

INTERNATIONAL COURT OF JUSTICE

CERTAIN IRANIAN ASSETS

(ISLAMIC REPUBLIC OF IRAN v. UNITED STATES OF AMERICA)

COUNTER-MEMORIAL

SUBMITTED BY

THE UNITED STATES OF AMERICA

October 14, 2019

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VOLUME II

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PRESS RELEASES

Treasury Sanctions Iran's Central Bank and National Development Fund

September 20, 2019

Action targets major sources of funding for the regime's proxies and terrorist arms, including the IRGC, the Qods Force, Hizballah and the Houthis

WASHINGTON- Today, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) took action against the Central Bank of Iran (CBI), the National Development Fund of Iran (NDF), and Etemad Tejarate Pars Co. under its counterterrorism authority, Executive Order (E.O.) 13224. Iran's Central Bank has provided billions of dollars to the Islamic Revolutionary



minister, and the governor of the Central Bank, has been a major source of foreign currency and funding for the IRGC-QF and Iran's Ministry of Defense and Armed Forces Logistics (MODAFL). Etemad Tejarate Pars, also designated today, is an Iran-based company that is used to conceal financial transfers for MODAFL's military purchases, including funds originating from the NDF.

"Iran's brazen attack against Saudi Arabia is unacceptable. Treasury's action targets a crucial funding mechanism that the Iranian regime uses to support its terrorist network, including the Qods Force, Hizballah, and other militants that spread terror and destabilize the region. The United States will continue its maximum pressure campaign against Iran's repressive regime, which attempts to achieve its revolutionary agenda through regional aggression while squandering the country's oil proceeds," said Treasury Secretary Steven T. Mnuchin. "Iran's Central Bank and the National Development Fund were ostensibly intended to safeguard the welfare of the Iranian people, but have been used instead by this corrupt regime to move Iran's foreign currency reserves for terrorist proxies."

"We are putting governments on notice that they are risking the integrity of their financial systems by continuing to work with the Iranian regime's arm of terror finance, its Central Bank," said Sigal Mandelker, Under Secretary for Terrorism and Financial Intelligence. "We will vigorously enforce our sanctions to cut off the Iranian regime's funding of global terrorism and its domestic oppression of the Iranian people, who are the regime's longest suffering victims."

CENTRAL BANK OF IRAN FUNDS THE IRGC, ITS QODS FORCE AND HIZBALLAH

Today's action targets the CBI for its financial support to the IRGC-QF and Hizballah. In May 2018, OFAC [designated](#) the CBI's then-Governor Valiollah Seif, and the Assistant Director of the International Department Ali Tarzali, for facilitating financial transfers for the IRGC-QF and Hizballah. Also, in November 2018 and as part of Treasury's disruption of an international oil-for-terror network, OFAC [designated](#) the CBI's International Department Director Rasul Sajjad, and the CBI's International Department Director, Hossein Yaghoobi, for conducting financial transactions for the IRGC-QF.

Since at least 2016, the IRGC-QF has received the vast majority of its foreign currency from the CBI and senior CBI officials have worked directly with the IRGC-QF to facilitate CBI's financial



During 2018 and early 2019, the CBI facilitated the transfer of several billion of U.S. dollars and euros to the IRGC-QF and hundreds of millions to MODAFL from the NDF. Additionally, millions were to be transferred to the Houthis. CBI has also coordinated with the IRGC-QF to transfer funds to Hizballah.

OFAC is designating the CBI today for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to, the IRGC-QF and Hizballah.

The IRGC-QF, which was designated pursuant to E.O. 13224 on October 25, 2007, is a branch of the IRGC responsible for external operations and has provided material support to numerous terrorist groups, including the Taliban, Hizballah, HAMAS, and the Palestinian Islamic Jihad, making it a key component of Iran's destabilizing regional activities. The IRGC, including its external arm, the IRGC-QF, was designated as a Foreign Terrorist Organization on April 8, 2019.

Hizballah was designated by the Department of State as a Foreign Terrorist Organization in October 1997 pursuant to E.O. 13224 in October 2001. It was also designated in August 2012 pursuant to E.O. 13582, which targets the Government of Syria and its supporters.

NATIONAL DEVELOPMENT FUND: A SLUSH FUND FOR THE IRGC-QF AND MODAFL

According to Article 84 of the Fifth Development Plan of the Islamic Republic of Iran, the NDF was established to serve the welfare of the Iranian people by allocating revenues that originated from selling oil, gas, gas condensate, and oil products to durable wealth and productive economic investments. However, the NDF has been used as a slush fund for the IRGC-QF, which has, for years, received hundreds of millions of dollars in cash disbursements from the NDF.

The NDF, in coordination with the CBI, provided the IRGC-QF with half a billion U.S. dollars in 2017 and hundreds of millions of dollars in 2018. Also, despite an increase in the IRGC's overall budget for 2019, the Rouhani administration withdrew some \$4.8 billion from the NDF in January 2019 to amend the budget allocated to the IRGC and the Islamic Republic of Iran Broadcasting (IRIB).



media outlets and aiming forced confessions from detainees.

During 2018 and early 2019, the CBI facilitated the transfer of hundreds of millions to both the Atomic Energy Organization and MODAFL from the NDF. Some of the funds to be transferred via Iran-based Etemad Tejarate Pars Co. were intended to be used for military purchases.

As of early 2019, Etemad Tejarate Pars Co. planned to send tens of millions in various currencies, including euros, to Wilmington General Trading LLC in Dubai, UAE, the Embassy of the Islamic Republic of Iran in Moscow, Russia, and to companies on behalf of MODAFL.

OFAC is designating NDF for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to, the IRGC-QF and MODAFL.

OFAC is designating Etemad Tejarate Pars Co. for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to, MODAFL.

On March 26, 2019, OFAC [designated](#) MODAFL pursuant to E.O. 13224 for its role in assisting the IRGC-QF. Wilmington General Trading LLC was also designated on March 26, 2019 for being owned or controlled by Asadollah Seifi who obfuscated millions of dollars' worth of transactions benefiting the Iranian regime and the purchase of foreign currency for the IRGC.

SANCTIONS IMPLICATIONS

As a result of today's action, all property and interests in property of these entities that are in the United States or in the possession or control of U.S. persons must be blocked and reported to OFAC. OFAC's regulations generally prohibit all dealings by U.S. persons or within (or transiting) the United States that involve any property or interests in property of blocked or designated persons.

In addition, persons that engage in certain transactions with the entities designated today may themselves be exposed to designation. Furthermore, any foreign financial institution that knowingly facilitates a significant financial transaction or provides significant financial services for entities designated in connection with Iran's support for international terrorism or any Iranian person on OFAC's List of Specially Designated Nationals and Blocked Persons could be subject to U.S. correspondent account or payable-through account sanctions.

The United States has a long standing policy of allowing for the sale of agricultural commodities, food, medicine and medical devices, and OFAC will continue to consider requests



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ANNEX 34

Public Statement - June 2019

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Orlando, FL, United States, 21 June 2019 - The Financial Action Task Force (FATF) is the global standard-setting body for anti-money laundering and combating the financing of terrorism (AML/CFT). In order to protect the international financial system from money laundering and financing of terrorism (ML/FT) risks and to encourage greater compliance with the AML/CFT standards, the FATF identifies jurisdictions that have strategic deficiencies and works with them to address those deficiencies that pose a risk to the international financial system.

Jurisdiction subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the ongoing and substantial money laundering and financing of terrorism (ML/FT) risks.

Democratic People's Republic of Korea (DPRK)

The FATF remains concerned by the DPRK's failure to address the significant deficiencies in its anti-money laundering and combating the financing of terrorism (AML/CFT) regime and the serious threats they pose to the integrity of the international financial system. The FATF urges the DPRK to immediately and meaningfully address its AML/CFT deficiencies. Further, the FATF has serious concerns with the threat posed by the DPRK's illicit activities related to the proliferation of weapons of mass destruction (WMDs) and its financing.

The FATF reaffirms its 25 February 2011 call on its members and urges all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with the DPRK, including DPRK companies, financial institutions, and those acting on their behalf. In addition to enhanced scrutiny, the FATF further calls on its members and urges all jurisdictions to apply effective counter-measures, and targeted financial sanctions in accordance with applicable United Nations Security Council Resolutions, to protect their financial sectors from money laundering, financing of terrorism and WMD proliferation financing (ML/FT/PF) risks emanating from the DPRK. Jurisdictions should take necessary measures to close existing branches, subsidiaries and representative offices of DPRK banks within their territories and terminate correspondent relationships with DPRK banks, where required by relevant UNSC resolutions.

Jurisdiction subject to a FATF call on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction.

Iran

In June 2016, the FATF welcomed Iran's high-level political commitment to address its strategic AML/CFT deficiencies, and its decision to seek technical assistance in the implementation of the Action Plan. Given that Iran provided that political commitment and the relevant steps it has taken, the FATF decided in February 2019 to continue the suspension of counter-measures.

In November 2017, Iran established a cash declaration regime. In August 2018, Iran has enacted amendments to its Counter-Terrorist Financing Act and in January 2019, Iran has also enacted amendments to its Anti-Money Laundering Act. The FATF recognises the progress of these legislative efforts. The bills to ratify the Palermo and Terrorist Financing Conventions have passed Parliament, but are not yet in force. As with any country, the FATF can only consider fully enacted legislation. Once the remaining legislation comes fully into force, the FATF will review this alongside the enacted legislation to determine whether the measures contained therein address Iran's Action Plan, in line with the FATF standards.

Iran's action plan expired in January 2018. In June 2019, the FATF noted that there are still items not completed and Iran should fully address: (1) adequately criminalizing terrorist financing, including by removing the exemption for designated groups "attempting to end foreign occupation, colonialism and racism"; (2) identifying and freezing terrorist assets in line with the relevant United Nations Security Council resolutions; (3) ensuring an adequate and enforceable customer due diligence regime; (4) clarifying that the submission of STRs for attempted TF-related transactions are covered under Iran's legal framework; (5) demonstrating how authorities are identifying and sanctioning unlicensed money/value transfer service providers; (6) ratifying and implementing the Palermo and TF Conventions and clarifying the capability to provide mutual legal assistance; and (7) ensuring that financial institutions verify that wire transfers contain complete originator and beneficiary information.

The FATF decided at its meeting this week to continue the suspension of counter-measures, with the exception of the FATF calling upon members and urging all jurisdictions to require increased supervisory examination for branches and subsidiaries of financial institutions based in Iran, in line with the February 2019 Public Statement.

While acknowledging the progress that Iran made including with the passage of the Anti-Money Laundering Act, the FATF expresses its disappointment that the Action Plan remains outstanding. The FATF expects Iran to proceed swiftly in the reform path to ensure that it addresses all of the remaining items by completing and implementing the necessary AML/CFT reforms.

If by October 2019, Iran does not enact the Palermo and Terrorist Financing Conventions in line with the FATF Standards, then the FATF will require introducing enhanced relevant reporting mechanisms or systematic reporting of financial transactions; and increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in Iran. The FATF also expects Iran to continue to progress with enabling regulations and other amendments.

Iran will remain on the FATF Public Statement until the full Action Plan has been completed. Until Iran implements the measures required to address the deficiencies identified with respect to countering terrorism-financing in the Action Plan, the FATF will remain concerned with the terrorist financing risk emanating from Iran and the threat this poses to the international financial system. The FATF, therefore, calls on its members and urges all jurisdictions to continue to advise their financial institutions to apply enhanced due diligence with respect to business relationships and transactions with natural and legal persons from Iran, consistent with FATF Recommendation 19, including: (1) obtaining information on the reasons for intended transactions; and (2) conducting enhanced monitoring of business relationships, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

More on:

- [Improving Global AML/CFT Compliance: On-going Process, 21 June 2019](#)
- [Outcomes FATF Plenary, Paris, 21 June 2019](#)

[< High-risk and other monitored jurisdictions](#)

ANNEX 35

MARKET NEWS

NOVEMBER 5, 2018 / 9:11 AM / 10 MONTHS AGO

UPDATE 1-SWIFT says suspending some Iranian banks' access to messaging system



(Adds quote from statement, background)

WASHINGTON, Nov 5 (Reuters) - The Belgium-based SWIFT financial messaging service said on Monday it is suspending some unspecified Iranian banks' access to its messaging system in the interest of the stability and integrity of the global financial system.

In a brief statement, SWIFT made no mention of U.S. sanctions coming back into effect on some Iranian financial institutions on Monday as part of U.S. President Donald Trump's effort to force Iran to curtail its nuclear, missile and regional activities.

The SWIFT statement said suspending the Iranian banks access to the messaging system was a "regrettable" step but was "taken in the interest of the stability and integrity of the wider global financial system."

Having abandoned the 2015 Iran nuclear deal, Trump is trying to cripple Iran's oil-dependent economy and force Tehran to quash not only its nuclear ambitions and its ballistic missile program but its support for militant proxies in Syria, Yemen, Lebanon and other parts of the Middle East.

SWIFT's decision not to mention the resumption of U.S. sanctions likely reflects the fact that it is caught between two contrary regulatory demands.

The U.S. government has told SWIFT that it is expected to comply with U.S. sanctions and it could face U.S. sanctions if it fails to do so. On the other hand, SWIFT is barred from doing so under the European Union's so-called blocking statute, which could subject it to European penalties for complying with U.S. law. (Reporting by Arshad Mohammed Editing by Bill Trott)

Our Standards: The Thomson Reuters Trust Principles.

ANNEX 36

264 F.Supp.2d 46
United States District Court,
District of Columbia.

Deborah D. PETERSON, Personal Representative
of the Estate of James C. Knipple, et al., Plaintiffs,
v.

The ISLAMIC REPUBLIC OF IRAN, et al.,
Defendants.

Joseph and Marie Boulos, Personal
Representatives of the Estate of Jeffrey Joseph
Boulos, et al., Plaintiffs,
v.

The Islamic Republic of Iran, et al., Defendants.

Nos. CIV.A. 01–2094(RCL), CIV.A.
01–2684(RCL).
|
May 30, 2003.

Synopsis

In actions under Foreign Sovereign Immunities Act (FSIA), arising out of bombing of a U.S. Marine barracks in Beirut, Lebanon, in 1983, family members of deceased servicemen and injured survivors alleged that the Islamic Republic of Iran, through the Iranian Ministry of Information and Security (MOIS) and the terrorist organization Hezbollah, engaged in state-sponsored terrorism resulting in wrongful death, battery, assault, and intentional infliction of emotional distress. After entry of default judgment against Iran, The District Court, [Lamberth](#), J., held that: (1) court had subject matter jurisdiction; (2) court had personal jurisdiction over Iran and MOIS; (3) statute of limitations did not bar action; (4) military service members at issue qualified for recovery; and (5) evidence established liability of Iran and MOIS.

Judgment for plaintiffs.

Attorneys and Law Firms

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[Robert Peter Feeney](#), Gaithersburg, MD, [Joseph Peter](#)

[Drennan](#), Alexandria, VA, [Anthony J. LaSpada](#), Tampa, FL, [Kay Maureen Clarke](#), Washington, DC, [Allen Louis Rothenberg](#), Philadelphia, PA, [Jane Carol Norman](#), [Ferris Ridgely Bond](#), Bond & Norman, PLLC, Washington, DC, for Defendants.

MEMORANDUM OPINION

[LAMBERTH](#), District Judge.

These actions arise from the most deadly state-sponsored terrorist attack made *[48](#) against American citizens prior to September 11, 2001: the Marine barracks bombing in Beirut, Lebanon on October 23, 1983. In the early morning hours of that day, 241 American servicemen were murdered in their sleep by a suicide bomber. On that day, an unspeakable horror invaded the lives of those who survived the attack and the family members whose loved ones had been stolen from them. The memory of that horror continues to this day.

On March 17–18, 2003, this Court conducted a bench trial to determine the liability of the defendants for this inhuman act. Having reviewed the extensive evidence presented during that trial by both lay and expert witnesses, the Court has determined that the plaintiffs have established their right to obtain judicial relief against the defendants. The Court’s findings of fact and conclusions of law are set forth below.

I. PROCEDURAL BACKGROUND

The plaintiffs in these two actions are family members of the 241 deceased servicemen (hereafter, “the servicemen”) and the injured survivors of the attack. Plaintiffs have brought these actions in their own right, as administrators of the estates of the servicemen, and on behalf of the servicemen’s heirs-at-law. All decedents and injured survivors of the attack were serving in the U.S. armed forces at the time of their injuries or death. All plaintiffs are nationals of the United States.¹

On October 3 and December 28, 2001, plaintiffs filed separate complaints with this Court. The complaints included statutory claims for wrongful death and common-law claims for battery, assault, and intentional infliction of emotional distress, all resulting from an act of state-sponsored terrorism. Plaintiffs sought relief in the form of compensatory and punitive damages. Although defendants were served with the two complaints on May 6 and July 17, 2002, defendants failed to file any response to either complaint, and on December 18, 2002, this Court entered defaults against defendants in both cases.

However, despite the entries of default, this Court is required to make a further inquiry prior to entering any judgment against defendants. FSIA mandates that a default judgment against a foreign state be entered only after a plaintiff “establishes his claim or right to relief by evidence that is satisfactory to the Court.” 28 U.S.C. § 1608(e); see also *Flatow v. The Islamic Republic of Iran*, 999 F.Supp. 1, 6 (D.D.C.1998). As in *Flatow*, the Court will require plaintiffs to establish their right to relief by clear and convincing evidence. The “clear and convincing” standard of proof is the standard required in the District of Columbia to support a claim for punitive damages, and is sufficient to establish a prima facie case in a contested proceeding.

II. FINDINGS OF FACT

As stated above, this Court received testimony from plaintiffs on March 17 and 18, *49 2003, defendants having failed to enter an appearance. The Court now enters its findings of fact, based upon the sworn testimony and documentary evidence presented during the March trial, and received in accordance with the Federal Rules of Evidence. This Court finds these facts to be established by clear and convincing evidence.

A. Historical Background²

The Republic of Lebanon is a mountainous country of approximately 3,800,000 people bordered by Israel, Syria, and the eastern shore of the Mediterranean Sea. Although it contains some of the oldest human settlements in the world, including the Phoenician port cities of Tyre and Sidon, it did not become an independent nation until 1944.

Lebanon did not participate militarily in the 1967 and 1973 Arab–Israeli wars. However, by 1973, approximately one out of every ten person living in Lebanon was a Palestinian refugee, many of whom supported the efforts of the Palestine Liberation Organization (PLO) against Israel. Some of these refugees engaged in guerilla warfare and terrorist activity against Israel from bases established in southern Lebanon. Beginning in 1968, Israel engaged in reprisals against these Palestinian strongholds in southern Lebanon. In 1975, civil war broke out in Lebanon between its Muslim inhabitants and Palestinian refugees, who supported the PLO, and its Christian inhabitants, who opposed the PLO’s actions. The war would not come to a complete end for another fifteen years, during which approximately twenty thousand Lebanese were killed, and approximately the same number of Lebanese were [wounded](#).

B. The Arrival of the 24th Marine Amphibious Unit

In late 1982, with the concurrence of the United Nations, a multinational peacekeeping coalition consisting of American, British, French, and Italian soldiers arrived in the Lebanese capital of Beirut. In May of 1983, the 24th Marine Amphibious Unit of the U.S. Marines (“the 24th MAU”) joined this coalition.³ The rules of engagement issued to the servicemen of the 24th MAU made clear that the servicemen possessed neither combatant nor police powers. In fact, under the rules, the servicemen were ordered not to carry weapons with live rounds in their chambers, and were not authorized to chamber the rounds in their weapons unless (1) they were directly ordered to do so by a commissioned officer or (2) they found themselves in a situation requiring the immediate use of deadly force in self-defense.⁴ As pointed out during *50 trial, the members of the 24th MAU were more restricted in their use of force than an ordinary U.S. citizen walking down a street in Washington, D.C.

The restrictive rules of engagement are consistent with the testimony of Col. Timothy Geraghty, the commander of the 24th MAU, about the mission of the multinational peacekeeping force:

[E]ssentially what it was, it was primarily a peacekeeping mission and it was to show [our] presence, and when I say ours, and this is throughout all the forces, is that we were out showing a presence, [primarily] to provide stability to the area. And I might add that there’s no doubt in just about anyone involved at the time, we saved a lot of lives by our presence there for awhile. And that was part of, I might add, in

my judgment, the success of that, our presence mission there, and [that] it was working is the primary reason why we were targeted....

The rules—these were geared primarily again with the peacekeeping mission [in mind] and the sensitivities of killing or maiming someone accidentally. That could be a tinderbox. That could start a whole chain of events.

Col. Geraghty further testified that the location and security of the 24th MAU's position was not tactical in nature, and was only acceptable to the commanding officer in the context of the unit's mission to "provide a presence."

Based on the testimony of Col. Geraghty and other witnesses, the Court finds that on October 23, 1983, the members of the 24th MAU, and the service members supporting the unit, were clearly non-combatants operating under peacetime rules of engagement.⁵

C. The Iranian Government and the October 23 Attack⁶
Following the 1979 revolution spearheaded by the Ayatollah Ruhollah Khomeini, the nation of Iran was transformed into an Islamic theocracy. The new government promptly drafted a constitution, which is still in effect today. The preamble to the 1979 constitution sets forth the mission of the post-revolutionary Iranian state:

The mission of the Constitution is to realize the ideological objectives of the movement and to create conditions conducive to the development of man in *51 accordance with the noble and universal values of Islam.

With due attention to the Islamic content of the Iranian Revolution, the Constitution provides the necessary basis for ensuring the continuation of the Revolution at home and abroad. In particular, in the development of international relations, the Constitution will strive with other Islamic and popular movements to prepare the way for the formation of a single world community ... to assure the continuation of the struggle for the liberation of all deprived and oppressed peoples in the world.

The post-revolutionary government in Iran thus declared its commitment to spread the goals of the 1979 revolution to other nations. Towards that end, between 1983 and 1988, the government of Iran spent approximately \$50 to \$150 million financing terrorist organizations in the Near East.⁷ One of the nations to which the Iranian government

directed its attention was the war-torn republic of Lebanon.

"Hezbollah" is an Arabic word meaning "the party of God." It is also the name of a group of Shi'ite Muslims in Lebanon that was formed under the auspices of the government of Iran. Hezbollah began its existence as a faction within a group of moderate Lebanese Shi'ites known as Amal. Following the 1982 Israeli invasion of Lebanon, the Iranian government sought to radicalize the Lebanese Shi'ite community, and encouraged Hezbollah to split from Amal. Having established the existence of Hezbollah as a separate entity, the government of Iran framed the primary objective of Hezbollah: to engage in terrorist activities in furtherance of the transformation of Lebanon into an Islamic theocracy modeled after Iran.

During the March trial in these cases, Dr. Patrick Clawson, a widely-renowned expert on Iranian affairs over the past 25 years, testified that in 1983, Hezbollah was a creature of the Iranian government:

Both from the accounts of Hezbollah members and from the accounts of the Iranians and of every academic study that I'm aware of, certainly at this time, Hezbollah is largely under Iranian orders. It's almost entirely acting at the—under the order of the Iranians and being financed almost entirely by the Iranians. It comes to be an organization with Lebanese roots and Lebanese activities and more independence from Iran, but that's years past this time frame.

* * * * *

THE COURT: In the '83 time frame, it was essentially a tool of Iran.

THE WITNESS: Correct, sir. Indeed, both Iranian and Lebanese observers have described it as being established at Iran's orders and as being a creature of Iran when it began. Hezbollah leaders today will sometimes describe that as the roots of their party and say that it has evolved away from being that.

Q: Was there any other major means of support for Hezbollah other than the Islamic Republic of Iran?

A: Not at this time, no, sir.⁸

*52 Dr. Clawson's testimony was corroborated by Dr. Reuven Paz,⁹ who has researched Islamist terrorist groups for the last 25 years:

Q: Now, as of the time of this attack, in October 1983, to what extent was Hezbollah, at that precise

moment, dependent upon the support of Iran, and particularly the Iranian Revolutionary Guards, who had been brought in in order to carry out any type of major [military] operation?

A: Well, I would say that they were, at that time, totally relied upon, the Iranian support. We are talking about composing a new group, of Hezbollah, out of people who had very little military experience. They were members, before '82, in groups that actually did not deal with military issues or terrorism. And most of the members during this process of unification that created Hezbollah started to be trained in training camps in the Bekaa Valley, where the main Iranian forces were located.

* * * * *

Q: Do you have an opinion, within a reasonable degree of certainty, as an expert on Islamist terrorism, whether this attack was carried out by Hezbollah, in response to the order which was the subject of the communications intercept in late September 1983?

A: Yes, especially at that time—even today, but especially at that time, when Hezbollah was not yet formed as a strong group, it was totally controlled by Iran and actually served mainly the Iranian interest in Lebanon and [against] Israel.

Q: Do you have an opinion, again within a reasonable degree of certainty, as an expert in Islamist terrorist groups, as to whether Hezbollah, at that time, the fall of 1983, would have had the capacity to carry out an attack of the dimension of the attack around the Marine barracks, in the absence of Iranian scientific, financial, and material assistance?

A: No, I don't think they could have carried out such an attack without Iranian training, without Iranian—Iranian supply of the explosives even, and without directions from the Iranian forces in Lebanon itself.¹⁰

Q: Dr. Paz, can you describe the—the source of—of this technique of suicide bombing, which was used in the attack on the Marine barracks and since, unfortunately, many other incidents?

A: Yes, this—this modus operandi actually was initiated in Iran and it was—it was not, at that time, used in anywhere in—in the Sunni Muslim world. It was at that time a Shi'ite

ideology of self-sacrifice by suicide bombing. It started during the Iran–Iraq war in the '80s, and then under Iranian training and influence and instructions, it started as a modus operandi *53 of terrorist groups—first in Lebanon, by Hezbollah, and then later on it moved to the Palestinian arena, mainly during the '90s.

It is clear that the formation and emergence of Hezbollah as a major terrorist organization is due to the government of Iran. Hezbollah presently receives extensive financial and military technical support from Iran, which funds and supports terrorist activities. The primary agency through which the Iranian government both established and exercised operational control over Hezbollah was the Iranian Ministry of Information and Security ("MOIS"). MOIS had formerly served as the secret police of the Shah of Iran prior to his overthrow in 1979. Despite the revolutionary government's complete break with the old regime, it did not disband MOIS, but instead allowed it to continue its operations as the intelligence organization of the new government. Based on the evidence presented at trial, the Court finds that MOIS acted as a conduit for the Islamic Republic of Iran's provision of funds to Hezbollah, provided explosives to Hezbollah and, at all times relevant to these proceedings, exercised operational control over Hezbollah.

It is clear that MOIS was no rogue agency acting outside of the control and authority of the Iranian government. Indeed, as Dr. Clawson testified at trial, the October 23 attack would have been impossible without the express approval of Iranian government leaders at the highest level:

Q: In the fall of 1983, was there anything of a significant nature, and especially a terrorist attack the dimensions of the attack on the Marine barracks of October 23rd, 1983, which would or could have been undertaken by Hezbollah without material support from Iran?

A: Iran's material support would have been absolutely essential for any activities at that time, and furthermore, the politics of the organization [was such] that no one in the organization would have thought about carrying out an activity without Iranian approval and almost certainly Iranian orders.

Q: Is that opinion within a reasonable degree of certainty as an expert on Iran?

A: Oh, absolutely, sir.

Q: Would any operation such as the October 23rd, 1983 attack require the approval within Iran of the

Ministry of Information and Security?

A: Yes, sir.

Q: What about Mr. Rafsanjani?

A: Yes, sir . . . There would have been a discussion in the National Security Council which would involve the prime minister, and it would also have required the approval of Iran's supreme religious leader, Ayatollah Khomeini. We have many detailed accounts about the approval process from other attacks at this time, and, indeed, from a number of Iranians who became disillusioned within this process and later left.

Q: Doctor, your opinion within a reasonable degree of certainty as an expert on Iran, what was the foreign policy objective of the October 23rd, 1983, attack and other like attacks by Iran during this period?

A: Both to end the Western, especially the American presence in Lebanon, and to establish Iran's image as the leader of the world's radical, anti-Western, anti-American Muslim movement.

The two officials named by Dr. Clawson, the ayatollah ("supreme leader") and the *54 prime minister of Iran, were high government officials in the Iranian government.¹¹ The approval of the ayatollah and the prime minister was absolutely necessary to carry out the continuing economic commitment of Iran to Hezbollah, and to execute the October 23 attack. Given their positions of authority, any act of these two officials must be deemed an act of the government of Iran.

The complicity of Iran in the 1983 attack was established conclusively at trial by the testimony of Admiral James A. Lyons, Deputy Chief of Naval Operations for Plans, Policy and Operation from 1983–85. As deputy chief, Admiral Lyons routinely received intelligence information about American military forces. On October 25, 1983, the chief of naval intelligence notified Admiral Lyons of an intercept of a message between Tehran and Damascus that had been made on or about September 26, 1983. The message had been sent from MOIS to the Iranian ambassador to Syria, Ali Akbar Mohtashemi, who presently serves as an adviser to the president of Iran, Mohammad Khatami.¹² The message directed the Iranian ambassador to contact Hussein Musawi, the leader of the terrorist group Islamic Amal, and to instruct him to have his group instigate attacks against the multinational coalition in Lebanon, and "to take a spectacular action against the United States Marines." Admiral Lyons

testified that he has absolutely no doubt of the authenticity or reliability of the message, which he took immediately to the secretary of the navy and chief of naval operations, who viewed it, as he did, as a "24-karat gold document."¹³

Although it is not presently known whether Ambassador Mohtashemi contacted Musawi, evidence was presented at trial that Mohtashemi did proceed to contact a member of the Iranian Revolutionary Guard ("IRG"), and instructed him to instigate the Marine barracks bombing.¹⁴ The Court heard the videotaped deposition testimony of a Hezbollah member known by the pseudonym "Mahmoud," who was a member of the group that carried out the October 23 attack.¹⁵ Mahmoud, a Lebanese *55 Shi'ite Muslim, testified that Ambassador Mohtashemi contacted a man named Kanani, the leader of the Lebanese headquarters of the IRG. Mohtashemi instructed Kanani to go forward with attacks that had been planned against the 24th MAU and the French paratroopers.¹⁶ Mahmoud testified that a meeting was later held in Baalbek, Lebanon, which was attended by Kanani and Sheik Sobhi Tufaili, Sheik Abbas Musawi, and Sheik Hassan Nasrallah. Nasrallah is the present leader of Hezbollah.¹⁷ Musawi, Nasrallah's immediate predecessor as the leader of Hezbollah, was killed in a February 16, 1992 Israeli attack.¹⁸ Tufaili is a former secretary general of Hezbollah.¹⁹

During this meeting, Kanani and the Hezbollah members formed a plan to carry out simultaneous attacks against the American and French barracks in Lebanon.²⁰ Mahmoud described the meeting and its aftermath:

*56 They got the order. They met and adopted the operation against the Marines and the French barracks in the same time. The Marines operation was done. They moved—they moved with one Iranian and one Shiite from the—Southern Lebanon over the mountain road to Hartareq Biralabin [phonetic spelling]. They stayed two days there.

The—the cars were built, equipped, in Biralabin in a warehouse near a—gas station ... underground. They built the cars. They equipped the cars there. That's their center.

One Dodge, one red Dodge, that was painted exactly like the other—the real Dodge that was providing water and other stuff to the Marines, and they moved it to the airport road where they put the hold on—ambush and hold the real car when she arrived. They stopped the real car and they moved with the fake one that was built with explosives toward the

Marine barracks.

D. The Attack

As testified by Mahmoud, after the meeting in Baalbek, a 19-ton truck was disguised so that it would resemble a water delivery truck that routinely arrived at the Beirut International Airport, which was located near the U.S. Marine barracks in Beirut, and modified the truck so that it could transport an explosive device. On the morning of October 23, 1983, members of Hezbollah ambushed the real water delivery truck before it arrived at the barracks. An observer was placed on a hill near the barracks to monitor the operation. The fake water delivery truck then set out for the barracks, driven by Ismalal Ascari, an Iranian.

At approximately 6:25 a.m. Beirut time, the truck drove past the Marine barracks. As the truck circled in the large parking lot behind the barracks, it increased its speed. The truck crashed through a concertina wire barrier and a wall of sandbags, and entered the barracks.²¹ When the truck reached the center of the barracks, the bomb in the truck detonated.

The resulting explosion was the largest non-nuclear explosion that had ever been detonated on the face of the Earth. The force of its impact ripped locked doors from their doorjams at the nearest building, which was 256 feet away. Trees located 370 feet away were shredded and completely exfoliated. At the traffic control tower of the Beirut International Airport, over half a mile away, all of the windows shattered. The support columns of the Marine barracks, which were made of reinforced concrete, were stretched, as an expert witness described, “like rubber bands.” The explosion created a crater in the earth over eight feet deep. The four-story Marine barracks was reduced to fifteen feet of rubble.

The force of the explosion was equal to between 15,000 to 21,000 pounds of TNT. FBI and ATF explosives experts both concluded that the explosive material was “bulk form” pentaerythritol tetranitrate, or PETN. Danny A. Defenbaugh, the on-scene FBI forensic explosive investigator, testified as to his findings:

[W]e were able to, through the forensic residue analysis, identify the explosive *57 material, and it was unconsumed particles of PETN

PETN is a primary explosive that is manufactured commercially and primarily for U.S. military purposes. It is a primary explosive that is used in detonating cord.

Detonating cord is nothing more than a plastic and fiber-wrapped cord that has the PETN, which looks like a white powder ... that is then extruded inside of that cord

In this case, it was not [consumed]; we found unconsumed particles of PETN. That was just like we had found also in the American Embassy bombing. What that means is that it had to have been from a bulk explosive, it had to have been from a manufacturer.

Defenbaugh explained that when the commercially-manufactured form of PETN is detonated, it is completely consumed in the ensuing explosion. The presence of unconsumed particles of PETN at the Marine barracks blast site, therefore, indicated that the PETN used in the bomb had not been the standard commercially-available form of the explosive. Instead, it had been the raw “bulk form” of PETN, which is not generally sold commercially. In the Middle East, the bulk form of PETN is produced by state-sponsored manufacturers for military purposes. In 1983, bulk form PETN was not manufactured in the nation of Lebanon. However, at that time, bulk form PETN was manufactured within the borders of Iran.

Warren Parker, who served as an explosives expert with the Army and the ATF for forty years, testified that the effectiveness of the attack demonstrated that it had been the result of careful planning.²² Parker also concluded, based on the degree of planning and sophistication that went into the attack, that a group of individuals without specialized training in explosives could not have carried it out:

Q: Mr. Parker, in your opinion, within a reasonable degree of certainty as an expert in explosives, could this bombing have been successfully carried out by a group of individuals with limited education, possessing minimal literacy and no specialized training in explosives?

A: No, sir.

Q: And what do you base that opinion on?

A: The degree of planning, the degree of sophistication of this bombing.... The fact that it was a significant amount of a military-type explosive. These are not things that you just go down to the drugstore and buy a *58 pound of, these are not things [for which] you buy innocuous materials and manufacture in your backyard. PETN is manufactured in factories

that have specialized tools and equipment and knowledge.

I think that I will concur with Mr. Defenbaugh's conclusion that it is a state- or military-run factory that produces this type of material, and I think the fact that it was carried out so successfully and not bungled really enhances the fact that somebody had practiced this before....

[D]uring the, say, late '60s, early '70s, clear up into the '80s, there were state-sponsored training camps involving the use of explosives for political gain, and these training camps used as part of their training, and I have seen materials seized from those that included pages from military manuals, U.S. military as well as English and French military manuals, as part of their training in calculating the explosive charges.

Q: I believe this Court in [*Eisenfeld v. Islamic Republic of Iran*] received testimony with regard to a training camp with regard to handling explosives just outside Tehran, Iran, run by the Iranian government. Would this be the kind of thing you're talking about, an intensive course over three or four months?

A: Yes, sir, those are exactly the kinds. There were several of those. The one in Iran was just one of several but typical of that.

Based on the evidence presented by the expert witnesses at trial, the Court finds that it is beyond question that Hezbollah and its agents received massive material and technical support from the Iranian government. The sophistication demonstrated in the placement of an explosive charge in the center of the Marine barracks building and the devastating effect of the detonation of the charge indicates that it is highly unlikely that this attack could have resulted in such loss of life without the assistance of regular military forces, such as those of Iran.

As a result of the Marine barracks explosion, 241 servicemen were killed, and many others suffered severe injuries. Steve Russell, the sergeant of the guard at the time of the explosion, testified that he had observed several victims of the bombing who were in severe pain before their deaths. Sgt. Russell stated that death was not instantaneous for many of the victims, and that many of the victims of the explosion endured extreme pain and suffering.

During the trial, family members of the victims testified

about the anguish they endured when they learned of the attack. Deborah Peterson described what happened when she received word of the attack on the Marine barracks, where her brother, Corporal James Knipple, was stationed:

It was Sunday morning and I was sleeping and I got a phone call from my father. He had a frantic sound to his voice that I had never heard before and he said—he just screamed, “Debbie, our worst nightmare has been realized.” And I turned on the television and saw what was happening....

It seemed like an awful long time [before word of his death was received]. We waited and waited and waited. We watched every television, we were—I mean, the house was filled with people. We watched the television, we got every newspaper, photograph, magazine we could. We looked for his face among the survivors. We even thought we saw him a couple of times. All of his friends gathered, neighbors, and we held out *59 hope even though the count was rising....

I think around November 7th or 8th, we got a phone call ... They wanted dental information and identifying marks, anything we could give them, and my father told them about a scar on his forearm. The next day, they told us that he was identified.

We brought him home on the 9th, on his 21st birthday, and we buried him on the 10th, the Marine Corps birthday. I remember the casualty officer, he was all by himself, he came to the house. We were all gathered around, and he told us that Jim was among the dead. It was official.

I remember the casualty officer sitting next to my father and they both seemed really quiet while everybody else was screaming and yelling and crying, and my dad just sat there really quiet. And then when everybody left, he went downstairs and started to scream Jim's name over and over and over again at the top of his lungs.

III. CONCLUSIONS OF LAW

Having made the above-listed findings of fact, the Court now enters the following conclusions of law:

1. An action brought against a foreign state, its intelligence service acting as its agent, and its officials,

acting in their official capacity, must be brought under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602–1611 *et seq.* The FSIA must be applied in every action involving a foreign state defendant. *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 489, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983) 28 U.S.C. § 1330. The sole bases for subject matter jurisdiction in an action against a foreign state defendant are the FSIA’s enumerated exceptions to immunity. *Argentine Republic v. Amerasia Shipping Corp.*, 488 U.S. 428, 434, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989). This Court lacks subject matter jurisdiction over the present actions unless they fall within one of the FSIA’s enumerated exceptions to foreign sovereign immunity. See *Saudi Arabia v. Nelson*, 507 U.S. 349, 355, 113 S.Ct. 1471, 123 L.Ed.2d 47 (1993). The FSIA has been construed to apply to individuals for acts performed in their official capacity on behalf of either a foreign state or its agency or instrumentality. *El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 671 (D.C.Cir.1996) (citing *Chuidian v. Philippine Nat’l Bank*, 912 F.2d 1095, 1101–1103 (9th Cir.1990)).

2. When it passed the Antiterrorism and Effective Death Penalty Act of 1996, Congress lifted the immunity of foreign states for certain sovereign acts that are repugnant to the United States and the international community, and created a right of civil action based upon the commission of terrorist acts. Pub.L. 104–132, Title II, § 221(a), (April 24, 1996), 110 Stat. 1214, codified at 28 U.S.C.A. § 1605 (West 1997 Supp.). That Act created an exception to the immunity of those foreign states officially designated by the State Department as state sponsors of terrorism, if the foreign state so designated commits a terrorist act, or provides material support and resources to an individual or entity which commits a terrorist act, which results in the death or personal injury of a United States citizen. See 28 U.S.C. § 1605(a)(7); see also H.R. REP. No. 104–383, at 137–38 (1995).

3. Iran has continuously been designated a state sponsor of terrorism by the *60 U.S. Department of State since January 19, 1984.

4. Applying the above-mentioned law, as a consequence of the actions of the defendants, this Court concludes that it possesses subject matter jurisdiction over the defendants in these actions, the Islamic Republic of Iran and the Iranian Ministry of Information and Security.

5. 28 U.S.C. § 1605(a)(7) provides for personal jurisdiction over foreign state sponsors of terrorism. As

this Court has noted in a previous case involving the government of Iran, “[because] international terrorism is subject to universal jurisdiction, Defendants had adequate notice that their actions were wrongful and susceptible to adjudication in the United States.” *Flatow*, 999 F.Supp. at 14 (citing Eric S. Kobrick, *The Ex Post Facto Prohibition and the Exercise of Universal Jurisdiction over International Crimes*, 87 COLUM. L. REV. 1515, 1528–30 (1987)); see also *Price v. Socialist People’s Libyan Arab Jamahiriya*, 294 F.3d 82, 88–89 (D.C.Cir.2002) (“In enacting [28 U.S.C. § 1605(a)(7)], Congress sought to create a judicial forum for compensating the victims of terrorism, and in so doing to punish foreign states who have committed or sponsored such acts and deter them from doing so in the future.”)

6. Applying the above-mentioned law, this Court concludes that it possesses personal jurisdiction over the defendants in these actions, the Islamic Republic of Iran and the Iranian Ministry of Information and Security.

7. 28 U.S.C. § 1605(f) provides for a statute of limitations of “10 years after the date on which the cause of action arose,” and provides for equitable tolling during the “period during which the foreign state was immune from suit.”

8. The state of Iran was immune from suit until passage of Pub.L. 104–132, which was made effective on April 24, 1996. Accordingly, the Court concludes that the statute of limitations contained in 28 U.S.C. § 1605(f) does not bar these actions.

9. In a memorandum opinion issued December 18, 2002, this Court stated that if the plaintiffs in these actions proved that the U.S. military service members at issue in these cases were part of a peacekeeping mission and that they operated under peacetime rules of engagement, they would qualify for recovery. As set forth in the above findings of fact, the plaintiffs have demonstrated that the U.S. military service members at issue were part of a peacekeeping mission, and that they were operating under peacetime rules of engagement. Therefore, the Court concludes that the military service members at issue in these cases qualify for recovery.

10. A foreign state is liable for money damages under the FSIA “for personal injury or death that was caused by an act of ... extrajudicial killing, or the provision of material support or resources ... for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while

acting within the scope of his or her office, employment, or agency.” 28 U.S.C. § 1605(a)(7). The foreign state must be designated as a state sponsor of terrorism under either section 6(j) of the Export Administration Act of 1979, 50 U.S.C. app. 2405(j) or section 620A of the Foreign Assistance Act of 1961, 22 U.S.C. 2371, at the time that the act occurred, *61 unless the foreign state is thus designated later as a result of that act. *Id.* Either the victim or the plaintiff must have been a United States national at the time of the act. *Id.* Additionally, the act must be such that it would be actionable if the United States, its agents, officials or employees within the United States engaged in similar conduct. The Court concludes, based on the above findings of fact, that plaintiffs in these actions have established all of these elements by clear and convincing evidence.

11. The FISA utilizes the same definition of “extrajudicial killing” as the Torture Victim Protection Act of 1991, which defines an “extrajudicial killing” as “a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all judicial guarantees which are recognized as indispensable by civilized peoples....” Pub.L. 102–256, 106 Stat. 73 (1992). The Court concludes that the act undertaken by agents of Hezbollah—the development and detonation of an explosive charge in the barracks of the 24th MAU on October 23, 1983, which resulted in the deaths of over 241 peacekeeping American servicemen—satisfies the FISA’s definition of an “extrajudicial killing.”

12. The Court finds that MOIS, acting as an agent of the Islamic Republic of Iran, performed acts on or about October 23, 1983, within the scope of its agency (within the meaning of 28 U.S.C. § 1605(a)(7) and 28 U.S.C.A. § 1605 note), which acts caused the deaths of over 241 peacekeeping servicemen at the Marine barracks in Beirut, Lebanon. Specifically, the deaths of these servicemen were the direct result of an explosion of material that was transported into the headquarters of the 24th MAU and intentionally detonated at approximately 6:25 a.m., Beirut time by an Iranian MOIS operative. The Court therefore concludes that MOIS actively participated in the attack on October 23, 1983, which was carried out by MOIS agents with the assistance of Hezbollah.

13. The Court concludes that the deaths of over 241 peacekeeping servicemen at the Marine barracks in Beirut, Lebanon were caused by a willful and deliberate act of extrajudicial killing.

14. As the result of the deaths of the 241 American

servicemen in Beirut, Lebanon, their parents, surviving siblings, children, and spouses have suffered and will continue to suffer severe mental anguish and loss of society.

15. It is beyond dispute that if officials of the United States, acting in their official capacities, provided material support to a terrorist group to carry out an attack of this type, they would be civilly liable and would have no defense of immunity. See 42 U.S.C. § 1983; *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).

16. The Court concludes that the defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security, are jointly and severally liable to the plaintiffs for compensatory and punitive damages.

17. As to each claim of each Complaint, the Court will make a determination of the proper amount of compensatory damages after its receipt of reports from the special masters appointed by the Court. The Court will *62 also make a determination as to punitive damages at that time.

IV. CONCLUSION

The Court is mindful that some may question the utility of the present suit. During the March trial, the Court heard testimony from a number of witnesses as to the reasons why this suit was brought, and as to its potential efficacy.

Dr. Patrick Clawson, deputy director of the Washington Institute for Near East Policy, described the manner in which civil judgments for acts of state-sponsored terrorism have had a noticeable impact upon the present regime in Iran:

Q: To what extent since its creation in 1979 has the Islamic Republic of Iran been susceptible to influence because of economic sanctions? By sanctions, I don’t mean something that was stated, but simply having to pay out bucks, whether it’s in damages in personal injury cases or damages awarded by a tribunal, punitive damages, anything of that sort?

A: To begin with, the release of those held hostage at the American Embassy in Tehran, most Iranian

observers think that the American freezing of billions of dollars of Iranian assets and the eventual negotiations which really hinged around how much money Iran was going to get back is a good example from the very beginning of this process of Iran's susceptibility to economic pressure, and there have been a number of situations since in which Iran has been deflected from its main course by economic pressures. For instance, the Europeans [were] successful at doing that in the early 1990s, deflecting Iran from terrorist activities in European soil.

* * * * *

Q: Given the enormity of the offense committed on October 23rd, 1983, in the attack of the Marine barracks, how much of that sum in the pockets of Iran would have to be subtracted before—in order to give some indication that they would start to change policy?

A: Well, sir, I would—the larger the sum, the more of an impact this is going to have on the Iranians, and if this court case results in a large judgment, be it for compensatory or punitive damages, that is very likely to receive the attention of a fair number of policymakers in Iran, and I have great confidence that the Iranian leaders will consider that in deciding which way to proceed.

* * * * *

I think, sir, that the Iranians have been extraordinarily sensitive to court actions, whether it was in Germany or in Argentina or in the United States, which make any references to the top leadership of the country being involved in these cases. That has been a matter of greatest sensitivity in Iran, and there have been several cases in which the Iranians reacted extremely strongly, particularly to suggestions that the supreme religious leader was involved in any way in these activities.... I have to say that I think that they pay quite detailed attention to these judgments

* * * * *

I would say that based on the past precedent about the way that these court cases have been viewed, what will be looked at very closely is two things. One is the size of the dollars involved, and the other is whether or not there is *63 any change in the way that the court views the matter. So this case, if it involves a much larger judgment in dollar terms than previous cases, will be regarded as a toughening of the American stance.

On the other hand, there will be close examination of whether or not this case in its legal reasoning or in the application or non-application of punitive damages involves any change in the way in which a court rules. So, for instance, a lack of punitive damages would be regarded as an indication that the United States Government is making a gesture towards Iran.

Q: A softening of our position.

A: Correct, sir....

Q: So as I read you correctly, less in punitive damages than has been awarded in cases before would be to the Iranians a softening of the American resolve; more would be a hardening of the American resolve?

A: Correct, sir.

The Court also heard the testimony of Dr. Michael Ledeen²³ as to the likely effect of an award of damages in the present actions:

THE COURT: From your experience dealing all these years now with Iran, have you seen, from the court cases where punitive damages have been entered by the courts, what impact, if any, that has had in Iran and on the government, and what do you think of that?

A: Well, it hurts the government because it stings them, and the people see—what the Iranian people need to reach the point where they are willing to risk their lives to bring down this regime is that the civilized world understands what kind of regime it is and therefore would welcome that kind of event; and consequently, in my opinion, every time that regime is condemned and punished in a Western court, that hastens the moment of the downfall of that regime.²⁴

The Court also heard testimony from the men and women who have brought the present actions about their reasons for so doing. During the trial, Lt. Col. Howard Gerlach, who was paralyzed in the October 23 attack, was asked about what he hoped to achieve by participating in these actions:

Well, I guess there's three words: accountability, deterrence and justice. And they are interrelated. The accountability, and I swear it was on Sunday, I was listening to a rerun of one of the TV—I don't know, Meet the Press or whatever, but Vice President Cheney was talking and he was saying that they, the terrorists

feel that they can do things with impunity, and he said ever *64 since the Marines in '83. Yes, there hasn't been any accountability.

Deterrence effect is, in some way, and this is also what he was talking about, was one thing we have to go after—and I think I'm stating this correctly; this is what I heard, is the funding. It's the funding. Even on the radio coming over here, we heard some talk about funding for terrorist organizations.

Then the third thing is the justice, and this refers to the people, a good portion of [whom] are in this room.... They lost a large chunk of their lives, young Marines, sons, husbands, fathers, brothers. They were attempting to do a noble thing. They went as peacekeepers in the tradition of this country... [W]e weren't trying to conquer land, we weren't trying to get anything for ourselves; we were really trying in a humanitarian way to help those people in Lebanon. I think this is ... the day in court, literally and figuratively speaking, for recognition of just how great these guys were.

The Court also heard the testimony of Lynn Smith Derbyshire, whose brother, Capt. Vincent Smith, was killed in the October 23 attack:

I'm not sure it's true that time heals wounds, but even so, a wound which has healed over time is not the same thing as not having a wound. Even a healing wound gets reopened from time to time.

* * * * *

[A]s I have talked to so many of the Beirut families, I believe that many of them would concur with me when I say that the pain does not stop when you bury the dead; it is only the very beginning. We feel this loss over and over and over again. It does not go away and it does not lessen with time; that is a myth. It is more like teaching someone who has a chronic pain disorder how to manage and embrace their pain than it is a lessening of pain.

* * * * *

I have spoken to quite a number of the family member and I think we're all—I think they would all agree with me when I tell you that what Vince would have wanted was justice.

Vince was a fair-minded man. Vince was a man of integrity, as I know so many of the men who were lost that day were. It's the kind of men Marines are. That's what the Marine Corps produces. And Vince would

have wanted us to fight.

Vince would have said ... we must hold these men accountable. Vince would have said that it is time for justice, that it is time for compensation, that it is time to make it—to make them pay enough to make them stop, because Vince was a man who believed in what was right, and if he had lived, he would be sitting here in my place and he would be saying, "Come on, sis, let's go get them."

But he can't be here, and in his name, and in his honor, and with the permission of some of the other family members here ... in their names and in their honor, I salute them, and we stand together to do what they cannot do for themselves.

There is little that the Court can add to the eloquent words of these witnesses. No order from this Court will restore any of the 241 lives that were stolen on October 23, 1983. Nor is this Court able to heal the pain that has become a permanent part of the lives of their mothers and fathers, their spouses and siblings, and their sons and daughters. But the Court can take steps that will punish the men who carried out this unspeakable attack, and in so doing, try to achieve some small measure of justice for its survivors, and for the family *65 members of the 241 Americans who never came home.

A separate order accompanies this opinion.

ORDER

In accordance with the memorandum opinion issued this date, it is hereby

ORDERED that judgment be, and hereby is entered on behalf of the plaintiffs, Deborah D. Peterson, *et al.*, and Joseph and Marie Boulos, *et al.*, as to all issues of liability against the defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security. It is further

ORDERED that all claims for damages in these actions be submitted to Special Masters to be appointed by this Court. It is further

ORDERED that, following receipt by this Court of reports from the Special Masters, and in consideration of the findings and evidence presented in those proceedings,

the Court will enter judgment as to each claim for compensatory damages. It is further

SO ORDERED.

ORDERED that the Court will take under advisement the issue of imposing an amount in punitive damages against the defendants, pending the entry of judgment as to the amounts of compensatory damages.

All Citations

264 F.Supp.2d 46

Footnotes

- 1 In an action under the Foreign Sovereign Immunities Act ("FSIA") for claims based on personal injury or death resulting from an act of state-sponsored terrorism, either the claimant or the victim must be an American national. See 28 U.S.C. § 1605(a)(7)(B)(ii). Although during the bench trial, the Court only received testimony that identified one of the decedents, James R. Knipple, as an American national, plaintiffs' counsel has represented that each and every service member injured or killed on October 23, 1983, or a beneficiary of that service member, is a national of the United States. The Court's findings are therefore subject to proof of American nationality during the damages phase of these proceedings. This may be accomplished either through direct testimony of any competent witness, or through the submission of relevant documentation.
- 2 The Court has taken judicial notice of the facts contained in the following subsection, pursuant to Rule 201 of the Federal Rules of Civil Procedure.
- 3 A Marine Amphibious Unit (now "Marine Expeditionary Unit") is a combined air / ground force unit of approximately two thousand U.S. Marines. See *Marine Expeditionary Units*, at [http:// www.usmc.mil/marinelink/ind.nsf/meus](http://www.usmc.mil/marinelink/ind.nsf/meus).
- 4 In the present context, "rules of engagement" are directions issued by a competent military authority that set out the limitations and circumstances under which the forces under its command may initiate and prosecute combat engagement with other forces that they encounter. Following are the rules of engagement that were issued to the members of the 24th MAU:
 1. When on post, mobile or foot patrol, keep loaded magazine in weapon, bolt closed, weapon on safe, no round in the chamber.
 2. Do not chamber a round unless told to do so by a commissioned officer unless you must act in immediate self-defense where deadly force is authorized.
 3. Keep ammo for crew-served weapons readily available, but not loaded. Weapon is on safe.
 4. Call local forces [LAF] to assist in self-defense effort. Notify headquarters.
 5. Use only minimum degree of force to accomplish any mission.
 6. Stop the use of force when it is no longer needed to accomplish the mission.
 7. If you receive effective hostile fire, direct your fire at the source. If possible, use friendly snipers.
 8. Respect civilian property; do not attack it unless absolutely necessary to protect friendly forces.
 9. Protect innocent civilians from harm.
 10. Respect and protect recognized medical agencies such as Red Cross, Red Crescent, etc.These ten rules were printed on cards distributed to every service member of the 24th MAU and were discussed at length with every member.
- 5 It should also be noted that the death certificates issued for the victims of the October 23, 1983 attack did not represent that the victims were killed in action. Instead, the cause of death was listed as "terrorist attack."
- 6 The facts contained in the following subsection are based on the trial testimony of Dr. Reuven Paz, director of the Project for the Research of Islamist Movements in Herzliya, Israel, and Dr. Patrick Clawson, deputy director of the Washington Institute for Near East Policy.
- 7 Since January 19, 1984, Iran has been designated as a state sponsor of terrorism pursuant to section 6(j) of the Export Administration Act of 1979, 50 U.S.C. app. § 2405(j). This designation arose in part as a result of the October 23, 1983 attack.
- 8 Dr. Michael Ledeen, a consultant to the Department of Defense at the time of the Marine barracks bombing and an expert on U.S. foreign relations, testified at trial that "Iran invented, created, funded, trained, and runs to this day Hezbollah, which is arguably the world's most dangerous terrorist organization."

- 9 Dr. Paz is the director of the Project for the Research of Islamist Movements and a senior research fellow at The International Policy Institute for Counterterrorism, both of which are based in Herzliya, Israel.
- 10 Robert Baer, a case officer in the Directorate of Operations of the CIA from 1976–97, testified at trial that “Hezbollah wasn’t ‘formally’ created until 1985. What happened was before it was a bunch of agents of Iran. But none of these agents, based on our intelligence, which was ... outstanding, were operating on their own. One time there was a case where a Hezbollah member went out and kidnapped some children. But that was done independently, and the moment he was caught, he was executed by Hezbollah because he wasn’t operating with authority from Iran.”

- 11 Under the 1979 constitution, the Supreme Leader is the highest government official of Iran, followed by the President. The powers of the Supreme Leader include the authority to delineate the general policies of Iran and supervise their execution, assume the supreme command of the armed forces, declare war, mobilize the armed forces, appoint and dismiss key government officials, and issue decrees for national referenda. Arts. 110, 113, Constitution of Iran, 1979.
- 12 Mohtashemi’s last name is sometimes given as “Mohtashemi–Pur.”
- 13 Dr. Michael Ledeen testified at trial that the message intercept was “one of the most impressive works of intelligence analysis that I saw [about the Marine barracks bombing], and it was absolutely convincing.” Dr. Reuven Paz testified that he had read and analyzed the message intercept, which he described as “an order to attack the foreign powers on Lebanese soil, meaning the United States, the French paramilitary power, and of course, the Israeli military forces in south Lebanon.”
- 14 The Iranian Revolutionary Guard, also known as the Pasdaran, has been described as an “elite security and military force that was formed to protect the ideological purity of the Ayatullah Khomeini’s Islamic Revolution and [that] has since developed considerable expertise in covert actions overseas.” See Paul Quinn–Judge, *Stalking Satan: As Their Leader Offers Friendship, Iran’s Revolutionary Guards Keep a Menacing Watch over Their Backyard*, TIME, March 30, 1998, available at http://www.time.com/time/magazine/1998/int/980330/terrorism.stalking_satan15.html.
- 15 The reliability of Mahmoud’s testimony was established by an individual who has worked for the United States government in an intelligence capacity for thirty years, and who is known by the pseudonym “Joseph Salam.” The Court admitted Salam as an expert on Islamic terrorist groups, based upon the quality and quantity of knowledge contained in his curriculum vita, which was filed under seal to protect Salam’s identity. According to Salam, Mahmoud has provided information to him in the past, and, after later comparison with known objective facts, his information has always been determined to be accurate.
- 16 Mahmoud’s testimony about Ambassador Mohtashemi is confirmed by Joseph Salam, who testified that although Mohtashemi held the title of Iranian ambassador to Syria, he performed no actual diplomatic function and was “highly placed in the supervision and origination of covert terrorist operations by Iran.” It is also independently confirmed by Dr. Michael Ledeen, who testified at trial that “Mr. Mohtashemi–Pur, his nickname in Iran is the Father of Hezbollah. He’s the person who created Hezbollah. So of course he had a major involvement in [the Marine barracks bombing] since those were the people who did it.” Dr. Ledeen also testified that “there was information of every imaginable type that enabled [the intelligence community] to reconstruct a picture which showed very clearly the Iranian involvement [in the Marine barracks bombing]. I don’t know anyone who looked at that information who came to any other conclusion.”
- 17 See *Talks with France Bridge the Diplomatic Gap*, TIMES (London), May 26, 2003, at 13, available at 2003 WL 3134823 (“[Israeli Foreign Minister Sylvan Shalom’s] warning came as the leader of Hezbollah, Sheikh Hassan Nasrallah, urged all anti-Israeli groups in Lebanon to take up arms in preparation for a possible Israeli attack.”).
- 18 See Kenneth R. Timmerman, *Likely Mastermind Of Tower Attacks*, INSIGHT, Dec. 31, 2001, at 18, available at 2001 WL 29585000 (“On March 17, 1992, a Hezbollah strike team leveled the Israeli Embassy in Buenos Aires, killing 29 persons and wounding 242. Hezbollah said the attack was intended to avenge the killing of Lebanese Hezbollah leader Sheik Abbas Musawi, whose convoy was obliterated by Israeli helicopter gunships in South Lebanon one month earlier.”); Gareth Smyth, *Sheikh Hassan Nasrallah’s Holy War*, FIN. TIMES, Aug. 30, 2001, available at 2001 WL 26065111 (“On February 16, 1992, Israeli helicopter gunships flew into south Lebanon and ambushed a convoy of cars, killing Abbas Musawi, the general secretary of Hizbollah.... [I]t brought to Hizbollah’s top position Israel’s most effective adversary of the next decade. With his beard, turban and black-rimmed glasses, Sheikh Hassan Nasrallah is recognised well beyond Lebanon’s borders.”).
- 19 See Hikmat Chreif, *Hezbollah Dissidents Demonstrate Against Normalization with Israel*, AGENCE

FRANCE-PRESSE, Jan. 7, 2000, [available at 2000 WL 2708811](#) ("About 3,000 supporters of Lebanese Hezbollah dissident Sobhi Tufaili demonstrated in Baalbek Friday against any normalization with Israel and visits by Israeli tourists to Lebanon.... Tufaili, who used to be secretary general of Hezbollah, criticized the group's leadership for neglecting the needs of the 'underprivileged,' especially in the Baalbek-Hermel area, which had been a major drug-growing area until a crackdown in 1992.").

20 Approximately eight minutes after the attack on the Marine barracks, a similar attack was attempted against the French barracks. Although the driver of the vehicle carrying the explosive device was shot and killed before the vehicle could enter the barracks, the device was detonated by remote control, killing 56 French soldiers.

21 Concertina wire is a length of barbed wire that is extended into a spiral for use as a barrier, as on a fence. It is employed by the U.S. armed forces to prevent entry into restricted areas by unauthorized persons.

22 Parker testified at trial:

In the Marine barracks [attack], we have considerable planning that had to occur. They had to know what the interior of the building looked like, and, in my background and experience, I believe that the placement of that in the center of the building with the atrium opening up to the top was probably key in causing most of the deaths.

So it took someone getting in there, doing a lot of pre-scouting, making sure that they could, in fact, penetrate the barriers, the barbed-wire barriers, negotiate the pipes that were placed in the way to deter traffic. They had to use a site that had a direct line because they couldn't afford to take a long time. The Marines were all armed. While they didn't have ammunition ready, and that was probably known, they would have likely not made it inside. So if they had tried to come through some sort of a circuitous route rather than a direct attack down through those barrier pipes right over [the] top of what I believe to be the only place that you could have gotten a truck of that size into the building without it being impinged or stopped by some part of the building itself—so they knew that that was a good entrance. They knew that the truck could negotiate those pipes and that the weak part for entrance was there at the sandbag guard barricade and that the interior of the building was the vulnerable spot of that building.

23 As noted above, Dr. Ledeen served as a consultant to the U.S. Defense Department at the time of the October 23, 1983 bombing, and is one of the premier experts in the nation on the subject of U.S. foreign relations. He is presently a resident scholar at the American Enterprise Institute.

24 Regarding the tension between the Iranian government and the populace, Dr. Ledeen testified that the people of Iran hate the regime. Even the public opinion polls taken by the regime itself show that 70-plus percent of the Iranian people don't like the regime, would like a national referendum, deplore the foreign policy of the regime and want better relations with the United States, and you would have to figure that if 70 percent of Iranians will tell people that they know are coming from the Ministry of Information that they hate the regime, that the real number must be something higher than that.

ANNEX 37

FILED

1

APR 1 2003

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

D. PETERSON, et al,

Plaintiffs,

vs.

THE ISLAMIC REPUBLIC OF IRAN,
MINISTRY OF FOREIGN AFFAIRS AND
THE MINISTRY OF INFORMATION AND
SECURITY,

Defendants

Docket No. CA 01-2094

Washington, D. C.
March 17, 2003
10:00 a.m.

J. BOULOS, et al,

Plaintiffs,

vs.

THE ISLAMIC REPUBLIC OF IRAN,
THE IRANIAN MINISTRY OF
INFORMATION AND SECURITY,

Defendants

Docket No. CA 01-2684

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE

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

2 THE DEPUTY CLERK: The Matter of D. Peterson, et al
3 versus The Islamic Republic of Iran, et al. Civil Action 2001,
4 Number 2094. And in the matter of J. Boulos, et al versus The
5 Islamic Republic of Iran, et al. Civil Action 2001-2684. Mr.
6 Fay, Mr. Perles, Mr. Gaskill, Mr. Laspada and Mr. Rothenberg
7 for the plaintiffs.

8 THE COURT: Good morning.

9 MR. FAY: Good morning, Your Honor, and happy St.
10 Patrick's Day.

11 THE COURT: Well, I have my green on.

12 MR. FAY: Yes, I'll report this immediately to the
13 pastor over at St. Mary's.

14 Your Honor, we have a few housekeeping matters before
15 I would like to make a short opening statement. We, when I say
16 we I mean Mr. Perles and myself, have been assisted in this
17 case by a number of other attorneys. I've asked them this
18 morning to enter an appearance and many of them are here. Mr.
19 Gaskill, I think, went out in the hall.

20 MR. GASKILL: I'm here.

21 MR. FAY: Okay. Dan Gaskill.

22 MR. GASKILL: Good morning, Your Honor.

23 THE COURT: Joseph Peter Drennan.

24 MR. DRENNAN: Good morning, Your Honor.

25 MR. FAY: Ferris Bond.

1 MR. BOND: Good morning, Judge. Nice to see you
2 again.

3 MR. FAY: Donald Clower.

4 MR. CLOWER: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. FAY: Anthony J. Laspada.

7 MR. LASPADA: Good morning, Your Honor.

8 MR. FAY: Jane Norman.

9 MS. NORMAN: Good morning.

10 MR. FAY: Kay Clarke.

11 MS. CLARKE: Good morning, Your Honor.

12 MR. FAY: Fredric Einhorn.

13 MR. EINHORN: Good morning, Your Honor.

14 MR. FAY: Barbara Ellen Pattin.

15 MS. PATTIN: Good morning, Your Honor.

16 MR. FAY: Mrs. Pattin is a former partner of mine.

17 And Jay Glenn.

18 MR. GLENN: Good morning, Your Honor.

19 MR. FAY: Your Honor, Mr. Glenn is a member of the bar
20 of the State of Illinois. Both the federal and the state bar.
21 I would move his admission pro hac vice for purposes of these
22 proceedings.

23 THE COURT: The motion is granted. Glad to have you
24 here.

25 MR. FAY: I should add all other counsel are admitted

1 to the bar of this Court.

2 Your Honor -- Allen, you've got to make out a
3 praecipe, I'm sorry. Allen Rothenberg who is a member of the
4 bar of this Court is also a member of the New York and
5 Pennsylvania bars.

6 MR. ROTHENBERG: Good morning, Your Honor.

7 MR. FAY: And I apologize. But I have an excuse. He
8 didn't make out a praecipe.

9 Your Honor, we are here this morning because on the
10 morning of Sunday, October 23rd, 1983 just before seven a.m. a
11 criminal act took place resulting in the death of in excess of
12 241 men.

13 This Court has previously held in a ruling on the
14 motions, a motion of the plaintiffs, I should say motions of
15 the plaintiffs for default, that the service requirements of 28
16 United States Code Section 1608 have been complied with. That
17 the defendants, The Islamic Republic of Iran and The Ministry
18 of Information and Security of the Republic of Iran have failed
19 to respond and that the plaintiffs are therefore entitled to
20 move forward to prove their case.

21 We, when I say we, Mr. Perles and I in our past cases
22 have asked, we ask in this case, that the Court adopt the
23 standard of clear and convincing evidence as the standard of
24 proof. We do that because we're asking for an award of
25 punitive damages, and that is the acceptable norm in the

1 District of Columbia where punitive damages are requested.

2 At the time of entry of default this Court addressed
3 in some detail the question of the circumstances under which a
4 military service member can recover damages for injury or
5 death. I note in that regard that as a result of both this
6 occurrence, the bombing of the embassy in Beirut some months
7 before in 1983, and numerous other acts, the Republic of Iran
8 in January of 1984 was named by the Department of State as a
9 sponsor of terrorism and I ask the Court to take judicial
10 notice of that.

11 THE COURT: Iran.

12 MR. FAY: Iran, yes. Iran was noted at that time
13 under the statute that complies with the request, with the
14 necessity of their status as a state purveyor of terrorism.

15 The Court today -- the acts before the Court today as
16 well as other acts of terrorism mark The Islamic Republic of
17 Iran as, in the words of Department of State, a leading state
18 supporter of terrorism in the world.

19 The acts described in the complaint, which we've
20 proven, fulfills the definition of 22 United States Code
21 Section 2656 for terrorism. "A premeditated, politically
22 motivated violence perpetrated against noncombatant parties."

23 Let me put this matter in perspective. Lebanon
24 emerged as an independent nation at the end of World War II
25 with a constitution which segmented off areas of power to the

1 various groups within that state. The Maronites, the Sunni
2 Muslims, the Shi'ite Muslims and the Druze. And although there
3 were some bumps in the road, that continued to be the rule and
4 the state continued to be a functioning state. Until the
5 emergence in the 1970s of a number of factors. The most
6 important of which for our purposes was the emergence of The
7 Islamic Republic of Iran as a militant theocratic totalitarian
8 state with a dedication of purpose not just relating to the
9 Iranian people but relating to the entire world. That is, to
10 spread Islam across the world. That differs it yet from any
11 other state, Islamic state in the world.

12 Now, the object was to develop across the world
13 conditions under which Islam would dominate. The testimony
14 will show that in accordance with that dedication, in the 1980s
15 Iran began to carry out its mission through an organization in
16 Lebanon known as Hezbollah or the Party of God. The testimony
17 will show, however, that Hezbollah was a mere front. It had no
18 existence independent of the support of Iran and simply served
19 to mask Iran as the real acting party. The evidence in this
20 case will demonstrate beyond any question that Iran was the
21 party that carried out these attacks.

22 Now, in late 1982 at the request of the Government of
23 Iran with the concurrence of the United Nations, a number of
24 nations sent troops to Lebanon merely to make a presence within
25 Lebanon. That presence was undertaken with various rules which

1 are very significant for the Court here today. I'm putting up
2 on the monitor the rules of engagement that were given to the
3 Marines that were sent to Lebanon in 1982.

4 "One: When on post, mobile or foot patrol, keep
5 loaded magazine in weapon, bolt closed, weapon on safe, no
6 round in the chamber.

7 Two: Do not chamber a round unless told to do so by a
8 commissioned officer unless you must act in immediate
9 self-defense where deadly force is authorized.

10 Three: Keep ammo for crew-served weapons readily
11 available, but not loaded. Weapon is on safe.

12 Four: Call local forces, LAF, to assist in self-
13 defense effort. Notify headquarters.

14 Five: Use only minimum degree of force to accomplish
15 any mission.

16 Six: Stop the use of force when it is no longer
17 needed to accomplish the mission.

18 Seven: If you receive effective hostile fire, direct
19 your fire at the source. If possible, use friendly snipers."
20 It doesn't define that term friendly snipers.

21 "Eight: Respect civilian property; do not attack it
22 unless absolutely necessary to protect friendly forces.

23 Nine: Protect innocent civilians from harm.

24 Ten: Respect and protect recognized medical agencies
25 such as Red Cross, Red Crescent, et cetera."

1 Now, I think it's interesting to juxtapose those rules
2 with the rules out of our local jury instructions in criminal
3 cases for self-defense. I'm not sure whether everybody can see
4 that or not. But let me read those off.

5 "A person play use a reasonable amount of force in
6 self-defense. A person may use an amount of force which at the
7 time of the incident he, she reasonably believes is necessary
8 to protect himself, herself from imminent bodily harm. Deadly
9 force. A person may use a reasonable amount of force in
10 self-defense including in some circumstances, deadly force.
11 Deadly force is force that is likely to cause death or serious
12 bodily harm. A person may use deadly force in self-defense if
13 she or he actually and reasonably believes at the time of the
14 incident that she or he is in imminent danger of death or
15 serious bodily harm from which she or he can save himself only
16 by using deadly force against his or her assailant."

17 Noteworthy is the fact that for the civilian in the
18 District of Columbia walking down the street the rules of
19 engagement, if you will, are more liberal than they were for
20 the Marines who were sent into Lebanon in 1982 and were still
21 there on October 23rd, 1983. The civilian walking down the
22 street, for instance, if he's licensed, can have a weapon with
23 a round in the chamber. He doesn't have to judge whether or
24 not fire coming at him is effective. And he has the right to
25 be reasonably mistaken, which the rules of engagement given the

1 Marines did not so provide. The humanitarian rules governing
2 actions of our servicemen were not regarded by Iran as respect
3 for other people and their institutions and beliefs, but rather
4 as an opportunity.

5 The testimony in this case will show that or on about
6 September 26th, 1983, a message was sent from the Iranian
7 Ministry of Information and Security in Tehran to Ambassador
8 Muhtafhemi, that's Muhtafhemi, who was the Ambassador of Iran,
9 to Damascus. Now, Ambassador Muhtafhemi was not a regular
10 member of the diplomatic corps, the evidence will show. His
11 task instead was far different. His task was to carry out
12 attacks upon -- terrorist attacks upon western forces and to
13 otherwise build Hezbollah.

14 There will be introduced under the sealing of this
15 Court a copy of an intercept of that message from The Ministry
16 of Information and Security in Tehran to Ambassador Muhtafhemi
17 instructing him to go ahead with the attack. That message will
18 also -- the intercept of that message will also be confirmed by
19 videotape deposition by an Israeli official of Shin Beth. So
20 there's no question as to the authenticity of the message.

21 There also will be testimony that this message was as
22 they say in the intelligence business perhaps, a 24-karat gold
23 message in terms of reliability. No question there.

24 There will be testimony also from Dr. Clawson, from
25 Dr. Paz as to the organization of Iran. And its workings at

1 that time that this occurred could not have taken place without
2 the concurrence of the very highest levels in both places,
3 meaning the president, Rasfajani, and the supreme leader of
4 Iran, the Ayatollah Khomeini.

5 We will then introduce testimony by videotape
6 deposition that in conformity with his instructions from the
7 highest level, Ambassador Muhtafhemi made a telephone call from
8 Damascus to Boalbek, a city in the Bekaa Valley, on the Eastern
9 side of Lebanon. That testimony will be given by videotape
10 deposition by a former Hezbollah member known by the pseudonym,
11 for purposes of this case, as Mahmoud. He will testify from
12 his personal knowledge that the Ambassador contacted leaders of
13 the Iranian Revolutionary Guard, sometimes referred to as the
14 Postaran, (spelled phonetically) by telephone in October from
15 Damascus to Boalbek, instructing them to go ahead with the
16 planned attacks on American Marines and the French forces. The
17 recipient of this call was a man by the name of Sayed Kansani,
18 an Iranian, who was then head of the Iranian Revolutionary
19 Guard, the Postaran, in Lebanon.

20 Mahmoud will further testify that also present were
21 Kosh Balkhtian, another Iranian, and Fnu Dahkani, an Iranian in
22 charge of military affairs for Iran. There were several others
23 present, including the head of -- the present head of
24 Hezbollah, Sheik Sobhi Tufeilly.

25 The witness will further testify that these men went

1 to -- from Boalbek to Beirut where they prepared explosives to
2 carry out their assignment against the American Marines and
3 against the French forces.

4 He will testify further that a truck was obtained
5 which was of similar variety to the trucks used to transport
6 bottles of water, not unlike here. And in the airport water is
7 sold in bottles at the airport by one Lebanese company. The
8 truck was painted to appear to be the same. In that truck were
9 planted explosives.

10 There will be later testimony in this case by Danny
11 Defenbaugh who was the head of the FBI Forensic Operation after
12 the case, that the computations made by him as an expert in
13 explosives shows that approximately 21,000 pounds of explosives
14 were used in this case. Over ten tons planted in the truck.

15 In addition, planted in the truck were cylinders of
16 butane to enhance the explosion. Now, that would not make the
17 explosion larger but it would make the explosion more deadly to
18 those who were in its way.

19 The testimony will make it clear that the work in this
20 regard was done by the Iranians with Hezbollah members
21 essentially as security and assisting merely in the work.

22 Mr. Mahmoud will further testify that on the day of
23 the attack Hezbollah intercepted the truck bearing cartons of
24 water containers on the road to the airport. It's a normal
25 occurrence for this truck to come into the airport. Once it

1 reached the airport -- this would be Plaintiffs' Exhibit Number
2 One we have blown up also down here, up at the top of the
3 exhibit may be found number six. Along this line ran a road, a
4 vehicle could then turn onto the road where there is a
5 four-point turn, which is the road down into the airport.

6 Now, although at this time while there was sniper fire
7 at the airport, not around the clock but certainly consistent,
8 and some artillery and mortar fire, this airport continued
9 functioning and some civilian aircraft would come into the
10 airport. So it would not be usual to see this vehicle drive
11 down this road.

12 Now, the top of the Marine area is marked here by
13 eight, where my pen is. At that point there was a gate, so to
14 speak, for vehicles to come through. However, the Iranians in
15 planning this occurrence took into account that fact and
16 anticipated that that would be more guarded. They also
17 computed the size of the truck that will be able to fit into
18 this building, BLT1-8 headquarters building. That's Eighth
19 Marine Battalion Landing. And the size that would be needed to
20 break through.

21 What they did was they came down the road, went past
22 the entrance, made a turn into what's marked on here as a
23 parking lot. This was largely unoccupied at this time. And it
24 gave the truck time to do a circle, gather speed, then go
25 forward through the line of concertina wire which it broke,

1 and continuing on in towards the building.

2 There will be testimony in this case from Sergeant
3 Steve Russell who was a Sergeant of the Guard, and that's
4 marked at the entrance of the BLT. That at some point in here
5 as it broke through the concertina wire he heard a large
6 report, turned and saw the truck going forward towards the
7 building. Whereupon he turned, ran through the building
8 shouting for everybody to get down, to warn them. And there
9 was an opening on this side of the building and on the other
10 side. He ran completely through the building, shouting for
11 everybody to get down. Significantly, when he got to the other
12 side of the building he turned, looked back, and in the exact
13 middle of the building where the letters BLT stand, there were
14 crossed flags of the United States and the United States Marine
15 Corps. The truck noticeably braked, to come to exactly that
16 point. He said at that point the driver had disappeared, going
17 down, and presumably was reaching for a trigger mechanism on
18 the floor. There was a brief instant and then there was a
19 blinding flash. That's significant because of the methods used
20 to bring down a building of this type. And the method is that
21 the charge is set to blow out the supports and then drop the
22 building floor by floor. Any building, no matter what its
23 size, can be demolished in this way, to cut the supports by
24 some explosive or heat charge and then the building will drop
25 floor by floor all the way down. That's exactly what happened

1 in this case.

2 The result was, to put it bluntly, devastating. This
3 is a photograph from the Federal Bureau of Investigation team
4 which answered the call and went to investigate the occurrence.
5 The crater blasted was more than 30 feet across. There was no
6 particle even of the driver ever found that could be
7 identified. The only part of the truck which could be
8 identified was part of the differential, apparently, and part
9 of the cam shaft inside the engine. Exactly how the explosion
10 happened to blow the cam shaft out of the engine is not known,
11 but that was the only thing that was left of the truck and the
12 driver.

13 We do now, however, about the driver, because we know
14 that from Mr. Mahmoud's testimony. The driver was a man by the
15 name of Rhadi (spelled phonetically) who was an Iranian. The
16 Iranians took no chances that Hezbollah in its formative stages
17 would not cooperate and instead had the truck actually driven
18 by an Iranian.

19 The testimony, too of both Mr. Defenbaugh and Roy
20 Anderson, an expert from the ATF who is now retired, is that
21 this was an operation which was carried out with a high degree
22 of skill and it was not merely a volunteer operation, let us
23 say, in the sense a backyard operation.

24 Also in the investigation by the FBI on part of a
25 surviving piece of concrete was found the residue of an

1 explosive known by its letters as PETN. Because of the
2 consistency of this explosive, under microscopic examination
3 and chemical analysis it could be known that this was
4 manufactured in a bulk. Now, the reason that's important is
5 there are two uses really for this type of explosive. This is,
6 in blasting caps where it's used in very small amounts, in
7 which case it would have been manufactured for that purpose.
8 That would have been able to have been seen under microscopic
9 and chemical analysis. And it's sold to military sources in
10 bulk. This was in bulk. So the explosive that was in there
11 that was exploded was not gathered by somebody opening up
12 unused artillery shells or something from a construction site.
13 It was a military, producer-military explosive. I should add,
14 too, that that explosive is not manufactured in Lebanon. It is
15 manufactured in Iran.

16 There will further be testimony from both Dr. Clawson
17 and Michael Ledeen who at that point was a Special Assistant to
18 the Secretary of State, concerning the political purpose of
19 this attack. The political purpose of the attack was to remove
20 the United States as a factor in Lebanon. Unfortunately the
21 United States has departed from Lebanon. In that sense
22 unfortunately, very unfortunately, this attack was successful.

23 There will be testimony, too that this has been
24 classified as a terrorist attack by the Department of Defense.
25 We will introduce a copy of one of the DOD certificates of

1 death indicating so. The others were all of the persons whom
2 we represent who were deceased whom we will introduce on the
3 damages hearings which will follow.

4 Your Honor, we ask that the Court weigh all of this at
5 the end of all the testimony, after the evidence on damages
6 also has been submitted. We will ask that the Court award an
7 amount not only in compensatory damages but in punitive
8 damages. And in that regard we ask the Court -- we will ask
9 the Court to consider a formula which would deter in terms of
10 overall value of the compensatory damages as well as the
11 amounts spent in Iran for terrorism at this time. The
12 testimony will show with regard to Iran that it was spending at
13 this point in the neighborhood of \$75,000,000 a year on
14 terrorism. But we ask that because this case involves a number
15 of individuals, that the Court entertain at least the thought
16 that the appropriate manner of awarding punitive damages be a
17 multiple of the total amount of the compensatory damages award.

18 Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Fay.

20 Is there anyone in the courtroom who purports to speak
21 for the defendants?

22 Hearing no one, Mr. Fay, you may proceed.

23 MR. FAY: Your Honor, at this point we would call
24 Colonel Tim Geraghty.

25 (COLONEL TIM GERAGHTY, WITNESS FOR THE PLAINTIFFS, SWORN)

1 DIRECT EXAMINATION

2 BY MR. FAY:

3 Q Could you please state your full name and address?

4 A Timothy J. Geraghty. I'm living in Nashville, Tennessee,
5 130 Sturbridge Drive, in Franklin, Tennessee.

6 Q Could you give us your date and place of birth?

7 A July 8th, 1937, St. Louis, Missouri.

8 Q And where did you live growing up?

9 A I was born and raised in St. Louis.

10 Q Could you please describe your course of education for us
11 up to the present time, including any postgraduate courses?

12 A I had parochial school at the Franciscans. I went to a
13 Christian Brothers military prep school outside of St. Louis
14 and a Jesuit university and into the Marine Corps. And while
15 in Honolulu on duty as the Inspector of the Force
16 Reconnaissance Company in Honolulu I on weekends and nights
17 attained my master's degree from Pepperdine University.

18 Q Colonel, did the Jesuits prepare you adequately for the
19 Marine Corps?

20 A They did.

21 Q Could you detail for us your career in the Marine Corps?

22 A I joined the Marines right out of college in '59. I went
23 to Officer's Candidate School. In the latter part of '59, I
24 was commissioned in December, went directly to the Basic
25 School, class of '60. And then directly thereafter to Okinawa.

1 I was an 03, infantry officer out of basic school. Went to
2 Pendleton, and then over to Okinawa for a 13-month company tour
3 and then back at Pendleton. Stayed in the infantry. And then
4 Vietnam stirred up in '65. I was at the First Division and was
5 deployed from -- with the division in mid-65 and went to
6 Vietnam the first time in the end of '65, December of '65. And
7 essentially stayed there. I extended my tour twice there
8 through December of '67. I was commanding officer most of that
9 time for 18 months of Charlie Company First Recon Battalion.

10 Q What is a recon?

11 A A recon unit, I see some members in the audience from a
12 recon that was with me in Beirut, they do the surveillance.
13 They're out for long patrols primarily, finding, closing with,
14 identifying the enemy. From there I went back to Camp Lejeune.
15 I was hospitalized with hepatitis and some ailments and then
16 reported into Camp Lejeune in early '68 one day, and the next
17 day found myself in Thessalonika, Greece for planning for
18 deployment to the Med and I was the operations officer of the
19 Third Battalion Second Marines, and floating around in the
20 Mediterranean for seven months there at the end of '68. I was
21 short-toured down, normally the tour is two years, I was a
22 major then, to take over the Force Reconnaissance desk at
23 Quantico. I had that job for two years and essentially a lot
24 of trips both in '69, '70 and '71 back to Vietnam. We were
25 doing a lot of combat evaluation of tactical gear. And then I

1 was assigned or selected to be the Aide to the commanding
2 general, Lieutenant General Nash at the Development Educational
3 Command and I was his Aide for about 18 months until he
4 retired. From there I went to Marine Corps Command Staff
5 College and then back to Okinawa for an unaccompanied tour
6 where I was the director of a leadership seminar for officers
7 and staff NCOs, and then S3, operations officer, at the Third
8 Recon Battalion.

9 After that I had orders for the inspector instructor
10 slot in Honolulu. It's a reserve outfit. I essentially was
11 the recruiter out there, too since there wasn't a recruiting
12 officer present there. Sort of a dual hat. And at that time,
13 as I mentioned previously, worked for and received my master's
14 from Pepperdine. I was essentially promoted out of that job in
15 two years, it was normally a three-year tour, and was assigned
16 to Washington at the headquarters of the Marine Corps where I
17 for about a year and a half was in the personnel side, policy
18 side of headquarters, Marine Corps, and then was selected for a
19 job with the Central Intelligence Agency in SOG, the Special
20 Operations Group, which required special clearances, for about
21 six months, background checks, and then was assigned to SOG for
22 three years there in the late seventies, early eighties.

23 At that time I was promoted to Colonel in early '81.
24 And then was assigned to be the Operations Office of the G3 of
25 the Second Recon Division at Camp Lejeune and I held that job

1 for about 18 months and then coincidentally 20 years ago today
2 I assumed command of the 24th Marine Amphibious Unit on St.
3 Patrick's Day day in '83.

4 We locked on and did our training and then sailed for
5 Lebanon and I was the commanding officer through the return of
6 the unit from Lebanon and then was made -- was -- changed
7 command, turned over my command in early '84 and then I --
8 because I was supposed to go for a second tour out there but it
9 was changed, and then was -- the last six months I was the
10 Deputy Chief of Staff for Readiness, and then my last tour was
11 commanding officer of the Marine Barracks in Norfolk where I
12 retired from there in the fall of '86.

13 Q During your service in the Marine Corps have you on various
14 occasions received decorations for your service to your
15 country?

16 A Yes, I have a number of awards.

17 Q Could you tell us about those?

18 A Well, you know, a lot were standard. The Legion of Merit
19 and the Bronze Star, the Vietnamese Cross of Gallantry, Navy
20 Achievement Medal. A few presidential citations.

21 Q What was the full time of your tours in Vietnam, Colonel?

22 A I was over there every year from '65 through '71 except '68
23 where I was out in the Mediterranean, so my tours -- I didn't
24 have tours in my job as the Force Recon Officer at the
25 Development Center but I was going on extended temporary duties

1 out there for anywhere from a matter of weeks to a couple of
2 months to -- for different evaluations and testing and studies
3 that we were giving.

4 Q And your duty assignment on October 23rd, 1983 was
5 Commander of the 24th MAU in Beirut?

6 A That's correct.

7 Q When did the 24th MAU arrive in Lebanon?

8 A We arrived there in May. I arrived a few days earlier. We
9 had sailed across by ship out of Marine Amphibious Group,
10 Readiness Group, out of Norfolk, and we arrived in the
11 Mediterranean and at that time I got off ship to fly into
12 Beirut, ahead of the ship, to primarily start the transition
13 process with Jim Meade, Colonel Meade, who was the commanding
14 officer of the 22nd who we were relieving.

15 Q Could you set the stage for us here by describing the
16 situation in Lebanon as of the time of the arrival of your
17 group, the 24th MAU?

18 A Well, the environment in Lebanon was beginning to change
19 but it was still pretty calm as Lebanon goes, Beirut, in the
20 eighties. The embassy had been attacked with a suicide bomber
21 in April, April 18th, I believe it was, which was just a few
22 weeks before we arrived there. And that was an eye-opener.

23 But I have specific recollection on -- when I arrived
24 there being asked what dress uniform that I was going to be
25 taking ashore for the social side, you know, with the embassies

1 and the different events that were a matter of really
2 obligation of commanders of all the multi-national force, the
3 British, the Italians, the French and us, the Americans, that
4 we would attend with the Lebanese, as well as other
5 ambassadorial or diplomatic functions. And I made a very early
6 decision which from experience, when you're going to make those
7 decisions make them up front so you're not changing anything
8 that's going to carry over and I just made decisions that I
9 wasn't going to take any uniforms that weren't combat gear.
10 Everyone else was going to do the same thing and they were
11 going to wear their combat gear all the time. It was a
12 question of just changing the full face and expression of what
13 we were going to do. And essentially for two occasions in my
14 entire time there when I went to what I consider exceptions of
15 the social rule. Because of specific reasons I just didn't get
16 involved in that. But it was much calmer.

17 Marines were going on liberty. They were going in
18 town to eat. They were -- it was just a lot more relaxed
19 environment and they were generally being accepted very much by
20 the people. When we would go on patrols we were met -- the
21 kids were coming out and very friendly. And I have to add, it
22 wasn't just the Americans. What was unique with Lebanon is
23 that you had forces from different countries, a multi-national
24 peacekeeping force, but you didn't have a headquarters above
25 it. So the liaison between all the different countries, the

1 different commanders particularly, was, I thought, very
2 crucial. And so I had up front put liaison officers in all
3 their headquarters, obviously with their concurrence, and that
4 became very important, but I would -- for instance, the Italian
5 commander, French, British, whatever, I would go with them with
6 their commanders in tours of their areas like we would host
7 them to ours. And the kids would go up and be just as friendly
8 to them as they were to the Americans. So it was much
9 different in the beginning. And in a nutshell, the key
10 difference in my watch is that it was changing. It was
11 changing very fast, very dynamic, and not for the better.

12 Q What was the mission assigned to your unit, the 24th MAU?

13 A Continuation of the same, which is essentially a presence
14 mission, and it was nebulous to be sure. And 20 years later I
15 can tell you go and ask ten people and you'll get ten different
16 definitions, but essentially what it was, it was primarily a
17 peacekeeping mission and it was to show your presence, and when
18 I say ours, and this is throughout all the forces, is that we
19 were out showing a presence, primary to provide stability to
20 the area. And I might add that there's no doubt in just about
21 anyone involved at the time, we saved a lot of lives by our
22 presence there for awhile. And that was part of, I might add,
23 in my judgment, the success of that, our presence mission
24 there, and it was working is the primary reason why we were
25 targeted.

1 Q What was the source of that mission? In other words, who
2 determined the mission? Was it determined by you? Or the next
3 level up?

4 A No, that comes down from the Pentagon. From the Department
5 of Defense and the European Command through threat forces,
6 through Europe, through the Sixth Fleet and then through the
7 amphibious task force commander downward.

8 Q Did you have occasion to witness a short videotape
9 regarding your marine unit in Lebanon and what day-to-day
10 life -- at least a taste of what it was like?

11 A Yes.

12 Q And was that, to the extent you could go into detail, was
13 that accurate?

14 A It was accurate.

15 MR. FAY: Can we dim the lights?

16 (Videotape played)

17 THE COURT: Your exhibit number?

18 MR. FAY: That is -- I don't know if we marked this as
19 an exhibit number. We ask that it be admitted into evidence.

20 BY MR. FAY:

21 Q Mr. Geraghty, let me show you -- I don't know if we can
22 make this -- I put up the rules of engagement which we obtained
23 from historical sources. First of all, I would ask whether or
24 not this is in fact an accurate copy of the rules of engagement
25 that you were given?

1 A It is.

2 MR. FAY: Your Honor, we would ask that this exhibit
3 which I believe is Exhibit Number Ten, Plaintiffs' Exhibit
4 Number Ten, be admitted into evidence.

5 THE COURT: It's received.

6 (Plaintiffs' Exhibit No. 10
7 was received in evidence)

8 BY MR. FAY:

9 Q Now, Colonel, going down from the top on these, "When on
10 post, mobile or foot patrol, keep loaded magazine in weapon,
11 bolt closed, weapon on safe, no round in chamber," that was the
12 instruction given along with these others to all of the Marines
13 in the 24th MAU?

14 A That's correct.

15 Q I believe I've seen a card with this -- these rules printed
16 on them. Were they handed out to every single Marine?

17 A That's correct. We went over those in great detail.

18 Q And were these rules adhered to at all times, especially up
19 to October 23rd, 1983?

20 A Yes.

21 Q What's the meaning really of the term rules of engagement,
22 if there has been any definition given to it.

23 A They're essentially the parameters you operate under with
24 the primary focus on the mission which was a peacekeeping
25 mission, and that's sacrosanct. That is the focus. And that

1 these are essentially the parameters that we operate under.

2 Q How would these differ from the rules which presumably were
3 being enforced for a Marine walking guard duty over at the
4 Marine Barracks even as you testify here today?

5 A The rules -- these were geared primarily again with the
6 peacekeeping mission inside and the sensitivities of killing or
7 maiming someone accidentally. That could be a tinderbox. That
8 could start a whole chain of events. The rules of having not a
9 chamber in the weapon --

10 Q Not a round in the chamber?

11 A Not a round in the chamber, I'm sorry, and having it on
12 safe is commonplace. Even within the compounds of Vietnam we
13 never had a round in the chamber when you're inside of those
14 compounds. There is -- it's when you deploy, when you're going
15 out in patrol and so on. And what it is, is you train them,
16 and it's a matter of just a second or two where you pull the
17 bolt to the rear, put a round in the chamber and take the
18 safety off, you've got it ready to go. But it's to put in
19 their mind that there's a thought process before you engage.
20 With the caveat of that is that any time that there was any
21 personal threat that was derived from any individual is that
22 they certainly have the authority to round the chamber.

23 Q Now, let me direct your attention to Plaintiffs' Exhibit
24 Number One. I have a blownup copy here. You can see that
25 easily as you testify. Let me also put a copy on the viewer.

1 Now, first of all, does this appear to be not according to his
2 scale but a reasonably accurate copy of the map of the area in
3 which your Marines were deployed?

4 A Yes.

5 Q And could you point out -- first of all, on the left side,
6 what do these lines over to the left side as you look at the
7 screen indicate? Along there, there. There, I'm sorry.

8 A Yes. Those are berms inside -- on the eastern side of the
9 entrance to the Beirut International. Behind those areas are
10 taxiways and so on. The Lebanese had some aircraft. In fact,
11 we used part of that for our aviation element.

12 Q Now, somebody entering the airport would use what route?
13 Maybe you could just take my -- well, maybe you could come over
14 to this and take my pen and show it.

15 A Yes.

16 Q As one would enter the airport, perhaps you can show how a
17 civilian, for instance, would enter the airport?

18 A Yes, it's this main entry point down to the end here with
19 the circle here is where the terminal was. The main terminal.
20 So consequently this was where most of the traffic would be
21 coming towards you.

22 Q And could you identify on that the area where the BLT1-8
23 was?

24 A Yes, right here. Just right off of the highway. The entry
25 highway.

1 Q And then where would the entrance into your area be?

2 A The MAU headquarters?

3 Q Yes.

4 A It's just 100 meters behind right here.

5 Q Okay. You can resume the stand.

6 Now, you referred to the -- earlier to the 24th MAU
7 and BLT1-8 and for the record, what do those terms include?

8 A I apologize. Yes, I know this is slang of the Pentagon.
9 MAU is a Marine Amphibious Unit which is -- incidentally now
10 it's been changed to Marine Expeditionary Unit. The MAUs are
11 now MEUs. And it's the designation of a unit of essentially
12 2000 or so Marines with a ground element supporting arms. The
13 aviation unit. And then the BLT is Battalion Landing Team. In
14 this case the battalion was First Battalion Eighth Marines, and
15 it becomes a landing team. A battalion is essentially
16 infantry. And the way the Marine Corps structure builds them
17 is that it's given a lot of supporting elements to make it a
18 landing team which includes amphibious tractors, tanks,
19 artillery, recon, engineers, all these, and sundry support
20 elements that make it a landing team.

21 Q Now, I referred in my opening to this area of the airport,
22 let me put this back on, as still being a civilian airport
23 facility up to October 23rd, 1983 and perhaps beyond that.
24 This just goes to October 23rd, 1983. For passengers who wish
25 to dodge small arms fire, mortar fire and artillery fire. Was

1 this still a civilian landing facility? In other words, did
2 planes occasionally come in there?

3 A Yes, and it's important to note that Lebanon, you know,
4 historically is a trading country. It's the crossroads for the
5 Mideast, Paris, and the Orient. But that it's essentially a
6 trading country which drew in people and that's all the way
7 back to the time of the Phoenicians. So the opening and the
8 maintaining to keep their ports open and specifically in the
9 modern era, their airport was probably no higher priority that
10 the Government could have to demonstrate to the people that the
11 Government is functioning and that there's a sense of normality
12 back. So there was a great pressure to have that remain open.

13 Q Was there any other functioning international airport in
14 Lebanon at that time or even actually to the present?

15 A No.

16 Q Was there also construction going on at the airport during
17 this time?

18 A Yes. Many. Because of the civil war that essentially, you
19 know, going back to the seventies, '76, that it became so
20 intense, there was so much destruction it was a continual
21 process of blowing something up and then they would start
22 reconstruction. Again, because of the priority of what the
23 airport meant to the Government of Lebanon, there was probably
24 no higher priority than to reconstruct when the shells come in,
25 do some damage and so on, to not only build up the areas of

1 destruction but there's actually an expansion going on at the
2 same time.

3 Q Colonel, during this period, up until October 23rd, 1983,
4 what police power even did your people have? For example, if
5 somebody came waltzing down the road that I'm pointing to now
6 such as might be found over at Union Station now with kids at
7 this time of the year walking through with knapsacks on their
8 backs and so forth, what authority did your people have to stop
9 them, search them, do anything to them?

10 A None. No, that was part of the dilemma that we had is the
11 Lebanese Army was in charge of the security of the airport per
12 se and we had our perimeter in a different area but who was
13 coming, when it was opening -- in fact, I took a lot of hits on
14 why I allowed the airport to reopen because it increased our
15 vulnerability. I had no say in that. That's the Prime
16 Minister of the country who is making those decisions. So we
17 had liaison, Lebanese Army liaison officers working for us and
18 that was the primary intercommunication we had with the
19 Lebanese Armed Forces.

20 Q So if Joe and Sally Sophomore today wander through Union
21 Station with a knapsack on their back, the transit police at
22 the station have more of a right to stop somebody and ask them
23 what's in the knapsack and what they're doing there than your
24 Marines had the right to stop somebody going down that road?

25 A Oh, yes.

1 Q Now, you mentioned an outside perimeter that was set up by
2 the Lebanese Armed Forces. Maybe we should back up a minute.
3 What was the consistency of the Lebanese Army at this point?

4 A The Lebanese Army was, and this was part of their whole
5 program, to essentially make an army, is include all the
6 different factions that were fighting one another, the Druze
7 and the Phalangists and the Christians and the Sunni and the
8 Shi'ites. And they had all those into and trained within the
9 Lebanese Army. And they were making progress. I can remember
10 going to a number of the graduation ceremonies and giving NCO
11 awards to the graduates and they were Druze and they were
12 Shi'ites and they were Phalangists. So General Tanouse,
13 (spelled phonetically) the general of the Lebanese Army, I
14 think was doing a magnificent job in trying to put that
15 together. But it fell apart pretty fast when the factions
16 started fighting again.

17 Q Did this outside perimeter even stay in touch with your
18 people? For instance, if a truck was coming in, did they get
19 on the radio and say hey, fellow, watch out for the truck
20 coming down the road?

21 A No, because the Lebanese control. When the airport is open
22 you have to understand there are literally hundreds of vehicles
23 coming in there as well as trucks. Just the hubbub of an
24 international airport. And again going back to the importance
25 of Lebanon keeping this airport open. So you have families as

1 they would come to the airport, and not necessarily to leave,
2 just to see the planes. Just to get away. So it was
3 considered to be a secure spot at times.

4 It also highlighted the -- how careful we had to be
5 that there wasn't accidental discharge that could kill or could
6 maim some civilian that would -- in the circumstances that we
7 operated I think would be very detrimental to our mission.

8 Q Let me ask you with regard to the backside, if you will, of
9 the area, the direction from which the attack ultimately came,
10 I'll put up Exhibit Number Two. Incidentally, is this an
11 accurate representation, not to scale, but an accurate
12 representation for our purposes here of that area?

13 A Yes, sir.

14 MR. FAY: Your Honor, we would ask that Plaintiffs'
15 Exhibits One and Two be admitted into evidence.

16 THE COURT: Received.

17 (Plaintiffs' Exhibit Nos. One & Two
18 were received in evidence)

19 THE DEPUTY CLERK: Excuse me, what is Number Two?

20 MR. FAY: Number Two is a map.

21 Your Honor, I have a book here with -- the original
22 copies of the exhibits and which have blownup copies. I have a
23 copy as well and pass that up to Your Honor.

24 THE DEPUTY CLERK: Is there an exhibit list?

25 MR. FAY: Well, perhaps it's not in there but I'll

1 provide it.

2 THE DEPUTY CLERK: What are you calling it?

3 MR. FAY: This is Number Two.

4 THE DEPUTY CLERK: What is its name?

5 MR. FAY: It is a depiction of the area of attack
6 including sentry and other key locations.

7 BY MR. FAY:

8 Q Directing your attention, Colonel, to this area, from
9 the -- what's marked here as entrance on the back of the
10 parking area, was there any Marine position outside of what is
11 noted as concertina wire stretching across that parking lot?

12 A No, that was one of the sensitivities that we had to
13 realize because we were where we were, is beyond that
14 concertina wire direct fire was going right into the terminal
15 which was the main hub. So there was nothing outside of that
16 concertina. And the only other forces, Marine forces that were
17 not in this area were over at the university through the town
18 that was isolated and of course after the bombing at the
19 British Embassy at our embassy we had special forces there for
20 security.

21 Q How many units would be parked outside the concertina wire
22 in the part that was marked as a parking lot?

23 A Depending on the time. When the shelling would start, and
24 for the same reasons they wanted to close it, the target, not
25 to allow the airport to open was the primary target of the bad

1 guys. So once that is shelled it essentially would be empty.
2 Once they tried to reopen it and so on, you had hundreds of
3 cars just coming and parking, people in the hubbub of the
4 airport operating.

5 Q And the term concertina wire, that is what? What does that
6 mean?

7 A It's a barbed wire that's circular that the Marines and
8 either military uses, to prohibit entry into, and these
9 particularly were reinforced concertina. We had stakes
10 actually driven into the ground to stop vehicles and so on. We
11 tested those quite a bit and it would stop normal vehicles and
12 small trucks, vans and so on.

