

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|---------------------------------|---|---|
| ----- | X | |
| OLIVIA RUX, et al., | : | |
| | : | |
| Petitioners, | : | <u>ORDER REGULATING</u> |
| | : | <u>ATTORNEYS' FEES AND COSTS</u> |
| | : | |
| -against- | : | 08 Civ. 6588 (AKH) |
| | : | |
| ABN-AMRO BANK N.V., et al., | : | |
| | : | |
| Respondents. | : | |
| ----- | X | |
| ALVIN K. HELLERSTEIN, U.S.D.J.: | | |

These proceedings arise under the Terrorism Risk Insurance Act of 2002 (“TRIA”), Pub. L. No. 107-297, 116 Stat. 2322 (Nov. 26, 2002), at 28 U.S.C. § 1610 note. At a hearing on February 19, 2009, I provisionally authorized the Respondent banks to pay, from blocked funds of the Government of Sudan, the judgment of about \$13.395 million obtained by Petitioners, survivors of the bombing of the U.S.S. Cole. In addition, I provisionally authorized the banks to pay themselves the costs and expenses that they incurred as stakeholders, to assure that the funds they had blocked did not include those of claimants other than the Government of Sudan. Pursuant to that authority, the banks seek reimbursement of fees and expenses incurred to their attorneys, in the total amount of \$621,247.22. My review of the applications suggests that there was considerable duplication of legal services, and that the present claim for fees and expenses is disproportionately large. I invited the Government to state its position.

The Government opposes the payment of any fees and expenses to the banks from the blocked funds at issue in this case. The Government argues that TRIA is a narrow exception to the Executive’s general authority to block funds of a foreign government posing an unusual and extraordinary threat to the United States. In general, funds blocked in this manner may not be moved unless specifically authorized by the Government, but TRIA creates an exception by allowing blocked funds to be used to satisfy certain judgments for “compensatory damages.”

The Government argues that TRIA should not be expanded to allow blocked funds also to be used to pay fees and expenses incurred by banks that appear in a TRIA action, given the Executive's interest, as a matter of foreign policy, in guarding the integrity of the remaining blocked funds.

I rule, however, that expenses incurred by the banks, in proceedings not of their own making, to assure that payments from blocked funds do not prejudice innocent beneficiaries, or the banks themselves, are integral to the process of allowing the victims of terrorism to recover from blocked assets. The victims should not have their recoveries diminished by these expenses, nor should the expenses be unreasonably high. In my opinion, a modest increase of payment from blocked funds, to defray the banks' expenses without affecting the recovery of the victims, is reasonable, appropriate, and consistent with TRIA.

In that sense, I authorize payment to the banks in an amount significantly less than their claim of \$621,247.22, to be allocated principally to the fees and expenses of lead counsel. I note that there is a tendency, in proceedings such as this, to duplicate legal services, and to staff more deeply than would be the case had an exacting client been involved. The reduction in the award is intended to adjust for this tendency, and to reflect, as well, the important concerns expressed by the Government, while promoting cooperation by the banks with Executive asset freeze orders and TRIA turnover proceedings. Therefore, in addition to full payment of Petitioners' judgment, I allow payment of fees and costs to the banks, in the following amounts, from the blocked funds as to which no objections were received:

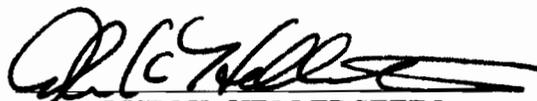
| <u>Respondent Bank</u> | <u>Fees and Costs Requested</u> | <u>Fees and Costs Allowed</u> |
|--------------------------------------|---------------------------------|-------------------------------|
| American Express Bank, Ltd. | \$64,761.56 | \$5,000.00 |
| ABN-Amro Bank N.V. | \$15,822.94 | \$5,000.00 |
| Bank of America | \$15,650.36 | \$5,000.00 |
| Bank of China | \$17,540.27 | \$5,000.00 |
| The Bank of New York Mellon | \$100,138.88 | \$25,000.00 |
| Citibank, N.A. | \$89,406.55 | \$5,000.00 |
| Deutsche Bank Trust Company Americas | \$148,519.72 | \$35,000.00 |
| HSBC Bank USA, N.A. | \$12,365.18 | \$5,000.00 |
| JPMorgan Chase Bank, N.A. | \$157,044.76 | \$25,000.00 |
| | Total: \$621,247.22 | Total: \$115,000.00 |

I also note that the redacted versions of the proposed orders submitted by the parties obscure not only the account numbers of blocked accounts, but also the amounts associated with the accounts. I find no reason to redact those amounts. Therefore, while the redacted versions of the final orders shall continue to redact account numbers, they shall reveal the amounts associated with the accounts.

The parties shall submit proposed orders that conform to this order.

SO ORDERED.

Dated: April 3, 2009
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge