19 military roads and the Beirut airport so that these terrorists
20 could have a home and a base to go to, to train, to go from,
21 to commit the attacks and to come back to. It is actually
22 unbelievable, but there is no question that it is all true.

23 And there is no question, Your Honor, that what the
24 State Department and the Central Intelligence Agency and the
25 National Security Council and the Bureau, I believe it was

1 called, of Counterterrorism headed by Ambassador Oakley and
2 his Deputy Dr. David Long, and the Defense Intelligence
3 Agency, as you heard from Defense Intelligence Officer for
4 Middle East, South Africa and Counterterrorism Director
5 Colonel Patrick Lang, there is no question, Your Honor, that
6 this heinous attack occurred to advance the Syrian
7 government's agenda.

8 There is no question, Your Honor, that the Syrian
9 government stood opposed to the efforts of Egypt to have peace
10 with Israel. There is no question that the Syrian government
11 stood opposed to the efforts of Jordan to have peace with
12 Israel. And there is no question, Your Honor, that the Syrian
13 government's policy was to support and use such terrorist
14 organizations as the Abu Nidal terrorist organization to
15 express outside of Syria, outside of Lebanon its opposition to
16 the peace efforts of then Chairman Arafat of the Palestine
17 Liberation Organization and to target those countries and the
18 innocent civilians of those countries because of official
19 Syrian government policy.

20 There is no question, Your Honor, according to the
21 testimony, that the Cairo Declaration, an attempt at peace by
22 Chairman Arafat of November 5 or 7, 1985, made in Cairo a few
23 weeks before the EgyptAir hijacking, there is no question
24 under the testimony, Your Honor, that that angered Hafiz
25 Assad, the President of Syria, and there is no question, Your

1 Honor, that the Syrian government, according to the testimony,
2 was included and involved in the selection of targets of
3 terrorist attacks by the people and the group it was paying to
4 commit those acts of murder and maiming.

5 And there is no question, Your Honor, that after the
6 Cairo Declaration, the first week of November 1985 but not
7 only because of that, the Abu Nidal terrorist moved into
8 Europe, having already committed other attacks in Europe that
9 is in evidence either from the testimony or the reports the
10 Court has received into evidence, attacks at Carfe De' Paris,
11 attacks on synagogues, other attacks, there is no question
12 that Egypt, not just the United States, but Egypt was a target
13 of the EgyptAir hijacking.

14 And Your Honor, it's proven because there is no
15 question that this was an EgyptAir flight. It wasn't coming
16 toward the World Trade Center, God forbid. It wasn't heading
17 toward Tel Aviv, it was not heading towards Moscow or any
18 other city, it was an EgyptAir flight from Athens, Greece in
19 Western Europe to Cairo, Egypt, and there is no question, Your
20 Honor, that that airplane insured and underwritten by EgyptAir
21 through MISR Insurance and Certain Underwriters for a value of
22 \$14 million, became at risk the second those hijackers were
23 permitted to board that aircraft however they got on, however
24 they got their weapons on in that briefcase, there is no
25 question that that aircraft and the lives of each and every

1 one of the 96 passengers became unbelievably at risk and it --
2 may it please the Court, this isn't just terrible acts of
3 terrorism in the decade of 2000.

4 This occurred back in 1985, and yet we heard
5 testimony, Your Honor, that even back then there was high
6 security at the airport, more security than Jackie Nink Pflug
7 had seen, that when she went to check in for the aircraft,
8 there is no question that they searched her luggage as a
9 traveler, a teacher at Cairo American school going back from
10 Athens to Cairo.

11 There is no question that boarding that aircraft was
12 Scarlett Rogenkamp, an employee of the U.S. Government, the
13 United States Air Force with high acclaim, that she was based
14 in Greece, she boarded this aircraft for Cairo.

15 There is no question that Patrick Scott Baker
16 boarded that aircraft on his worldly trips to enjoy life, to
17 climb mountains, there is no question that Patrick Scott Baker
18 spent, in the hour of the delay of the flight, some time and
19 he met people, and two of the people he met, may it please the
20 Court, were Tamar Artzi, a young Israeli woman, and Nitzan
21 Mendelson, a young Israeli woman. There is no question that
22 Patrick Baker met them and knew them, although he didn't at
23 the time meet Jackie or Scarlett.

24 There is no question, may it please the Court, that
25 they -- also, on that aircraft, were hijackers dressed in

1 suits, suits that included ties like we're wearing in this
2 courthouse, neckties, that became vehicles of terrorism.

3 There is no question that also on that aircraft were
4 EgyptAir sky marshals. There is no question that this was a
5 time period of terrorism or there wouldn't have been sky
6 marshals to defend against acts of terror at that time. There
7 is no question, may it please the Court, that under the
8 sponsorship of the Syrian defendants, these hijackers took
9 control of the aircraft, standing up with a weapon, a revolver
10 in one hand and a grenade in the other, and there is no
11 question, Your Honor, that that weapon and that grenade, if
12 nothing else, shocked, for the rest of their lives, every
13 passenger that saw that on the airplane, including but not
14 limited to the unquestioned testimony of Patrick Scott Baker
15 and Jackie Pflug who was seated in the third row, and I
16 believe Patrick was in the sixth row.

17 They saw that, each of them separately not knowing
18 one another, and Jackie Pflug testified that she saw the
19 hijacker put the grenade to his mouth and try to pull the pin
20 and he couldn't get it out, and she remembers him smiling at
21 her. And Patrick Scott Baker testified that there is no
22 question that he actually saw the pin come out of the grenade.
23 And there is no question, Your Honor, that with those
24 grenades, those weapons -- and the reports that are in
25 evidence make it clear it wasn't one weapon, and that's why I

1 say "those," and it wasn't one grenade, and that's why I say
2 "those," those weapons and those grenades that got onto that
3 airplane with those hijackers, there is no question that that
4 airplane, owned and insured, as I've already indicated, was at
5 risk, and the foreseeable result of such a hijacking is that
6 guns will shoot or be shot or that air marshals will have a
7 shootout trying to defend the passengers or the stewardesses
8 or the captain and that the fuselage will be hit and pierced
9 and that the plane will maybe go all the way down.

10 The foreseeable risk of the hijacking, sponsored by
11 the Syrian defendants, makes it clear, without question, that
12 the Syrian defendants and each of them are fully liable to the
13 Certain Underwriters Plaintiffs in this action in strict
14 accordance with the report of Dr. James Markham, the senior
15 economist for the center for forensic economic studies who
16 testified in this case.

17 And I quote from the Exhibit 93 in evidence where he
18 states his opinion, his conclusions in accordance with
19 standards for economic and statistical analysis that the loss
20 to the aircraft, after first deducting the salvage value and
21 the money paid to Malta, was, as he testified to, started out
22 as \$14 million in 1986. By the end of -- by the end of that
23 period, it was up to \$15,118,274, interest was added, but he
24 testified that salvage, the net salvage value of \$3,151,830
25 was then reduced, so that the obligation at the end of that

1 period was \$13,031,836. And then, in accordance with his
2 testimony at Exhibit 93 and received into evidence and as
3 testified to yesterday, he then sets forth the prime interest
4 rate in accordance with public statistics from the U.S.
5 Federal Reserve for the Court's consideration in awarding any
6 interest on that net loss amount which he carries forth on
7 Table 1 of his report to be \$61,341,296.

8 And there is no question, may it please the Court,
9 that that loss was incurred solely and as a result of this
10 EgyptAir hijacking by the Abu Nidal terrorist organization and
11 incurred as a direct and result of the sponsorship,
12 encouragement, enabling and support of the Syrian Defendants
13 of the Abu Nidal Organization. And that in addition, as he
14 testified to and as the Certain Underwriters have testified,
15 that the loss surveyor bill with interest and converted to
16 U.S. dollars is \$300,006, and the loss surveyor bill for
17 Lloyds Aviation Department as converted to dollars from
18 British pounds and with interest is \$680,656.

19 And accordingly, there is no question, may it please
20 the Court, that the Certain Underwriters Plaintiffs, with the
21 prejudgment interest, as allowed under 28 U.S.C. 1605A for the
22 aircraft loss after the salvage value but plus the surveyors'
23 bills totals \$62,321,958, and there is no question, may it
24 please the Court, that the Syrian defendants are responsible
25 for each and every penny of that amount as we ask the Court to

1 award; plus, in accordance with the testimony, attorney's fees
2 that will be incurred in the cost of collecting that judgment
3 and which I believe it was Mr. Durrant or one of the other
4 witnesses testified in the affidavits I reviewed with the
5 Court just before we concluded the trial, attorney's fees for
6 collection of an additional one-third of that amount that
7 particular expert said would be standard and reasonable, and
8 that is a matter deferred to the Court.

9 But in addition, Your Honor, before I complete about
10 the Certain Underwriters and their entitlements under 28
11 U.S.C. 1605A, I would indicate to the Court that the Certain
12 Underwriters Plaintiffs are entitled also to interest at the
13 legal rate from date of judgment until collection, and we
14 defer to the Court to consider all of that evidence and award
15 such judgment to the Certain Underwriters.

16 As it relates to these three Americans, there is no
17 question, may it please the Court, that Patrick Scott Baker
18 watched the gun and the grenade of the hijacker in front of
19 him, the shootout between the sky marshal and the hijackers,
20 there is no question, according to his testimony, that perhaps
21 as many as 25 bullets hit the fuselage.

22 There is no question, Your Honor, that the plane
23 took a deep drop putting Patrick Scott Baker, Scarlett
24 Rogenkamp and Jackie Pflug clearly in fear for their lives for
25 being nothing other than Americans on an EgyptAir flight,

1 unconscionable, heinous acts of international terrorism
2 sponsored by the Syrian defendants.

3 There is no question, by the way, that the Abu Nidal
4 Organization is a foreign terrorist organization, so
5 designated by the U.S. Government, and there is no question
6 that the Abu Nidal terrorist Omar Ari -- Omar Ali Rezaq has
7 not only been convicted of this air piracy as the sole
8 surviving hijacker but he has admitted in the affidavit that
9 we filed with this court, as I believe Exhibit 35, admitted
10 that he did this hijacking, and there is no question that
11 Jackie Pflug and Patrick Scott Baker, the two American
12 surviving victims, identified Omar Ali Rezaq from Exhibit 3 in
13 evidence as the hijacker; not only the hijacker, the shooter.
14 The shooter.

15 There is no question, may it please the Court, that
16 the shootout took place and they saw a sky marshal, at least
17 one, killed, and Patrick Scott Baker talked about reaching out
18 for a gun and that he still sees that gun on the floor in his
19 hand but he didn't pick it up. Another hijacker picked it up.

20 There is no question that after that airplane took
21 that deep drop, it eventually landed at the Malta airport
22 without lights. They didn't know where they were. They
23 didn't know what had happened except they knew they probably
24 had been through an experience that was going to take their
25 lives, and it did take Scarlett Rogenkamp's life, but

1 miraculously Patrick Scott Baker and Jackie Pflug were spared.

2 There is no question, Your Honor, that after that
3 airplane landed in Malta, that what the hijackers already had
4 done in collecting passports and collecting neckties and
5 continued to do row by row, person by person, there is no
6 question, Your Honor, that those hijackers targeted both the
7 American passengers and also targeted the Israeli passengers.

8 There is no question, Your Honor, when you read the
9 testimony of Omar Rezaq in his criminal trial that his advance
10 instructions were to kill every Israeli, every Jew on the
11 airplane. There is no question, may it please the Court, that
12 the hijackers' advance instructions were to kill an American
13 every 15 minutes using the Americans for fuel.

14 And there is no question, Your Honor, that Tamar
15 Artzi was shot at approximately midnight being one of the
16 Israelis, the first one. There is no question that the
17 Americans, Scarlett Rogenkamp, Patrick Baker and Jackie Pflug
18 watched that because they had been moved to first class with
19 the two Israelis; the Americans and the Israelis singled out
20 because they held American or Israeli passports.

21 There is no question, Your Honor, that Tamar Artzi
22 when she was called forward, went forward to get her passport,
23 like the others had gotten their passports. I believe there
24 was testimony about a Filipino woman and others who were let
25 off the airplane. There is no question that the hijackers

1 were asked to let off the Palestinians. They refused. They
2 were asked to let off the baby. They refused. They were
3 asked to let off the children. They refused. And there is no
4 question that this act sponsored by the Syrian defendants,
5 targeting EgyptAir, was intended to advance the political
6 agenda of the then Syrian government, and there is no
7 question, Your Honor, that even today the Syrian government
8 continues as a state sponsor of terror and that they continue
9 to use terrorism as part of their political governmental
10 agenda.

11 And at the end of this closing argument, Your Honor,
12 I will ask this court to recognize the fact that although the
13 mantel passed eventually from the father at his death to the
14 son, that the testimony is clear that the policy of the Syrian
15 government has not changed. The State Department has
16 continued the Syrian government on the State Department list.
17 The State Department said just recently in the documents I
18 read into the record with your permission yesterday, that
19 Secretary Clinton said just last week, "We have condemned the
20 Syrians." We've addressed -- and I'm paraphrasing -- the
21 Syrian's transfer of weapons to Hizballah, a terrorist
22 organization that there's been testimony is a foreign
23 terrorist organization listed by the United States.

24 And there is no question, Your Honor, that fairly
25 recently, according to one of the State Department reports I

1 read to you into the record yesterday with your permission,
2 Syria, it said, continued to house, I believe the words were,
3 and I'm paraphrasing, the world's most notorious terrorist. I
4 believe the name is Imad Mughniyah, so there is no question,
5 Your Honor, that from the 1980s until 2010, Syria hosted the
6 most notorious, violent, brutal foreign terrorist organization
7 of its day, the Abu Nidal terrorist organization, and there is
8 no question, Your Honor, that up until his death very recently
9 in Damascus, Syria, which has been made clear from the State
10 Department documents I read in yesterday, that Syria was
11 hosting, and I believe the words were, and I hope I don't
12 misquote, the world's most notorious terrorist, end quote.

13 There is no question, Your Honor, that this court
14 should at the end of this trial award under 28 U.S.C. 1605A,
15 not only to the Certain -- Certain Underwriters all the money
16 to which they are entitled and which I won't comment on
17 further, but in addition, award to Patrick Scott Baker every
18 penny that the conscience of this court will permit, not only
19 for his lost economic wages, the impact on his power of labor
20 to earn money, but for his pain, for his suffering, for his
21 mental anguish, for the time he had to watch this grenade, the
22 revolver, the shootout, the gun on the floor, and then being
23 the person to watch Tamar Artzi, a new friend, take a bullet
24 in the brain, and remember his testimony, may it please the
25 Court, about holding the hand as she reached through or he

1 reached through the seats because they were sitting one behind
2 the other, and the holding of his hand before she was dragged
3 forward to her fate that he watched.

4 This man watched Tamar Artzi take that bullet and
5 watched Nitzan Mendelson take that bullet, and he turned to
6 the French woman near him and he said, "I am next." He knew,
7 and it was so, and it's haunting. It's haunting for me as his
8 counsel. It's haunting for my partners who have worked so
9 hard into helping to gather the evidence to bring to you, and
10 it's haunting for Patrick Scott Baker as you heard and as
11 Dr. -- the doctor testified to, haunting, traumatic, stress,
12 it caused him to practically -- I don't want to overstate
13 it -- to escape for 15 years to get to a comfort zone.

14 Nothing wrong with being a fisherman, nothing wrong
15 with going out on a boat, 15 years of escapism, Your Honor,
16 escapism from the reality of what he was able to sit here 25
17 years later and explain to the Court in excruciating detail,
18 and he remembered taking the -- I think he said "blue," maybe
19 it was white. I happen to believe it was blue, head --
20 headrest cover off and giving it to the crying, waiting, next
21 victim who put her head in their hands -- her head in her
22 hands, and he watched those terrorists, and terrorists is too
23 nice a word, those murderers, those state sponsored, Syrian
24 state sponsored murderers, he watched them drag her forward
25 and she knew she was next and put a gun and blow out her

1 brains, and knowing he was next, he considered what were his
2 options.

3 He stayed in his seat. He was brought forth to the
4 aircraft door once, and the testimony is and it's -- there's
5 no question that he overheard the report that no more killing,
6 the fuel is coming, and he was taken back to his seat, and he
7 thought maybe he had a reprieve, like a cat with multiple
8 lives and a big tall one at that.

9 And since it's not in evidence, I won't say how
10 short the hijacker was in comparison, but there is no question
11 that Patrick Scott Baker considered attacking the hijacker as
12 he was dragged back to -- walked -- asked to come back and he
13 did go back. And he said he knew he was next, and he was
14 ready, and he went to the door, and he started to jump, and he
15 told the Court, there is no question, that Omar Ali Rezaq shot
16 at him, from what the testimony is, about four feet, and the
17 bullet went into the back of his head and he gushed and he
18 went down those stairs. And there is no question, Your Honor,
19 that every day since, Patrick Scott Baker has lived with that;
20 and there is no question, Your Honor, that every day since,
21 Patrick Scott Baker has heard the footsteps of those who came
22 down and dragged him back up the steps to the airplane; and
23 there is no question that he was then thrown over to the
24 tarmac and left for dead; and there is no question that he
25 miraculously stood up, got under the fuselage, ran into the

1 weeds; and there is no question that he saw that person stand
2 up in those weeds and point a gun at him, train a gun and
3 follow him as he ran for safety not knowing, as he said, "Are
4 you the good guy or the bad guy?"

5 There is no question that again and again and again
6 Patrick Scott Baker knew he was next, knew he was going to be
7 shot, was shot, knew that he was dragged, knew that he was
8 pushed, knew that he would maybe have another chance, and then
9 he saw that rifle, and there is no question that the Syria
10 defendants are responsible even for the acts of the rescuers,
11 even when they pointed a gun in safety but not known to
12 Patrick Scott Baker that it was safety, and there is no
13 question, Your Honor, that for Patrick Scott Baker and his
14 family members, each of whom have testified here, that they
15 are entitled under 28 U.S.C. 1605A to every penny your
16 conscience will permit you to award for his pain, his
17 suffering, his anguish, the infliction, intentional infliction
18 of emotional distress upon him, all of the things that the
19 federal law permits under 28 U.S.C. 1605A, including under the
20 *Pugh* case, most recently in the last two years decided, I
21 believe, in this courthouse as well, prejudgment interest from
22 the time he suffered on November 23rd and 24th, 1985 until
23 date of judgment for all of which we ask the Court to award as
24 well as for interest on judgment from date of judgment until
25 collection.

1 And we ask on behalf of Patrick Scott Baker, Your
2 Honor, I repeat, that you award every penny the evidence
3 permits and that your conscience permits under applicable law
4 because he deserves it. He lost a part of his life. He's
5 never been able to regain and never will regain, no matter
6 that, thank God, he was able to marry and is doing better and
7 working, but there's no evidence of a pension, there is no
8 evidence that he will ever have the kind of life he aspired
9 to, and no one, certainly not the Syrian defendants, had the
10 right to take away those hopes, those dreams, those plans to
11 climb the highest mountains.

12 There is no question, may it please the Court, that
13 Jackie Pflug, the first witness, who lives by telling this
14 horrible story because she can't be a teacher. She cannot be
15 a teacher. She was, by all testimony, an acclaimed,
16 respected, special education teacher. She taught in Texas.
17 She taught in Norway. She got a contract with her new husband
18 Scott Pflug who has testified, and she taught the Cairo
19 American school under what I believe was a, I thought she
20 said, a two-year contract making \$40,000 a year, according to
21 her testimony.

22 There is no question that she was in Athens, because
23 her husband, the Phys Ed teacher, Scott Pflug, of the Cairo
24 American school on the volleyball team were in games and she
25 even delayed her flight so that she could see the last game

1 but not -- she wasn't able to stay for the championship game,
2 but because of that delay, her desire to simply be with those
3 kids and her husband, the coach, she ended up that fateful
4 day, night, on EgyptAir Flight 648, and there is no question,
5 Your Honor, that Jackie Nink Pflug, as the first witness, was
6 able to set forth to the Court the fact that there is no
7 question about any of these points on Exhibit 3 or that has
8 been testified to in this case because she testified that she
9 saw, she heard the gun when Tamar Artzi was shot.

10 She saw or she heard the gun, because I believe she
11 said she closed her eyes for one or both of them, but she saw
12 them dragged forward, Nitzan dragged forward and knowing,
13 knowing that this was probably the end of Jackie's life, and
14 there is no question, Your Honor, that Jackie saw Patrick
15 Scott Baker, 15 minutes after Nitzan Mendelson, shot, pushed
16 or jumped, dragged up and then onto the tarmac. And if you
17 recall, Your Honor, Jackie said that there is no question that
18 she looked down after one of the Israeli women were on the
19 tarmac and she saw that person moving and she said to herself,
20 "don't move, don't move," and then somebody, one of the
21 hijackers went and put multiple bullets into her and killed
22 her.

23 Jackie Pflug knew that if it didn't stop, she was
24 next, and by that time, by the time that she saw Scarlett
25 shot, may it please the Court, there is no question that this

1 was eight-and-a-half hours after the hijacking began. This
2 wasn't all a 15-minute thing. This was -- this was a
3 lifetime, a night of horror, a lifetime.

4 Patrick Scott Baker was shot four-and-a-half hours
5 after the hijacking began, and another four hours later Jackie
6 Pflug saw the hijackers call forward and blow the brains out
7 of Scarlett Rogenkamp who died.

8 And Scarlett Rogenkamp's estate is represented by
9 her sister Patricia Henry who came here, proved that she
10 represents the estate, and everybody talked about the
11 wonderful life and person of Scarlett Rogenkamp.

12 And poor Patrick Scott Baker, Your Honor, remembered
13 on the witness stand being taken in his wheelchair at the
14 hospital in Malta and having to identify Scarlett Rogenkamp,
15 and I remember him saying, there is no question, Your Honor, I
16 believe he said she was pretty except she wasn't pretty,
17 because of course, Your Honor, there is no question that the
18 Abu Nidal terrorist under the Syrian defendants killed,
19 executed, her sister said, Scarlett Rogenkamp, and we ask the
20 court to award, as to Patrick Scott Baker, to the estate of
21 Scarlett Rogenkamp, every penny which has been proven in this
22 court and to which she is entitled both for economic loss but
23 also for pain, for suffering, for mental anguish, for what she
24 witnessed and for knowing that she was next, because if
25 Patrick Scott Baker said to the French woman with his hand

1 when he was there, when he said, "I'm next," surely Scarlett
2 Rogenkamp, with her hands tied behind her back and sitting
3 there another four hours after Patrick was shot, she knew she
4 was next. That is unconscionable that anybody should have to
5 go through this. It is unbelievable, it is unacceptable, and
6 we ask this court not to countenance this act -- these acts.