13 Q But not a heavy truck?

14 A No, not a heavy truck. And you hit on the basic problem
15 here is that we were -- the dilemma we had is that the mission
16 was composed and directed really by the diplomats. The
17 diplomatic service. Our position was not a tactical position.
18 In fact, it was atrocious. And it was tolerable with the
19 mission when we started. Again I go back to it all changed in
20 our watch and that's essentially what the problem was. Our
21 mission because we were targeted and the artillery and all the
22 other things, that we became a primary target along with the
23 French and the other forces, it was directed toward us. So
24 that changed the whole complexion and really endangered all the
25 more our vulnerability of the deployment at work.

1 I have to mention that there were plans that I was
2 fully supporting to redeploy a good part of the Marines to the
3 south into a different area in order to just reduce the profile
4 of the numbers where we were. But that never came to pass.
5 So, in a nutshell, I told some people these are the
6 circumstances, particularly after the Israelis withdrew at the
7 end of August, the 28th of August, is that the -- and we became
8 a primary target during what we call the September Wars, is the
9 environment and the changes essentially changed our mission,
10 but no one changed our mission. Circumstances changed our
11 mission but we could not change the mission and that is part, I
12 think, in my judgment the -- the primary dilemma in
13 circumstances like this in going in as a peacekeeping mission
14 and any change to the status quo becomes interpreted as
15 weakness, particularly when their vulnerability -- you start
16 taking casualties, you change the status quo, and there's a
17 reluctance do that because it would send a signal that you're
18 weakening or that you're doing it. And that I think is a big
19 part.

20 I wanted to -- in fact, starting -- we were less than
21 a month before redeployment and being relieved there in
22 October, and I actually wanted to start backloading early,
23 again, to reduce the signature ashore, but that didn't come to
24 pass because they figured again that any reduction of force at
25 this time would be interpreted as cutting and running or a sign

1 of weakness. So those are the kind of issues that bounce back
2 and forth.

3 Q Colonel, just to get a little bit better idea of this area,
4 I've placed on the viewer Plaintiffs' Exhibit Number 21 marked
5 for identification. And the place where I put my pen, is this
6 an accurate representation of the BLT1-8 building?

7 A That's correct.

8 Q And to the left where I've placed my pen again, is this the
9 avenue, if you will, leading to the airport?

10 A Yes, the southbound towards the terminal, and northbound
11 away, towards the city.

12 Q And then where I place my pen now would be the parking
13 lot --

14 A That's correct.

15 Q -- area? And I'm now placing Plaintiffs' Exhibit Number 20
16 on the viewer. I'd ask you whether this is an accurate
17 representation of the interior of that BLT building.

18 A That's correct.

19 Q At the time of the occurrence, was it the same as it
20 appears now? That is to say, with boxes and so forth in that
21 area?

22 A Yes. Those are essentially the boxes where we put our
23 gear, administrative records, office equipment, you know. The
24 field gear. And so on. They're boxed in that and they're
25 going back towards the ship. And that's where, I might add,

1 that just a couple of weeks before the bombing, General Kelly,
2 Commandant of the Marine Corps, stood right in the center there
3 and gave Purple Hearts out to some of the members.

4 Q And where I'm placing my pen now, that is where the flags
5 were located?

6 A Yes.

7 Q That was the flag of the United States and the flag of the
8 Marine Corps?

9 A Marine Corps, yes.

10 Q Now, was that pretty precisely the center of the structure
11 on the ground floor?

12 A Yes, looking at it, it had an atrium like you have in like
13 the embassy suites at the Hyatt.

14 Q Let me put up 22.

15 A There you go. And that was essentially right in the center
16 of that atrium.

17 Q And that would be such as we've -- I think the words Hyatt
18 atrium has almost become a term in the English language. And
19 that's what it looked like?

20 A Yes.

21 MR. FAY: Your Honor, we would ask that Exhibit
22 Numbers 20, 21 and 22 be admitted into evidence.

23 THE COURT: Received.

24 (Plaintiffs' Exhibit Nos. 20-22
25 were received in evidence)

1 BY MR. FAY:

2 Q Could you trace your footsteps on October 23rd, 1983 to the
3 point at which the attack took place?

4 A Yes. I had gotten up at five, around five o'clock, 5:30,
5 which was the normal time that my day would start. And what I
6 would do, my office is right above my operations center, I
7 would go down to check the overnight traffic and see if
8 anything has occurred or -- if anything actually were that
9 important, they would wake me. But it was quiet and because of
10 the severe artillery and fire in the weeks before I recall this
11 vividly, going outside into the parking lot right outside my
12 headquarters there and was just sort of taken aback how quiet
13 it was. You know, in the early morning hours. There weren't
14 too many things moving. No songbirds or anything else. It had
15 cleared up. It was just very quiet. And we were in a period
16 of cease fire at that time. And there was serious talk of
17 Syrian reconciliation talks and negotiations that were going
18 to -- they were planning for the following week. And that we
19 were told that the BIA, the Beirut International airport, was
20 the area where all the different factions were going to meet
21 primarily because of the security of that area.

22 Q Colonel, you mentioned the Syrians and the Israelis, the
23 French, and UK troops and the Marines. In any way was there
24 any representation at all that Iranian personnel were present?
25 By representation I mean was there any legal status for Iran

1 within Lebanon at that time that you know of?

2 A No, we knew that through intelligence, you know, Iranian
3 Revolutionary Guards were out in Bekaa Valley under Syrian
4 control. We knew that.

5 But to continue with your question, I went back to --
6 up to my office and I wasn't there back in my office that long
7 went this tremendous explosion occurred and my first thought
8 was it was a rocket. I thought a Syrian rocket that had hit
9 us. And it blew -- I had windows taped and sandbags all in
10 front of our offices there at the MAU headquarters as it was at
11 the BLT. All of us had. But it blew all of the glass that we
12 had taped fortunately before then, and sandbags through my
13 office. And my XO was -- and we shared the room there above
14 our operations center and it blew both of us a number of times
15 in the room against the far wall and actually blew out the door
16 going down to the operations center.

17 So I just -- I ran downstairs to see what it was and I
18 went down to the COC and they were okay. I mean there was dust
19 and dirt clouds all around. A fog. And feeling my way out and
20 got outside and there was just like a heavy fog. You couldn't
21 see anything but the smell of cordite and concrete was in the
22 air. Fine powder. And I went around the corner and there was
23 a Lebanese liaison at the United Nations building there that I
24 thought was hit and that was all right and so on.

25 And I was joined then by my logistics officer, Major

1 Melton, and was still trying to figure out where it landed and
2 what it did. Because we had no way of knowing the means of
3 delivery except there was a hell of an explosion. And I was
4 looking in the fog one way and Major Melton is the one that
5 said, my God, sir, the BLT building is gone. Now, what
6 happened is that the smoke had cleared, started clearing out a
7 little bit and he saw that essentially the BLT building had
8 been destroyed.

9 Q Colonel, let me show you what has been marked as
10 Plaintiffs' Exhibit Number 23. And following where I'm placing
11 my pen, is this all that remained of the BLT building?

12 A Yes.

13 Q Is this an accurate photograph depicting the destruction
14 done to the BLT building?

15 A Yes, yes.

16 Q Could you tell us a little bit about the rescue efforts,
17 Colonel?

18 A In a word, heroic. The Marines just pitched in. There
19 were a number of parallel things going on. The first is to get
20 organized a rescue effort to help dig out the Marines, sailors
21 and soldiers as much as we could. So starting that on one
22 hand. On the other hand, I had the just an instinct that we
23 were going to get hit again. At least I just felt it was
24 happening. At the same time we're taking sniper fire. And
25 people were converging obviously on the building.

1 The Lebanese, God bless them, the first ones with the
2 heavy equipment, were on the spot and started using the heavy
3 equipment to get the slabs off and help in the rescue effort.
4 The Italians came. The British, all of them.

5 We found out then that just a couple of minutes after
6 us the French got hit at their parachute headquarters just a
7 couple of minutes northeast of us. And the same thing as this,
8 a smaller truck went into the basement and brought down a
9 seven- or eight-story building. They lost 59 paratroopers and
10 over 100 wounded.

11 But the effort to get that -- the other thing is I had
12 to get on SatCom back to National Command Center to get support
13 out there because I had lost -- the BLT was the one that had
14 the operations to control the artillery and all the sundry
15 units. That's part of the BLT function. So my headquarters
16 had to assume that function with the absence of the BLT. And
17 at the same time I had to get another BLT complete headquarters
18 out there in order to pick that up, plus an additional rifle
19 company for security because I felt our vulnerability.

20 And that's when -- we have a stand by at Camp Lejeune,
21 a 24 hour, seven-24 fly away, and that's when the Two Six under
22 Lieutenant Colonel Kelly were out there within a day.

23 Q What was the final casualty number, if you recall?

24 A 241.

25 MR. FAY: Your Honor, I don't have any other questions

1 of Colonel Geraghty at this point.

2 THE COURT: I take it, Colonel, you were the commander
3 of the overall marine operation in Lebanon, what's that, the
4 MAU?

5 THE WITNESS: That's correct.

6 THE COURT: And then this barracks that was actually
7 hit, what had it been before?

8 THE WITNESS: It was used as an aviation
9 administrative building, for a better term. What was
10 interesting about it, Your Honor, through all the wars and
11 trials and tribulations of Lebanon, the Syrians used it as
12 their headquarters when they were occupying, the Israelis used
13 it as a hospital, and primarily it was considered by the
14 Lebanese of one of their strongest buildings. It was strong,
15 with reinforcement rods and so on.

16 I think in retrospect is that the artillery and the
17 heavy fire that -- artillery fire that we started getting there
18 at BIA, and most of the Marines were on the runway. We had
19 tents set up and hardback and so on. And then we brought some
20 armor ashore for protection, but we didn't use that building
21 that much early because we just kept the forces deployed. But
22 it was the artillery and the threat that we were facing that I
23 had no choice, I had to get them in hardened structures. And
24 there weren't too many places to go and this was one of them.

25 I could tell you other buildings in that area. We

1 were going down in the basement and everything. I had to get
2 the forces ashore since I could not reduce their signature.
3 And the threat that I always thought was artillery barrages and
4 rockets and mortars, that they could bring to bear on us. So
5 it's in that context.

6 THE COURT: When did the Marines first go into Lebanon
7 in this peacekeeping role? Like a year before?

8 THE WITNESS: That's correct. It was September I want
9 to say, of '82. Primarily with the mission of helping the
10 French to remove the PLO. The fighters. And they had agreed,
11 there were a lot of negotiations, to get them out of Lebanon
12 and send them mostly I think to Tunisia. That is, spread them
13 around through the Mediterranean. And the mission there was
14 with the French and it was successful, to remove the fighters
15 and all that.

16 Now, part of that, we find out later, part of that
17 quotient in removing the fighters was the agreement
18 diplomatically that the United States had made to provide
19 security on refugee camps that were left behind. Really
20 unprotected from the Palestinian standpoint. And so after the
21 fighters left, the Marines' decision is rather than linger
22 around there, what was it? And the decision was made to get
23 them out. There was no reason to linger there according -- you
24 know, coming down from above.

25 Well, the machines went and they weren't gone I

1 wouldn't say a matter of weeks when the -- what triggered the
2 return was the President of Lebanon, Bashir Gemayel, was
3 assassinated. And that started -- whether with Israeli
4 coalition or what, but the Christian forces, Phalangist forces
5 went into Sabra and Shatila and massacred women and children.
6 It was really bad. And it was really I think out of a sense of
7 obligation that -- and this was right up at President Reagan's
8 level, that we can't have that kind of behavior and not provide
9 protection and it was after the horse was out of the barn, but
10 still provide some kind of stability and protection there.
11 That's what brought the Marines back in with the so-called
12 presence. So it's one of those missions where the road to hell
13 is paved with good intentions for all the things that we did.

14 But I think in retrospect the changing of -- how
15 things rapidly deteriorated and we became the target primarily
16 because of the success of what we were doing was starting to
17 have I think some positive effect which would generate this.

18 THE COURT: Thank you very much, Colonel.

19 THE WITNESS: Yes, sir.

20 THE COURT: We'll take our morning recess.

21 MR. FAY: Thank you, Your Honor.

22 (Recess)

23 THE COURT: All right, Mr. Fay?

24 MR. FAY: Your Honor, at this time we would present
25 the deposition testimony of Joseph Salam and Mahmoud.

1 THE COURT: All right.

2 MR. FAY: Your Honor, while we're waiting I spied
3 another distinguished member of our bar who has been working
4 with us on this case, Mr. Feeney. Robert Feeney.

5 MR. FEENEY: Good morning, Your Honor.

6 THE COURT: Mr. Feeney.

7 MR. FAY: I guess we need a little work on the lights.
8 There.

9 (Videotape deposition of Joseph Salam played)

10 (Mr. Fay requested on the videotape deposition that
11 Mr. Salam be qualified as an expert)

12 THE COURT: The witness is well qualified, and the
13 request is granted.

14 (Videotape deposition of Joseph Salam continued,
15 followed by videotape deposition of Mahmoud)

16 MR. FAY: Your Honor, may I approach the bench?

17 (Off the record)

18 THE COURT: The Court will recess at this time. We
19 will resume at two o'clock with the testimony of Admiral Lyons.

20 (Lunch recess, 12:10 p.m. to 2:00 p.m.)

21 AFTERNOON SESSION 2:10 P.M.

22 MR. FAY: Good afternoon, Your Honor. At this time we
23 would call James Lyons as a witness.

24 (JAMES LYONS, WITNESS FOR THE PLAINTIFFS, SWORN)

25 DIRECT EXAMINATION

1 BY MR. FAY:

2 Q Would you please state your full name and address?

3 A I live on 9481 Piney Mountain Road, Warrenton, Virginia.

4 Q And your full name, please?

5 A It's Admiral James A. Lyons, Jr., USN retired.

6 Q Could you detail your education for us, Admiral Lyons?

7 A I've listened to a lot of guns go off, so you've got to
8 speak up.

9 You understand that, don't you, Judge?

10 THE COURT: I do.

11 THE WITNESS: Good.

12 BY MR. FAY:

13 Q Admiral, could you detail your education for us?

14 A I graduated from the Naval Academy in 1952, the Naval War
15 College in 1964, and the National War College in 1971.

16 Q Okay. Is your senior year in Navy the year that they beat
17 Army?

18 A That's right, 14 to two.

19 THE COURT: I'm shocked you raised that in this Court.

20 THE WITNESS: But the year before we lost 38 to
21 nothing.

22 THE COURT: I'll resist saying good.

23 MR. FAY: I'd ask for judicial cognizance that the
24 witness' memory has not faded, Your Honor.

25 BY MR. FAY:

1 Q After graduation from the Naval Academy, what was your
2 first duty assignment, Admiral?

3 A Well, I had essentially tours in the amphibious force and
4 the destroyer force and the cruiser force and then I was Exec-O
5 of a destroyer in 1959. I took command of the destroyer in
6 1966. And went on from there.

7 Q Could you review your career from that point with the Navy?

8 A Well, the -- and I guess you mean where I went from that
9 tour?

10 Q Yes. Yes.

11 A I was the Executive Assistant to the Deputy Chief for Naval
12 Operations for Plans, Policy and Operation, '71 to '74. I took
13 command of a guided missile cruiser, 1974 to '75. I was Chief
14 of Staff of a carrier group, '75 and '76 and then I came back
15 to the Pentagon as the Senior JCS Planner for the Navy. I was
16 selected for Rear Admiral in January, '78. And after a short
17 tour on the Navy Staff I went to the Joint Staff as the
18 Director of Political and Military Affairs from '78 to '80.

19 In 1980 I went to take command of task force 73 in the
20 Pacific which I was responsible for all the logistics and the
21 first deployment of the pre-position ships in Diego Garcia.
22 From that tour I was ordered as Commander of the Seventh Fleet
23 and the NATO Striking Fleet. That was '81 to '83.

24 In '83 to '85 I was the Deputy Chief of the Naval
25 Operations for Plans, Policy and Operation. Then the Navy

1 opted for all JSC matters. I was also the U.S. military rep
2 for the United Nations during that same period, and in 1985,
3 '86, '87, I was Commander in Chief of the Pacific Fleet. At
4 which point they told me they thought I ought to look for other
5 employment.

6 Q In your course at the Naval War College and later at the
7 National Defense University, what was your major area of
8 interest?

9 A Well, it was -- I focused a lot on the Middle East, Persian
10 Gulf, Indian Ocean, and some of the intricacies that involved
11 the region.

12 Q And later as Director of Political Military Affairs for the
13 Joint Chiefs of Staff organization, what were your areas of
14 responsibility?

15 A Well, basically the world, but I focused primarily on the
16 Middle East and Europe. After the Iranians sacked our embassy
17 in November, '79 I was responsible for developing the first
18 concept for the deployment showing task force. I also in that
19 position accompanied the then Secretary of Defense, Harold
20 Brown, who was the first Secretary of Defense ever to make a
21 trip to the Middle East, where we visited Saudi Arabia, Jordan,
22 Israel, Egypt and so on.

23 Q And could you describe your areas of responsibility when
24 you were Commander of the Mobile Logistics Support Force?

25 A Well, again, as I previously, said I was responsible for

1 all logistics for the Seventh Fleet. Responsibility for the
2 pre-position ships, and at that time the diplomats were still
3 being held hostage in Iran. So that was a primary focus of our
4 efforts.

5 Q At one point in your career -- when did you first come into
6 the area of Iran? Waters nearby Iran?

7 A Well, that was in 1967 when I had command of a destroyer.
8 I was up at Collog Island. (Spelled phonetically) All the
9 states in the region at that time. So I would say my first
10 on-scene dates back to 1967.

11 Q From July of 1983 until September, 1985 when you were
12 Deputy Chief of Naval Operations, did you at the same time
13 function, ever function with regard to the United Nations?

14 A That's the same period of time.

15 Q Yes.

16 A Right.

17 Q And that function with regard to the United Nations was
18 what?

19 A That involved a variety of things which included the Middle
20 East as well but, of course, at that particular period of time
21 we were -- the Soviet threat was somewhat number one on the
22 agenda. And I was also the JSC rep on conventional arms
23 limitations talks with the Soviet Union, and then I headed up
24 the U.S. Incidents-At-Sea Talks in Moscow in 1984.

25 Q In your position as Deputy Chief of Naval Operations in

1 July of 1983 to September, 1985, did you have occasion to
2 receive intelligence information with respect to areas where
3 American military forces were involved?

4 A I did. Numerous ones.

5 Q Was it in the normal course of your work as Deputy Chief of
6 Naval Operations?

7 A Correct.

8 Q Admiral, in your position as Deputy Chief of Naval
9 Operations, did you have occasion to become aware of an
10 intercept of a message to the Iranian Ambassador in Damascus
11 from the Iranian Government in Tehran in the fall, late
12 September of 1983?

13 A You know, we -- that message came -- I got to see that
14 message on the 25th of October, two days after the event of the
15 Marine Barracks blowup. And that message was formulated in the
16 latter part of September, approximately four weeks before the
17 Marine Barracks blowup.

18 Q When you say formulated, would that be the same as
19 intercepted in some way?

20 A Well, you can say that we know with certainty that the
21 Iranian Ambassador called in the leader of the terrorist group,
22 Islamic Amal, (spelled phonetically) Hussein Moussaoui, and
23 gave him instructions to carry out attacks on the forces in
24 Lebanon and to take a spectacular action against the United
25 States Marines.

1 Q Were you ever able to determine why this intercept of late
2 September, 1983 did not reach you until two days after the
3 attack on the Marine Barracks at Beirut?

4 A I've asked that question a thousand times. I don't know.
5 I first saw it when the Director of Naval Intelligence walked
6 into my office and said this is something you'd better take a
7 look at.

8 Q Have you brought a copy of that record with you today?

9 A Well, I'm not authorized to do that, but I have here an
10 envelope which I will hand the Court which will provide
11 sufficient information for the Court to request that document
12 through appropriate channels.

13 Q Is that still classified information?

14 A As far as I know.

15 Q And that is in an envelope marked Plaintiffs' Exhibit
16 Number Five?

17 THE COURT: Seven.

18 MR. FAY: Seven, I'm sorry. Seven. Your Honor, we
19 would ask that this exhibit be admitted into evidence but kept
20 under seal of the Court and not published.

21 BY MR. FAY:

22 Q Admiral, without disclosure of intercept methods with
23 appropriate consideration of national security factors, can you
24 describe essentially the information, the type of information
25 you received?

1 A Well, as I said, we know with certainty that the Iranian
2 Ambassador directed Hussein Moussaoui, the terrorist leader of
3 the Islamic Amal, to conduct attacks against the military
4 forces in Lebanon and to take a spectacular action against the
5 U.S. Marines. Beyond that, I can't go.

6 Q Admiral, over your years as a naval officer, was part of
7 your profession the evaluation of intelligence information?

8 A Well, I would say if there was ever a 24-karat gold
9 document, this was it. This is not something from the third
10 cousin of the fourth wife of Muhammad the taxicab driver.

11 Q You don't have any doubt, I take it, as to the authenticity
12 of that message?

13 A No.

14 Q And you don't have any doubt that it was sent by somebody
15 in a position in Tehran to give such an order to the
16 Ambassador?

17 A Correct.

18 Q Could you express your opinion, you've already said
19 24-Karat, but -- Your Honor, we would ask that the Admiral be
20 qualified as an expert permitted to express an opinion with
21 regard to the reliability of the exhibit which we've placed in
22 evidence?

23 THE COURT: Your request is granted.

24 BY MR. FAY:

25 Q Could you -- you already mentioned 24-Carat, so to some

1 extent you've answered it but perhaps before I ask that
2 question, could you perhaps tell us a little bit about the type
3 of information that the military gets in intelligence and how
4 much of it is good, how much of it is okay?

5 A Well, at that particular period of time there were
6 thousands of messages from every source you can imagine.
7 However, not like this message, which should have set off all
8 the bells and whistles.

9 Q How often would a message of this type of importance, of
10 this type of reliability come across your desk, come to your
11 attention as Deputy Chief of Naval Operations?

12 A That's the only one I've seen of that quality.

13 Q One last question, Admiral, are you being compensated in
14 any way for your time either in the traffic jam trying to get
15 here or for your testimony, more importantly.

16 A No, not at all.

17 MR. FAY: Your Honor, I have no other questions of
18 this witness.

19 THE COURT: At the time the intercept was brought to
20 you by the Chief of Naval Intelligence, you evaluated it in the
21 same way you have here today that this was an intelligence --

22 THE WITNESS: I took it immediately to the Secretary
23 of the Navy and to the Chief of Naval Operations.

24 THE COURT: No question this was the real Mc Coy in
25 your view.

1 THE WITNESS: No question.

2 THE COURT: And it was treated that way by those
3 officials as well.

4 THE WITNESS: Correct.

5 MR. FAY: Your Honor, I don't have any other
6 questions.

7 MR. PERLES: May I have a moment with Mr. Fay, please?

8 THE COURT: Yes.

9 BY MR. FAY:

10 Q Admiral, you mentioned Amal. Was this the precursor
11 organization to Hezbollah?

12 A Correct.

13 THE COURT: Thank you very much, Admiral.

14 MR. FAY: Thank you, Admiral.

15 THE COURT: You can step down.

16 Let me say one thing to the ladies and gentlemen who
17 are here. I want to try to accommodate as many plaintiffs who
18 can observe some part of these proceedings as I can. I've
19 indicated to the Marshals that about every 30 minutes the last
20 row on each side of the audience I'm going to ask to step out
21 and let other plaintiffs step in so that they'll have an
22 opportunity to observe these proceedings as well. If there are
23 others who want to rotate in and out, you may do so when we do
24 that rotation but I think that will allow some of the people
25 who are waiting out in the hall to try to get into the

1 courtroom to come in.

2 Okay, Mr. Fay.

3 MR. FAY: Your Honor, at this time we would present by
4 videotape the deposition testimony of Mr. Robert Baer.

5 THE COURT: All right.

6 (Videotape deposition of Robert Baer played)

7 THE COURT: What's the name of his book?

8 MR. FAY: Hang on just a minute, Your Honor.

9 THE COURT: Is it going to be an exhibit?

10 MR. FAY: We can introduce it as an exhibit, yes. I
11 tried to actually get a copy and didn't. I have an excerpt
12 here but I could not get the entire book. It's a wonderful
13 title. See No Evil. I think it was published in 2001, Your
14 Honor.

15 Your Honor, our next witness will be Sergeant Steve
16 Russell, and the direct examination will be conducted by Mr.
17 Gaskill.

18 THE COURT: All right.

19 MR. GASKILL: Good afternoon, Your Honor. Dan
20 Gaskill.

21 (SERGEANT STEVE RUSSELL, WITNESS FOR THE PLAINTIFFS, SWORN)

22 DIRECT EXAMINATION

23 BY MR. GASKILL:

24 Q Good afternoon, Mr. Russell.

25 A Good afternoon.

1 Q Would you please state your full name and address for the
2 reporter?

3 A Steven Edward Russell. I live at 116 Depot Street, Belle
4 Haven, Massachusetts.

5 MR. FAY: Maybe if you can get the mike a little bit
6 closer.

7 THE WITNESS: I'm sorry.

8 BY MR. GASKILL:

9 Q What was the date and place of your birth?

10 A July 14th, 1955, Boston, Massachusetts.

11 Q What high school did you attend?

12 A I went to South Boston High School. We moved to the
13 suburbs and I graduated from Algonquin High.

14 Q Did you go to any schooling after that?

15 A I did a couple of years of college.

16 Q Did you have any occupation or jobs during high school?

17 A I worked in a warehouse for Sears & Roebuck.

18 Q And how old were you when you entered the Marine Corps?

19 A 19.

20 Q You were right out of high school?

21 A Yes.

22 Q Have you held a steady occupation after you've gotten out
23 of the Marine Corps?

24 A No.

25 Q What year did you get out of the Marine Corps?

1 A I left the Marine Corps on a medical retirement in 1994.

2 Q Was that the first time you got out of the Marine Corps?

3 A No, I originally went into the Marine Corps in 1974,
4 graduated in 1977, got out of the Marine Corps in 1977 and did
5 five years as a civilian, worked primarily at General Motors
6 for five years, loading cars, and then went back into the
7 Marine Corps in 1982.

8 Q Why did you do that?

9 A I missed the Corps.

10 Q What did you miss about it?

11 A The camaraderie and the esprit de corps. The camaraderie,
12 the professionalism. The respect. I just didn't find civilian
13 life too attractive.

14 Q Back in October 1983 how were you employed?

15 A I was attached to the Second Marine Division, Camp Lejeune.
16 I was a member of the TOW Company, Second Tank Battalion.

17 Q What was your rank at the time?

18 A E-5 Sergeant.

19 Q How long were you in the Marine Corps before you picked up
20 E-5 or Sergeant?

21 A Exactly two years and a week. I was -- I picked that up
22 meritoriously.

23 Q Could you define a meritorious promotion, please?

24 A That's a promotion that is given to a deserving Marine,
25 basically promoted ahead of his peers. For example, I think at

1 that time a sergeant would be promoted to approximately 12 to
2 14 months of grade with good conduct marks, and if he proved
3 himself worthy of the next high rank he would be promoted ahead
4 of his peers.

5 Q You said you were a member of TOW Company, Second Tank
6 Battalion?

7 A Yes.

8 Q What does that mean?

9 A That's tube launch optically tracked wire command link
10 guided anti-armor weapons system.

11 Q What do those fit, on the back of a jeep?

12 A At the time they were mounted in the rear of an M51 jeep.
13 They were two-men crew-served weapons and they could also be
14 manned portable to be deployed in a better offensive position
15 on a tripod.

16 Q Were you with any other units during 1983?

17 A Yes, actually during the month of March into April we were
18 attached adcom-opcom which is administratively and
19 operationally to the 8th Marines as an attachment.

20 Q As an attachment to who?

21 A To 8th Marines. They were going on a Med Float.

22 Q What is a Med Float?

23 A A Med Float is approximately every six months Marines would
24 rotate on a cruise. Usually it's about five ships. An
25 infantry battalion of Marines with their attachments such as

1 ourselves, TOWS, Artillery, Tanks, Recon, receive attachments
2 from other divisions and they would go on floats to the
3 Mediterranean to be like a force in readiness if the Marines
4 were needed in the Middle East or in that area.

5 Q Did there come a time when your unit finally did deploy on
6 this Med Float?

7 A Yes, we did.

8 Q And when was that?

9 A If I remember correctly, it was April 11th of 1982.

10 Q And did you leave right out of Camp Lejeune?

11 A We left Camp Lejeune that morning and drove to Morehead
12 City with our equipment gear, personnel and, you know, we
13 mounted -- actually embarked on the ships in Morehead City and
14 from there the ships left for the Middle East.

15 Q And where exactly in the Middle East did you end up going?

16 A We ended up going to Beirut, Lebanon.

17 Q As a noncommissioned officer in the United States Marine
18 Corps what were you initially told about the nature of this
19 deployment?

20 A Initially it was going to be basically a Med Float. Again,
21 just to go over to the Mediterranean, Middle East, in that
22 area, but, of course, it was generally believed we would be in
23 Beirut. At that time there was already a MAU, an amphibious
24 unit in Lebanon, so our role was to replace them.

25 Q And what if anything were you told about the nature of the

1 deployment itself?

2 A To be peacekeepers.

3 Q What does that mean?

4 A At that time we really didn't know. To this day I really
5 can't --

6 THE COURT: Well, you know today it's to be sitting
7 ducks.

8 THE WITNESS: Yes, sir.

9 BY MR. GASKILL:

10 Q Who generally told you that this was a peacekeeping
11 mission?

12 A The superior officers and those in command.

13 Q Sergeant Russell, what does the term rules of engagement
14 mean to you?

15 A Rules of engagement were rules provided to us to let us
16 know in specific situations how to react, how to act or react
17 depending on, for example, hostage situations or whatever the
18 case may be, where we were going.

19 Q Did you understand these rules to be guidance to help you
20 out, or were these orders?

21 A No, these were orders.

22 Q How many basic rules of engagement were there?

23 A There were ten.

24 Q And how did you remember them?

25 A Well, on ship on the way over every Marine was issued what

1 did they call an ROE card and we had to memorize them and we
2 were told specifically at that time that those cards will be
3 kept at all times from that point on in our upper left breast
4 pocket.

5 Q Do you have the actual card --

6 A Yes, I do.

7 Q -- that you were handed that day and kept in Beirut?

8 A I have it with me.

9 Q Please to yourself read these rules of engagements that are
10 posted here. This was Plaintiffs' Exhibit 12A. Do these
11 differ in any way from the rules on your card?

12 THE COURT: I think it's Plaintiffs' Ten is the way I
13 have it marked.

14 MR. GASKILL: I'm sorry, Your Honor.

15 A Yes, they're exactly the same.

16 Q Did you ever question the rules of engagement?

17 A No, they were orders, you do what you were told.

18 Q During your time in Beirut, was there ever any more
19 discussion at all about the rules of engagement and why they
20 were important?

21 A Well, off and on at all times myself as an NCO I made sure
22 that my fellow Marines, for example, always carried it and it
23 never left our breast pocket. A utility jacket. I checked
24 them once in a while to make sure they carried it and they
25 understood, knew what the rules of engagement were and what

1 they meant.

2 Q Did you yourself school other lower ranking Marines about
3 having it in their left breast pocket and understanding what
4 they mean?

5 A Well, I made sure that they had them, but primarily, like I
6 said earlier, it was just a standing order. You followed the
7 rules of engagement. You have didn't ad lib it. Maybe number
8 two means this. You just took it the way it is.

9 Q I want to direct your attention now to a specific date,
10 October 23rd, 1983. Do you remember what you were doing about
11 five a.m. Beirut time?

12 A 0500, October 23rd, I was a Sergeant of the Guard located
13 in my guard shack at the BLT headquarters building.

14 Q Okay. Can you describe the outside of the guard shack,
15 please?

16 A The guard shack basically it was like I call it
17 tinkerproof. A small aluminum frame plexiglas enclosure. Just
18 enough room for myself and a couple of shelves beside me. With
19 sandbagged walls perhaps chest high.

20 Q Does this picture accurately represent the guard shack that
21 you're talking about?

22 A That's my guard shack.

23 Q Behind this wall of sandbags this is your guard shack?

24 A Yes, sir, it's not actually behind the wall. It's within
25 that wall of sandbags.

1 Q Very well.

2 THE COURT: What's that number on that exhibit?

3 MR. GASKILL: 24, Your Honor.

4 THE COURT: All right.

5 MR. GASKILL: Your Honor, we would move at this time
6 that this photo marked Plaintiffs' Exhibit 24 for purposes of
7 identification be admitted into evidence.

8 THE COURT: Received.

9 (Plaintiffs' Exhibit No. 24
10 was received in evidence)

11 BY MR. GASKILL:

12 Q What were your specific duties as the Sergeant of the
13 Guard?

14 A Primarily as any Sergeant of the Guard would, make rounds,
15 make sure the troops on post were awake, alert, understood
16 anything that came up. Let me know if they had seen anything
17 unusual, anything happened. You know, basically just keep an
18 alert. Make rounds. Keep radio communications with them at
19 all times. Radio checks every half hour, 45 minutes or so.

20 Q And what if anything occurred out of the ordinary during
21 that post on the night of the 22nd to the morning of the 23rd?

22 A I want to say around 0300, 0400 I got a call from COC which
23 is Combat Operations Center which is located in the same
24 building, from the radio man upstairs saying that they had
25 received some sort of threat of a possible car bomb attack or

1 car bomb of some sort. They described it as -- the description
2 they had was a white over blue or a blue over white, meaning
3 white roof with a blue body or vice versa. A Mercedes. I can
4 remember that distinctly.

5 So at that time I took the information into my brain.
6 I physically went to every exterior perimeter post which would
7 have been Post Four, Five, 5A, Six and Seven and made sure that
8 they understood. I told them if you see this vehicle, let me
9 know. If you see anything suspicious similar to that vehicle,
10 let me know.

11 Q How much space, if any, was between your guard booth and
12 the actual barracks?

13 A Well, the guard shack itself actually sits -- if you look
14 at that picture it actually sits underneath the overhang of the
15 second floor of the building. So the guard shack basically was
16 just underneath the overhang of the second floor. Like there's
17 a porch there that surrounded the building.

18 Q Were there any barricades, natural or otherwise, between
19 the guard shack and the airport terminal behind you?

20 A The only thing between me, the guard shack and the airport
21 terminal which was you might say the civilian side of the
22 perimeter, running east and west there was I call it an
23 engineered, designed and built concertina which is a kind of
24 barbed wire, and barbed wire engineered fence shaped sort of
25 like a tepee with crisscrossing patterns of barbed wire and

1 intermingled with concertina wire.

2 Q Sergeant Russell, I'm showing you now what has been marked
3 for identification as Plaintiffs' Exhibit Number 26. Does this
4 drawing accurately depict the position of the concertina wire
5 or barbed wire fence?

6 A If you would raise it up just a little bit more. Just
7 below that number six and seven you'll see the wire running
8 across east and west. The airport road is to the left. You
9 can see Posts Five, 5A, Six and Seven. But yes, that's an
10 approximation of where that fence was located.

11 Q Besides not being to scale you'd say it's accurate?

12 A No, sir, it's not to scale. It's close.

13 MR. GASKILL: Your Honor, plaintiffs would move at
14 this time Plaintiffs' Exhibit 26 into evidence.

15 THE COURT: Received.

16 (Plaintiffs' Exhibit No. 26
17 was received in evidence)

18 BY MR. GASKILL:

19 Q What if anything out of the ordinary occurred between the
20 hours of six a.m. and seven a.m. on October 23rd, 1983?

21 A I want to say it was approximately 0615 or so, maybe 0610.
22 I was sitting in that guard shack that you showed earlier.
23 When I say sitting in it, there's a chair with arms or perhaps
24 a swivel chair I sat in, with radios to my left and right. But
25 the entrance was facing into the lobby. So I sat there facing

1 into the lobby of the building. And I remember a Marine came
2 down, a tall Marine came down. He had sweats on, white or gray
3 sweats, sweatpants, sweatshirt. And I said how are you doing,
4 devil dog. Shooting the breeze. We have three weeks to go
5 before we go home. So we talked, you know, small talk for a
6 few minutes. And the conversation kind of petered out. It
7 probably didn't last three or four minutes.

8 And the very next thing that I heard was a very
9 loud -- off in the distance behind me I heard a noise, a pop, a
10 snap. To this day I say it sounded like a two-by-four
11 breaking. It was very loud but it was directly to my rear.
12 Initially of course I heard it and it caught my attention but I
13 must have said to myself, well, it's Sunday morning, 0630,
14 whatever. You know, there had been construction throughout the
15 week behind us at the airport terminal. You know, trucks came
16 out. A lot of construction noise. So I didn't really think
17 anything of it at first but within a few seconds it just made
18 me look over my left shoulder.

19 Q And what happened next?

20 A I looked over my shoulder and I saw -- if you look at that
21 picture, I saw a large yellow Mercedes truck at Position One
22 coming through an open gate and bouncing. It was a curb there
23 that he bounced over. As I looked at him I saw him bound
24 through that gate. And I immediately turned back to my front
25 and I said out loud to myself, where the fuck did he come from.

1 And at that time I remember obviously -- I told myself I've got
2 to get a better look at this. So I went to stand up because
3 the sandbags were, perhaps this side outside the plexiglas.

4 So I went to stand up with my .45. My .45 caught on
5 the arm of the chair. So I fiddled with it just for a second.
6 Stepped outside the guard shack which again is forward toward
7 the lobby. Turned completely around and looked through the
8 plexiglas, and by that time the vehicle had reached Position
9 Two on this sketch which is about half the distance between
10 where I saw him first and myself.

11 At that position he was -- if you look at that sketch
12 you'll see to the left of that vehicle there's a vertical line
13 which was actually like an eight-inch pipe, metal or cast iron
14 pipe that was laid there for perhaps traffic coming in and out,
15 for whatever reason, but he came through that gate, went around
16 it to the right, which anybody would. So he turned right
17 directly back towards -- straight at me. So he was leaning.
18 When I looked at him a second time I saw the vehicle leaning
19 heavily, coming straight for me.

20 Q Sergeant Russell, I want to back you up to when the truck
21 was at Position One coming towards the gates there.

22 A Yes, sir.

23 Q Would this photograph accurately reflect the view the
24 driver had of your guard shack at the time?

25 A Yes, sir, it shows the open gate and the guard shack.

1 MR. GASKILL: Your Honor, plaintiffs move to admit
2 what has been marked Plaintiffs' Exhibit Number 25 into
3 evidence.

4 THE COURT: Received.

5 (Plaintiffs' Exhibit No. 25
6 was received in evidence)

7 BY MR. GASKILL:

8 Q Let me put this back up. So the truck is coming directly
9 towards you now.

10 A Yes, sir.

11 Q And how fast is it going?

12 A He was moving pretty quick. I can't say how fast he was
13 going. He was moving pretty good.

14 Q Did there come a point at which you could actually see the
15 driver inside the vehicle?

16 A Yes, sir, I did.

17 Q Can you describe him?

18 A Perhaps 30 feet from me at Position Two, 30, 40 feet, but I
19 looked -- obviously the truck caught my attention right there
20 and I distinctively looked right at the driver's face. He in
21 turned looked directly back at me. We made eye contact and he
22 had what I call a shitty grin on his face.

23 Q How old would you say he was?

24 A No more than 25, mid-twenties.

25 Q What was he wearing?

1 A I remember a patterned shirt. It could have been
2 camouflage.

3 Q Okay. What about the features of his face?

4 A Dark skin. What I mean is slightly darker than myself.
5 Middle Eastern. He had a grubby -- perhaps what I call a
6 scrubby seven-day beard, not full beard but a scrubby seven-day
7 beard. Mustache. Curly black hair.

8 Q Okay. And at this time is the man in the sweatpants, the
9 Marine who was wearing sweatpants, is he still standing with
10 you at this time?

11 A Yes, sir, he is.

12 Q And what happened next?

13 A You have to realize from beginning to end this happened
14 very quickly, but the second time at Position Two when I turned
15 around to fully look at the vehicle and we made eye contact
16 something snapped inside me and I immediately spun around and
17 turned quick, pointed at that Marine and pointed actually to
18 the east and I said get the fuck out of here. That individual
19 took off. I immediately at the same time started heading into
20 the lobby of the building.

21 Q Where was the truck when you entered the lobby of the
22 building?

23 A Right behind me.

24 Q What position on this?

25 A He was perhaps between two and three at that time.

1 Q How close behind you?

2 A 20 feet, 30 feet. No more.

3 Q You said he was grinning. Well, I say you say he was
4 grinning. Can you describe your perception of that grin?

5 A Again I call it a shitty grin. Basically I got you. He
6 had reached the point of no return, so to speak. He had a
7 combat stance position, so to speak. No matter what happened,
8 from that instant on he was coming at me. A smile of success
9 you might say.

10 Q Okay. And what happened next?

11 A Then again I told that Marine go. I screamed at him. He
12 was halfway gone anyway. But I continued into the lobby of the
13 building and all I could think to do, and again I just reacted,
14 I did what I did, all I could think to do was put my head up
15 and scream perhaps three times, to hit the deck, to hit the
16 deck, to hit the deck. And continued through the center of the
17 lobby, slightly at an angle to the right, and headed towards
18 the exit on the opposite side.

19 Q And before he entered, did you attempt to halt the driver
20 at all?

21 A No, no, sir. No time. It happened too fast.

22 Q As a Marine Sergeant on guard duty -- how many times have
23 you performed guard duty on other occasions?

24 A Many many many times. I can't remember how many times.

25 Q And as of October, 1983 did the rules of engagement still

1 apply to you as a guard?