7 We ask this court to send the loudest, strongest
8 message you can in awarding all of the compensatory damages to
9 which Patrick Scott Baker is entitled, the estate of Scarlett
10 Rogenkamp is entitled and that each of their near family
11 members, each of whom have testified for their solatium claims
12 and under 28 U.S.C. 1605A are entitled to award, please, Your
13 Honor, the most number of pennies and dollars and millions of
14 dollars that this court will sign as a judgment for
15 compensatory damages, and on behalf of the estate of Scarlett
16 Rogenkamp and for what she suffered and for all of her family
17 members as well, prejudgment interest in accordance with *Pugh*
18 from the moment of November 24, 1985 until date of judgment
19 and interest at the legal rate from date of judgment until
20 date of collection.

21 Jackie Scott Pflug, Your Honor, told this court that
22 there is no question that each of these unbelievable
23 movie-like things really happened, really happened, and who
24 did it happen to in relation to Jackie? An American teacher
25 who went to Cairo, to the Cairo American School to teach

1 Egyptian children. Syria targeting Egypt for its political
2 reasons, targeted EgyptAir and targeted not just the traveler
3 Patrick Baker, not just Scarlett Rogenkamp, the Air Force
4 employee, but targeted the American teacher, Jackie Nink
5 Pflug, and may it please the Court, Jackie told you what she
6 could remember about the 14 hours between the start of the
7 hijacking and the moment when she was shot, shot in her head
8 and left for dead.

9 And may it please the Court, there is no question
10 that she was left on that tarmac for dead because the Court
11 will recall, there is no question that the first medical
12 report on Jackie Nink Pflug was the report of the medic taking
13 her to the morgue, left for dead, because they killed her,
14 executed her, like Scarlett's sister said, Scarlett was
15 executed. There is no question, Your Honor, that without
16 mercy, without conscience, without any sense of humanity, the
17 Syrian sponsored Abu Nidal terrorists shot Jackie Pflug in the
18 head knowing and intending that it would ruin the rest of her
19 life if she lived for even one moment; miraculously she did.

20 There is no question that the bullet went into her
21 brain. She had brain surgery. She had a brain injury, has a
22 brain injury. There is no question that Patrick Scott Baker
23 took a bullet into his head and has a brain injury.

24 There is no question, may it please the Court, that
25 Jackie Pflug has suffered, and in her sense also escaped

1 differently than Patrick Baker because she didn't get out onto
2 a boat for 15 years, but she eventually, after being at
3 Landstuhl and being in other hospitals, she went to a new
4 city, Minneapolis, Minnesota with her young husband, Scott
5 Pflug, who has testified, and that her mother-in-law took care
6 of her and her husband took care of her and she, the testimony
7 is, Your Honor, to walk to the bathroom or wherever in the
8 house, because I don't want to misstate, they had to put
9 footsteps on the floor. She couldn't drive. She doesn't have
10 proper vision. She will never teach again.

11 And there is no question that Dr. Spector asked her,
12 as he said on the stand, not to be in the courtroom so as not
13 to further devastate her, Your Honor, about her condition
14 because Jackie has been able to give speeches, referred to as
15 motivational speeches, but it's speeches about this heinous
16 unconscionable terrorist attack sponsored by Syria, and it
17 took lives, limb, maimed but also took brains.

18 There is no question, Your Honor, that Jackie Nink
19 Pflug has lost her total ability to power and labor and earn
20 money as a teacher, having had, as I recall, a master's degree
21 and having a dream for a doctorate, a plan for a doctorate.
22 There is no question, Your Honor, that she deserves every
23 penny of those lost wages. And there is no question, Your
24 Honor, that she deserves prejudgment interest on all of her
25 losses in accordance with *Pugh*.

1 There is no question, Your Honor, that Dr. Markham
2 for both Patrick Scott Baker and Jackie Pflug, and presenting
3 to you his economic analysis, deducted what they've earned. I
4 ask the Court about Jackie Pflug, to consider that, because is
5 it really right that for Jackie Nink -- I said Scott Pflug. I
6 apologize. Jackie Nink Pflug, is it right that for Jackie
7 Nink Pflug who has had her power to labor and earn money as a
8 licensed certified committed superb special education teacher
9 should never be able to teach again? Should she, because
10 she's been able to give speeches about the hijacking and earn
11 money from it, should that really be an offset?

12 The Court will determine that. I'm talking about
13 what's right. I'm talking about the destruction of her brain.
14 And Dr. Spector talked about his worry about Jackie's fall,
15 her crash as a result of if she's not able to talk about her
16 escape into the stories about the hijacking. That we ask the
17 Court to consider in awarding compensatory damages to Jackie
18 Pflug for the most number of pennies, most number of dollars,
19 most number of millions of dollars that this court, in all
20 good conscience, can award to Jackie Pflug because she
21 deserves each and every one of those millions of dollars for
22 compensatory damages plus prejudgment interest for her pain,
23 for her suffering, for her mental anguish, for the destruction
24 of her brain, for what she witnessed, for what she waited
25 through, for what she feared, for what she experienced and for

1 what she now has lived through in attempting to build a life
2 for herself; and her husband Scott, which resulted in divorce
3 because they couldn't take it anymore, because Jackie was not
4 the same. It's not a matter of fault. It's true. Scott
5 Pflug deserves a maximum award, her husband.

6 And her second husband who picked up the mantel
7 after they got married and cared for her and has cared for her
8 deserves an award. And her son Tanner, in accordance with the
9 testimony, deserves an award because his life has been
10 dramatically impacted by what his mother experienced. And
11 each of the near family members, Your Honor, who have
12 testified in this case, about their fears about Jackie, about
13 watching for each of them, CNN, about going to funerals for
14 the Rogenkamp family, about the purple heart for Scarlett
15 Rogenkamp, about the flag on the coffin, about those visions,
16 about those experiences, the loss of the complete loss of
17 Scarlett Rogenkamp's life and the destruction of a part of the
18 life of Patrick Scott Baker and Jackie Nink Pflug who's brain
19 cannot function properly.

20 She has no executive judgment, she has no proper
21 vision, she has no ability except in relation to the speaking
22 about this hijacking. She has no other ability to power and
23 labor and earn money. We ask you to award her the maximum
24 number of millions of dollars in accordance with this court's
25 sound judgment.

1 And lastly, Your Honor, there is the issue under 28
2 U.S.C. 1605A of an entitlement to punitive damages, an
3 entitlement for this court to send -- this court to send a
4 message to the Syrian defendants, that this court, having
5 heard this evidence, is outraged; that this court, having
6 heard this testimony of these survivors and having a sense, a
7 direct sense of what each of them have been through because of
8 Syria's state sponsorship of the Abu Nidal terrorist
9 organization, we ask the Court to determine that it is exactly
10 the reason why Congress put into 28 U.S.C. 1605A and President
11 Bush signed that into law to include an entitlement to
12 punitive damages.

13 The standards for punitive damages, may it please
14 the Court, are for punishment, and if any government in the
15 world -- and there are other governments that also deserve
16 such punishment, and I'll comment on one in a moment, if any
17 government in the world deserves punishment for its
18 sponsorship, direct involvement, and I won't repeat what I've
19 already said about this EgyptAir hijacking and also the Rome
20 and Vienna airport attacks, because the evidence about that is
21 clear as well, it is the Syrian government for its acts here,
22 and we ask Your Honor to award punitive damages in such amount
23 as the Court determines, and I will comment on the amount in
24 just a moment.

25 But I want to ask the Court to reflect back on the

1 testimony of Colonel Lang saying that this court sending a
2 message of punitive damages will really, quote, I believe he
3 said, get the attention of the Syrian government, unquote.
4 They will hear that message. They will listen. He said they
5 are not a rich country. They will listen to an assessment of
6 punitive -- an award of punitive damages against them.

7 And Professor Deeb said, Your Honor, that the Syrian
8 government spends today 500 million U.S. dollars a year
9 sponsoring terrorism. I'm sorry to repeat. Professor Deeb
10 has testified, being one of the world's most noted experts on
11 Syria for decades and currently, that the Syrian government
12 spends, he said, quote, \$500 million a year as a minimum, he
13 said, on terrorism, on the sponsorship of terrorism. There's
14 a reason that Syria remains on the State Department list of
15 state sponsors of terror because they are sponsoring terror.

16 And Ambassador Oakley made it clear, they sponsor
17 Hamas today, they sponsor Hizballah today, and Secretary of
18 State Clinton commented that Syria has been warned -- I'm
19 using my word -- I believe she used the word "condemned."
20 Maybe she also says "warned" -- just last week about Syria and
21 its relation to the issue of moving weapons, providing weapons
22 to Hizballah.

23 Hizballah isn't just in southern Lebanon, Your
24 Honor. Hizballah is a foreign terrorist organization with
25 operations around the world, and in this courthouse, various

1 judges have held governments responsible for sponsoring
2 Hizballah and their acts of terrorism.

3 And Ambassador Oakley made it clear they also
4 sponsor Hamas, a terrorist organization, and he made it clear
5 in his testimony that Khalid Meshal -- Khalid Meshal,
6 K-h-a-l-i-d, Meshal, M-e-s-h-a-l, has his base today in Syria,
7 the head of Hamas, a designated foreign terrorist organization
8 designated by the U.S. Government.

9 And may it please the Court, Professor Deeb made it
10 clear that this sponsorship by Syria of terrorist activities
11 of at least, he said, not less, I believe was his words, not
12 less than \$500 million a year, he even commented perhaps as
13 high as \$700 million a year, is going on in the sponsorship of
14 terrorism, including but not limited to sponsoring Hizballah,
15 Hamas and other terrorist organizations.

16 And yesterday, when you permitted me to read into
17 the record the State Department most recent country reports
18 that was available to us, it makes it clear that today Syria
19 hosts, today at least as of that time and that report released
20 in April 2009, Syria hosts numerous terrorist organizations,
21 sponsors those organizations, provides what I will refer to as
22 safe haven for those organizations. They have their
23 operations there, and there is even a reference to training
24 there. And may it please the Court, issues relating to
25 punitive damages as were set forth by Judge Lamberth in the

1 *Heiser*, H-e-i-s-e-r, case, I have copies for you, and also the
2 other case before me decided, the other case, *Acosta v.*
3 *Islamic Republic of Iran*, the Court considered various
4 standards in relation to punitive damages and did award
5 against Iran punitive damages, and separately in the *Gates v.*
6 *Syria* case, punitive damages have been awarded. In each of
7 those three cases, I hope I'm not misstating it, \$300 million
8 was awarded as punitive damages in each of those three
9 separate cases, *Heiser*, *Acosta*, both against Iran, and in
10 *Gates* as against Syria.

11 More recently, I had the privilege, Your Honor, in
12 this courthouse not long ago to argue before Judge Lamberth
13 the issue of punitive damages, not against the government of
14 Syria but against the government of Iran, and I outlined for
15 the Court, as I outlined for you that Judge Lamberth himself
16 in previous decisions, in determining to award \$300 million
17 against Iran as a state sponsor of terror, used as a measure
18 of damages how many dollars, according to testimony before
19 Judge Lamberth, was being spent currently by the government of
20 Iran in sponsoring terrorism.

21 And the judge determined that he was going to use a
22 number of \$100 million per year because that was the testimony
23 he had before him by at least from Patrick Clawson from the
24 Washington Institute for Near East Affairs, a noted expert on
25 Iran. And he indicated, Your Honor, in those decisions that

1 he was going to use a three times multiplier, not of the
2 wealth of the country but of the amount they were spending on
3 terrorism, and therefore, Judge Lamberth, in those decisions,
4 used a multiplier of three times \$100 million a year and
5 concluded that an appropriate amount of punitive damages
6 against Iran would be \$300 million a year. And now I get to
7 the comparison and then the conclusion.

8 May it please the Court, I had the privilege of
9 arguing a case that Judge Lamberth recently consolidated
10 involving the Marine barracks case. He consolidated four
11 cases, the lead case is *Valore -- Valore v. Islamic Republic*
12 *of Iran*, it's a case that relates on behalf of Marine barracks
13 bombing victims from the 1983 Hizballah-sponsored act --
14 Hizballah committed, Iranian committed act of terrorism.
15 There was testimony in this case about Hizballah having
16 committed the Marine barracks bombing and testimony about Iran
17 being the closest ally of Syria and Syria the closest ally of
18 Iran. Even today the Secretary of State and the State
19 Department have said so in documents that I've recited into
20 the Court.

21 In arguing *Valore*, may it please the Court, His
22 Honor Judge Lamberth permitted updated testimony from Patrick
23 Clawson as to how much, in the opinion of Patrick Clawson,
24 Iran is currently spending on the sponsorship of terrorism.
25 Patrick Clawson filed sworn testimony of a very high amount

1 but said not less than \$200 million per year. And Judge
2 Lamberth, in the *Valore* decision, awarded to that consolidated
3 group of plaintiffs, not a multiplier of three times, but a
4 multiplier of five times against Iran for its continued
5 heinous sponsorship of terrorism, not only what it did in 1983
6 in Beirut, Lebanon, attacking the Marine barracks, but ever
7 since 1983 till now sponsoring terrorist activities, and Judge
8 Lamberth, accordingly, awarded a five times multiplier using
9 \$200 million and awarded a one-billion-dollar punitive damages
10 award against the Islamic Republic of Iran pursuant to the
11 *Valore* consolidated case, my particular case in that group.
12 It was the *Spencer* case, but I had the privilege of presenting
13 the argument.

14 And in that argument, may it please the Court, I
15 didn't only concentrate on the issue of punishment because we
16 all know, as Your Honor knows, that the other prongs of
17 punitive damages, in addition to punishment, are deterrents,
18 to deter the state sponsoring of terror from future
19 sponsorship of terror, but also to deter others so that they
20 will know the United States of America and this court will not
21 countenance the sponsorship of terror by anybody, by any
22 country, by any state sponsor of terror, by any foreign
23 terrorist organization, by any terror organization, by anybody
24 against Americans in violation of U.S. law.

25 And in relation to deterrence, Syria, may it please

1 the Court, according to the evidence, there is no question
2 they have continued to sponsor terrorism right up until now,
3 and only your award in sending a message to Syria may get
4 their attention in assessing punitive damages not only as
5 punishment but as deterrence.

6 And for those others around the world who are
7 sponsoring terrorist acts, committing terrorist acts, let them
8 hear a message from this United States court that the United
9 States of America is going to always stand up for our
10 soldiers, for our citizens, for our rights, for our beliefs,
11 for our commitment to democracy, for our respect to individual
12 human rights and their entitlement of our citizens and every
13 human in the world to life, liberty and the pursuit of
14 happiness.

15 A message, Your Honor, that only you today can send
16 to the Syrian defendants, and taking Professor Deeb's
17 testimony that there is no question that Syria is spending a
18 minimum of \$500 million a year today on sponsoring terrorism,
19 we ask you to award such multiplier as you deem appropriate to
20 send that message. No matter how high that number may get,
21 the fact of the matter is, using the -- using other cases from
22 this courthouse and that of Judge Lamberth who in earlier
23 cases against Iran used a three times multiplier and in the
24 *Valore* case that include my *Spencer* case, the five times
25 multiplier, I understand Your Honor that in asking for this,

1 it is a strong ask of this court for which I cannot stand
2 down.

3 I cannot apologize because 25 years later, Syria is
4 still sponsoring terror. They were indeed, without question,
5 one of the worst state sponsors of terror in the world, and
6 today Iran is clearly the world's worst sponsor of terror in
7 the world and there is no question about it, no question about
8 it. And the government of Syria, however, needs to be
9 punished and there needs to be deterrence, and Syria and Iran
10 working together hand in hand to arm Hizballah, to arm Hamas,
11 to provide this kind of money through the hands of the
12 government of Syria is arming that could not be done,
13 terrorist support that could not be provided.

14 Iran uses Syria, but Syria is a willing partner and
15 participant. The testimony that you will read, Your Honor,
16 makes it clear that Syria and Iran are like this, but Syria,
17 you see, is located on the map, next to Lebanon and the
18 Mediterranean Sea and above Israel and the Palestinian
19 authority, Palestinian territory. Down there is Egypt. Over
20 here is Jordan. So Iran and its hateful President
21 Ahmadinejad, in its partnership with Syria, its conspiracy
22 with Syria, and Syria as a willing partner spending, according
23 to the testimony of Dr. Deeb, Professor Deeb, not less than
24 \$500 million a year, needs to send the most powerful message
25 ever sent from this courthouse to the government of Syria and

1 to all governments in the world. Punishment, deterrence, and
2 lastly, justice.

3 May it please the Court, in my opening statement I
4 believe I used the words that this case is about seeking
5 justice, and it is. Because Scarlett Rogenkamp deserves
6 justice. Maybe she's hearing the message. Patrick Scott
7 Baker deserves justice. He thanked you for listening to him.
8 And Jackie Nink Pflug deserves justice. For 25 years, Your
9 Honor, they have been seeking justice, and through us, through
10 you, through the system of justice in our country and pursuant
11 to 28 U.S.C. 1605A, adopted for the purpose of making it clear
12 that American victims of terrorism, and in this case, American
13 victims of Syrian terrorism, being American victims of
14 EgyptAir Flight 648, are entitled to justice under the law.

15 And we ask, Your Honor, that in considering your
16 judgment in this case, we ask you to find the Syrian
17 defendants and each of them responsible for its sponsorship of
18 the Abu Nidal terrorist organization, for its involvement in
19 that, for its support of that, for its participation in
20 selecting EgyptAir as its target, in sending a message, we ask
21 you, Your Honor, to properly compensate the Certain
22 Underwriters, as I said before and won't repeat, because
23 they've suffered those losses, and Scarlett Rogenkamp and her
24 estate and the family members as Plaintiffs in this case for
25 all that they're entitled to, and Patrick Scott Baker and his

1 family members, for all that he and they're entitled to, and
2 we ask, Your Honor, to do the same for Jackie Nink Pflug who
3 no matter how she has a smile on her face, deserves justice
4 for her brain having been taken, as Patrick deserves justice
5 for the bullet he took and the damage to his brain.

6 This has been about seeking justice. So what is
7 justice? Truthfully, Your Honor, may it please the Court, as
8 I conclude, truthfully, in this case, which I thought about
9 every, every, every single day, truthfully there can be no
10 justice, but what there can be, although there is no justice
11 for Scarlett, no justice for Patrick, no justice for Jackie,
12 what there can be, Your Honor, for them and their family
13 members and the Certain Underwriters is an assessment by you
14 of a certain measure of justice, because all justice --
15 although justice will never be awarded completely to them, the
16 only way we here in the United States of America sometimes can
17 deliver justice 25 years later for the pain, for the
18 suffering, for the anguish, for the lost brain tissue and lost
19 lives, limbs, what they've been through, the lost dreams, the
20 lost everything, the loss of the aircraft, the only way at the
21 end of the day justice can be granted is by an order and a
22 judgment from a court that also grants justice and then
23 measures that justice.

24 The only way we in our courts can measure justice
25 under 28 U.S.C. 1605A, we measure justice in terms of dollars,

1 recoverable dollars, awardable dollars, and I ask this court,
2 without raising my voice or without expressing any further my
3 anguish, to in granting justice, in measuring justice, to
4 grant a judgment that is in the highest millions of dollars
5 for each and every one of the Plaintiffs, the victims, their
6 family, the Certain Underwriters, for all of these
7 unconscionable, heinous, intolerable acts, and I ask this
8 court to grant also those punitive damages against the Syrian
9 defendants, punishment for what they did knowingly,
10 intentionally, willingly and being held responsible by this
11 court for the consequences of their acts, and I ask this court
12 to award the highest sum with the most number of zeros that
13 this court deems appropriate in its assessing justice, to
14 deter, to punish and to deter, to deter others and to deter
15 Syria, the Syrian defendants because they deserve it.

16 One might say they deserve no justice. I say, Your
17 Honor, they deserve a message of justice from this court. We
18 thank the Court for its attention during this trial, we thank
19 the Court for permitting us to present the evidence in what I
20 hope the Court will agree is painful, meticulous presentation
21 of what some later some day will say this couldn't have
22 happened, must have been a movie, a Steven Spielberg movie, it
23 couldn't have happened.

24 But Your Honor, it did happen and it happened on our
25 watch and it happened in our time, and the only way to prevent

1 it from happening again is not just through the good work of
2 TSA and Homeland Security because Times Square is Times
3 Square, the fact of the matter is, the only way we can measure
4 justice, award justice, send a message is with what you do
5 today in granting judgment against the Syrian defendants for
6 which in advance, Your Honor, may it please the Court, we
7 thank you for your consideration.

8 THE COURT: You're welcome. Thank you.

9 Is it your practice in these cases to traditionally
10 propose findings of fact and conclusions of law?

11 MR. HEIDEMAN: Upon request, absolutely.

12 THE COURT: If you'd like to, I think that would
13 expedite the matter.

14 MS. KALIK: We'll need to get the transcript.

15 THE COURT: Well, 30 days after you get the
16 transcript is fine.

17 MR. HEIDEMAN: This way the findings and conclusions
18 can reference page in the transcript, Your Honor, both of the
19 testimony and of the exhibits.

20 THE COURT: I don't remember in the *Valore* case if I
21 got them or not, but -- yes, I did, I certainly did and they
22 proved very useful. I appreciate that.

23 Thank you very much for your superb presentation of
24 all the evidence and for your work on behalf of your clients
25 which was obviously so thorough and so impassioned. It was a

1 great honor to be here. Please convey to these families my
2 best. Thank you very much. Court will be in recess.

3 THE DEPUTY CLERK: All rise. Court stands
4 adjourned.

5 (PROCEEDINGS END AT 12:20 P.M.)

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12 **CERTIFICATE OF REPORTER**

13 I, Catalina Kerr, certify that the foregoing is a
14 correct transcript from the record of proceedings in the
15 above-entitled matter.

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20 _____
21 Catalina Kerr

_____ Date

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