2 A Absolutely.

3 Q And the rules of engagement for your firearm at that time,
4 what were they?

5 A Well, in compound no one had a magazine in the weapon. The
6 only ones that did, the only ones that were allowed to were the
7 Marines, for example, on Post Four, Five, 5A, Six and Seven on
8 the exterior post. They were allowed to have a magazine in the
9 weapon. We me as a sergeant guard I had a .45 at my side and
10 two .45 magazines on my left side. The magazines had to stay
11 in the pouch. My weapon was not loaded.

12 Q What was your understanding of why you couldn't have a
13 magazine in the weapon in the guard shack?

14 A Safety of people, number one. And it wasn't combat. It
15 was peacekeeper.

16 Q Let me ask you this, you look over your shoulder, the truck
17 is coming into the building now at Position Three.

18 A Yes, sir.

19 Q What happened next?

20 A What happened was I exited the lobby on the opposite side.
21 A few things happened at that instant, and I'm talking instant
22 in time. Number one, I caught sight of a Marine on fire watch
23 from the motor pool directly outside the building, and there
24 was a two-foot tall concrete wall, and I remember pointing at
25 him get the fuck out. I just yelled at him to get down which,

1 believe it or not, I saw him start to go down. At the same
2 time I heard a loud noise behind me. A very loud bang behind
3 me. And as I'm turning slightly left to run into the open
4 parking lot and looked over my shoulder one more time again and
5 that's when that vehicle was basically at Position Three. He
6 had just hit the guard shack, my guard shack. He hit the
7 sandbags, the radios, the chair, every bit of it. Came into
8 that lobby and then that same view -- I'm sorry. And in that
9 same view it was like a wave on the ocean beach. It was just a
10 pure beautiful wave of sand from the sandbags that came in.

11 Q What did you believe based on your training as a Marine
12 Sergeant that this truck was going to do once he got inside?

13 A He was attacking us. I don't know how he was going to
14 attack us. He was in a hearse. Whether he was going to
15 explode, burn, whatever, would jump out and start shooting at
16 us, I have no idea. Maybe he just intended to drive, run over
17 me. I have no idea.

18 Q Is it your testimony that you ran into the building that
19 you knew was about to be attacked?

20 A Absolutely. Yes, I did.

21 Q What were you thinking?

22 A I don't know. Again, something snapped. I turned,
23 reacted, told him to go, ran in, screamed. I think the only
24 thing on my mind was to warn. There was no time to do anything
25 about it. Even, for example, if I had -- at that instant had

1 an antitank rocket in my hand and been able to blow up that
2 truck, he was coming in. It was that close, that big, that
3 fast. He was coming in.

4 Q Can you briefly describe the building itself, please?

5 A The building, four stories high. I think they call it an
6 atrium-style building where you walk into the lobby and you
7 look up, and just as you do in this courtroom, basically you
8 see the roof of the building just this large, if not larger.
9 The second, third and fourth floors had balconies completely
10 surrounding around the building just like this ledge there.
11 And the rooms were there. The rooms were located on the
12 exterior of the building itself. So you walked in and four
13 stories up you saw the roof. There were skylights.

14 Q Was there anything significant in the lobby at all on the
15 day of the attack?

16 A Well, significant to me and any Marine would be in the very
17 center of that lobby there was an American flag and a Marine
18 Corps flag crossed, six feet high or so. Held up by sandbags.
19 And that's about all that was there. There wasn't much there
20 at that time.

21 Q So we have the truck now in Position Three. And as the
22 truck moves to Position Four, what happens?

23 A Okay. After Position Three when I looked back and saw the
24 wave of debris come in I ran perhaps just not too many feet,
25 ten feet more, at best. And looked back one last time and this

1 is when I saw -- the first thing I noticed was the vehicle came
2 to a stop. As though the driver applied the brakes. The
3 vehicle came to a stop. And at the same time, perhaps
4 ceremoniously or otherwise, the flags went down.

5 I noticed a lot of damage to the truck in the front.
6 It was a split windshield. The driver's side of the windshield
7 was damaged. Smashed. There was lot of damage to the upper
8 part of the cab over the head of the driver. Perhaps in coming
9 in he obviously hit the guard shack and maybe the overhang of
10 the second floor.

11 Q Sergeant Russell, you testified that the rooms were up
12 around the building.

13 A Yes.

14 Q The second, third and fourth floors?

15 A Yes, they were.

16 Q What if anything was the lobby of the building used for?

17 A The lobby was primarily -- I know there had been a desk or
18 two in there. At temporary times there may have been an office
19 or two temporarily set up, but it was used primarily for
20 storage of equipment. Mainly what they call K-Rats.

21 Q Does it come in a case? How large is a case of K-Rats?

22 A K-Rat, it was about this large and maybe this tall. It was
23 an aluminum tray that was packed inside that they would put
24 into a steam machine.

25 Q Where were these K-Rats located?

1 A Prior to this they were stacked inside the lobby. There
2 were quite of few of them in there.

3 Q Would it have been possible for the truck to get to the
4 center of the building with those K-Rats there?

5 A I don't think so. There were a lot there. They were quite
6 heavy.

7 Q When were the K-Rats removed?

8 A The day before.

9 Q So the truck stops at Position Four. Could the truck have
10 continued on if it wanted to?

11 A Absolutely. I mean other than the American flag and the
12 Marine Corps flag going down, there was nothing impeding its
13 travel.

14 Q But you're looking back now at the front of the truck as
15 you run out of the building, is that right?

16 A Yes, sir.

17 Q And what happened next?

18 A The next thing I saw was a bright flash, a yellow flame
19 that started at the lower left from my perspective, which would
20 have been the passenger side lower right of the front bumper.
21 It began very quickly, but the flame grew and spread diagonally
22 across directly over the driver's windshield. The next thing I
23 felt was heat and confusion and that was it. I was
24 unconscious.

25 Q And what happened after you woke up?

1 A I think I was out for about a minute, a minute and a half.
2 I woke up on my stomach. I woke up on my stomach and I managed
3 to look up. The first thing I did was look up and all I could
4 see was gray dust. There was a very strong smell. I saw gray,
5 and the smell was very strong. I can say that my senses came
6 back rather quickly. I saw gray dust. And a little debris
7 directly in front of me was very dusty, very smoky. So I
8 couldn't see past it.

9 Q After you awoke you said your senses came back to you?

10 A I got all my senses back.

11 Q What were you smelling at that time?

12 A I smelled some sort of explosive, and I have said all along
13 that the explosive smell I smelled was -- I don't think -- have
14 you ever heard of a thing called PETN? If I can describe that.

15 My dad was a rock superintendent. Blasting all his
16 life. He used to load holes with dynamite and after the
17 dynamite was loaded they would pull bags of you might call it
18 pelletized like, you know, pellets of salt you put on ice or
19 whatever, and they put bags of this to fill the hole to the
20 very top. I think it was PETN. But it was called PETN. And
21 again this is from my childhood. And my dad would take me to
22 work, show me how the holes were drilled. They would load the
23 holes, myself as a five or six-year old little kid, with the
24 old fashion wooden plunger block. Bang. That was the biggest
25 thrill in the world for me.

1 Q And your dad let you blow up the rocks?

2 A Yes, he did. He was the rock superintendent. But the
3 PETN -- the reason I say that is because after the blast, come
4 on, dad, I want to go see. No, no, no, son. He would tell me
5 stay where we are. Because if you get the smoke from the PETN
6 it would give you a severe headache. If you inhaled the smoke,
7 breathe it in, it would give you a severe headache. So
8 everybody stayed away for quite sometime. Ten to 15 minutes at
9 least, for it to dissipate. Because it would give you a severe
10 headache. But that PETN I can say to this day I remember the
11 smell. A very burning, burnt explosive smell. It smells -- C4
12 has a smell of its own. Dynamite has its own smell. PETN has
13 a smell of its own. And I remember that smell.

14 Q What was the first thing you saw and thought when you woke
15 up?

16 A When I woke up I saw the debris in front of me and the very
17 first thing I said to myself is that son of a bitch did it. He
18 fucking did it. And then I said to myself out loud, if I light
19 a match this place is going up again. Because the smell of the
20 explosive was so strong.

21 Q Could you see anything at this time?

22 A Only a couple of feet in front of me but not too quickly.
23 It was dissipating. The cloud of dust and smoke.

24 Q So when the cloud of dust and smoke eventually dissipated,
25 essentially what remained of this building, the four-story

1 building?

2 A It was approximately a 15- to 20-foot pile of rubble to my
3 left.

4 Q And what did you hear at this time?

5 A Excuse me. The very first thing I heard was a black Marine
6 screaming for help. Help me.

7 Q I'm sorry.

8 A He was screaming for help. Help me. Dear God, somebody
9 help me. I could hear him right to my left. Through a large
10 crack in what was the roof of the building. It was so clear.

11 Q He was asking for --

12 A It was so clear and so distinct. I knew it was a black
13 Marine. I could tell. It was a black Marine.

14 Q Did you move to help him?

15 A Instinctively. I remember trying to move in that
16 direction. I couldn't move. I was -- I couldn't move. I'm
17 sorry. Somehow shortly after that within a few seconds or so,
18 I don't know how I did it, I managed to roll on to my back. At
19 that time it had cleared up pretty good. I could see a lot.
20 And the first thing I told myself was I've got to get up,
21 somehow sit myself up or whatever. I've got to see what's
22 happened here. No one was moving. No one was around actually.
23 I couldn't see anybody else. And again this is not a very long
24 time after the explosion. So the first thing I did was to get
25 up on my elbows, so to speak. I'm laying on my back and I get

1 up on my elbows and I look down and why couldn't I move ,for
2 one. My left foot was reversed.

3 Q What do you mean your left foot was reversed?

4 A I thought it was gone but it was still pointing to the
5 ground and I looked at my left hand up beside me and it looked
6 like it had been pulled apart. I was trying evaluate myself.
7 Why couldn't I move. Why couldn't I respond. But anyway --

8 Q Do you remember clearly looking at your hand?

9 A Yes, I do.

10 Q Describe your hand.

11 A It was split on both sides and the palm was basically
12 hanging, it looked worse than it was, but it was oozing pus.
13 And by now I had all my senses. I could smell explosives. I
14 could hear cries. I could see what was going on clearly. And
15 I could smell blood. I had all my senses. And I could feel
16 pain, severe pain, stinging, numbness, from the waist down.

17 Q Sergeant Russell, how many voices did you hear pleading for
18 help in this commotion?

19 A If I had to say honestly, three or four. Not for long.

20 Q And how long after the blast did you hear people screaming
21 for help?

22 A Honestly, two or three minutes. Two or three minutes. I
23 heard no voices after that. I think the only other thing I
24 heard after that was what I think was perhaps rounds going off
25 inside the building. That's when help arrived.

1 Q So two to three minutes later there was silence and you
2 didn't hear those voices again?

3 A I still hear them quite often, every day. But they only
4 lasted a few minutes.

5 Q How did you get out of that immediate area that day?

6 A I think I was very fortunate. Immediately after that, a
7 few seconds had passed, as I was looking down which was now
8 looking east, there was a stairway leading down to the gravel
9 parking lot behind our now gone building and there was a Marine
10 Major, I don't remember his name, and in TOW we had two medical
11 corpsmen and I know that the instant his foot hit the bottom
12 step he turned and looked and we made eye contact and he
13 pointed and told his corpsman to get over there. I was the
14 very first one attended to. I was very fortunate. I think
15 they saved my life.

16 Q Where did they take you?

17 A They took me -- if you look at that picture north of Post
18 Five, there was a Post Four. That's where they put me on a
19 cart, eventually put me on a cart. Actually that's Post Five,
20 I'm sorry. If you move that. Post Four was actually more to
21 the east. Yes, there you go, there's Post Four. I was moved
22 up there with a cart within a few others, within approximately
23 ten to 15 minutes.

24 Q How many other victims did you see at that point?

25 A At that point?

1 Q Yes.

2 A No more than four or five.

3 Q And where did you go after that?

4 A We went over to a two and a half ton truck, brought into
5 the MAU infirmary. Brought inside. I remember they put me up
6 against the wall just inside the door. I was one of the first
7 ones in there and I stayed in there for perhaps 25, 35 minutes
8 as they kept bringing them in.

9 Q Did you see any more victims at that point?

10 A Yes, I did.

11 Q How many?

12 A Perhaps another dozen at least.

13 Q Did you get a good look at one of them?

14 A One in particular, yes, I did.

15 Q Would you describe that person?

16 A Lying on my back, over my shoulder I heard some severe
17 moaning. He was bleeding on a cot. He didn't have a back, but
18 he was bleeding. He had no back. He was breathing erratically
19 in gasps. He was moaning. And he -- it stopped. That was
20 about it. 25, 30 minutes or so.

21 Q Sergeant Russell, you obviously had some severe physical
22 injuries as a result of this blast, but right now I want to
23 focus on what if any psychological issues you have dealt with
24 as a result of this bombing?

25 A Post-traumatic stress disorder. I'm on medication. I

1 haven't slept with my wife in years. I can't.

2 Q Why is that?

3 A Too violent. I sleep on the floor. I sleep in front of
4 the fireplace.

5 Q What kind of emotions have you been dealing with lately?

6 A The last couple of days have been hard. On any given day,
7 sometimes more often than not -- excuse me, a sound, a sight or
8 smell brings it right back. I've noticed that my memory has
9 dissipated quite a bit lately with my age, but this day is as
10 clear as it was as if it happened this morning.

11 Q What if any psychological medications are you taking now?

12 A I'm on fluoxetine, which is Prozac, and I take hydroxyzine
13 to sleep, which doesn't do any good.

14 Q Will any of these meds -- do you have any reason to believe
15 that any of these medications will affect your ability to
16 remember and testify accurately as to what happened on October
17 23rd, 1983?

18 A No, sir, not one bit. No, sir. It's burned in my memory
19 every second, in color. It's there.

20 MR. GASKILL: Your Honor, I would like to ask Mr.
21 Russell just one more question and it's kind of a non-specific
22 question, but I'll ask the Court's indulgence to allow him to
23 answer this.

24 THE COURT: All right.

25 BY MR. GASKILL:

1 Sergeant Russell, recognizing that you may not have the
2 opportunity to see these family members again, what if anything
3 would you like to say and tell them about that day?

4 A I don't know how to put it into words. I'm sorry. A few
5 people had pointed fingers at me. I could have done something
6 else. I'm sorry I was there. It happened too fast, as I just
7 explained. Nothing could have been done to stop it. I hope
8 I've done some good today. And if I step down right now and
9 drop dead I'd be happy, because I've been a good Marine.

10 (Applause)

11 MR. GASKILL: No further questions, Your Honor.

12 THE COURT: We'll take our afternoon recess.

13 (Recess)

14 MR. FAY: Your Honor, at point we would present the
15 testimony of Dr. Reuven Paz by videotape deposition.

16 THE COURT: All right, you may proceed.

17 MR. FAY: We have a little mouse on the screen. I
18 don't know how we'll get rid of it.

19 THE DEPUTY CLERK: That's as much as you can do.

20 MR. FAY: That's all I can do. I think the mouse will
21 watch too. Thank you.

22 (Videotape deposition of Dr. Reuven Paz played)

23 (On the videotape deposition Mr. Fay asked that he be
24 qualified to testify as an expert witness and render an opinion
25 on Islamic terrorists groups)

1 THE COURT: I agree, and you may proceed.

2 (Videotape deposition of Dr. Reuven Paz resumed)

3 MR. FAY: Thank you, Your Honor. That concludes our
4 testimony for today. We'll be able to start tomorrow at --

5 THE COURT: Why don't you approach the bench and let
6 go over the exhibits.

7 (Bench Conference)

8 THE COURT: Do you have one for Professor Paz?

9 MR. FAY: I think I'm mixed up.

10 THE COURT: On the record I received Seven under seal
11 as the CV.

12 MR. FAY: Yes, that's right. That should be Five and
13 this should be Seven.

14 THE COURT: So the identification of the exhibit for
15 Admiral Lyons should be Five, Plaintiffs' Exhibit Five
16 submitted in camera, instead of Seven.

17 MR. FAY: Correct, Your Honor.

18 THE COURT: Okay.

19 MR. FAY: Number Seven.

20 THE COURT: And this is Number Five, that should be
21 Seven. And then Plaintiffs' Ten was the rules of engagement
22 that I received.

23 MR. FAY: Yes. We have the deposition --

24 THE COURT: Yes. Now, are those marked? The first
25 video was -- how was it marked?

1 MR. FAY: Yes, I have an envelope to put it in.

2 THE COURT: Okay. My concern is we'll have a
3 different court reporter tomorrow. She's going to have to have
4 the exhibit numbers of the videos that were played when she
5 inserts them.

6 MR. FAY: This is the only one that has to be held
7 under seal. Number Six.

8 THE COURT: Okay. And which is that?

9 MR. FAY: Number Six, Your Honor, it's the videotape
10 of Mahmoud-Salam.

11 THE COURT: Okay. And what are you providing me in
12 camera that has actual identification?

13 MR. FAY: You mean of Mr. Mahmoud?

14 THE COURT: Right.

15 MR. FAY: That is the deposition notice. I have to
16 bring it tomorrow.

17 THE COURT: But that's not identified.

18 MR. FAY: It's not identified.

19 THE COURT: This is an actual deposition.

20 MR. FAY: Yes.

21 THE COURT: All right. And then what was the first
22 video you played?

23 MR. FAY: That was just an introductory video. I
24 didn't mark that, but I can.

25 THE COURT: I think we ought to mark that if you want

1 to preserve this as well. Whatever the next number is.

2 THE DEPUTY CLERK: 27 would be next.

3 THE COURT: So it would be Plaintiffs' 27?

4 MR. FAY: Yes.

5 THE COURT: That would be that first video that we
6 made with Colonel Geraghty.

7 MR. FAY: Yes.

8 THE COURT: And then Robert Baer, what is his
9 deposition?

10 MR. FAY: I don't have it marked as an exhibit. I'll
11 give it the next number.

12 THE DEPUTY CLERK: 28.

13 THE COURT: 28. And then the next one played would be
14 Dr. Paz?

15 MR. FAY: Yes, Your Honor.

16 THE COURT: And you'll mark that 29?

17 MR. FAY: Yes, Your Honor.

18 THE COURT: And then -- because the Mahmoud-Salam is
19 marked Plaintiffs' Six.

20 MR. FAY: Yes.

21 THE COURT: Okay. Now -- and then all the -- let's
22 see, the one item that I'm not sure was moved in was
23 Plaintiffs' 23 which is a photograph. Let me ask the clerk if
24 his record shows that it was received.

25 THE DEPUTY CLERK: It does not show that, Your Honor.

1 MR. FAY: 23 is a photograph.

2 THE COURT: It was identified, and I'll receive 23 as
3 well.

4 MR. FAY: Okay.

5 (Plaintiffs' Exhibit No. 23
6 was received in evidence)

7 THE COURT: And I've received 24, 25, 26. All right.
8 Any others?

9 MR. FAY: I move in 23 as well.

10 THE COURT: Obviously. Any others?

11 MR. FAY: I believe that was the photograph of the
12 building after the destruction.

13 THE COURT: Yes. Before we break in open Court, do
14 you want to give me a preview of tomorrow?

15 MR. FAY: Yes, Your Honor. Incidentally, I'm going to
16 have this marked as the next exhibit, which is 30. That's just
17 the un translated Mahmoud deposition. So --

18 THE COURT: So it should be under seal, too.

19 MR. FAY: Yes, and it should be under seal, too.

20 THE COURT: All right.

21 MR. FAY: Thank you.

22 (Bench Conference concluded)

23 THE COURT: All right. If we could have order in the
24 Court.

25 Mr. Fay, would you give me a preview then of what

1 you're expecting to do when we proceed tomorrow?

2 MR. FAY: Your Honor, tomorrow we have scheduled
3 testimony from Danny Defenbaugh. Danny Defenbaugh was the agent
4 in charge of the forensic part of the FBI investigation of this
5 occurrence. There are a number of photographs he has. He
6 gives an expert conclusion and so forth.

7 Next we have Warren Parker. Mr. Parker is an expert
8 in explosives. He was trained by the Army, spent 20 some years
9 in the Army, and then spent around another 20 years as an
10 expert with Alcohol, Tobacco & Firearms with the Treasury
11 Department. And he will testify with regard to his conclusions
12 regarding the explosions and so forth.

13 Both of them will indicate, contrary to what the
14 television announcer, probably without much information at the
15 time, said was 2000 pounds. Their conclusion is that it was
16 about 21,000 pounds of explosives used in this explosion which
17 would make it the largest non-nuclear explosion on the earth.
18 On the record at least.

19 Next we will have testimony from Lieutenant Colonel
20 Howard Gerlach who is the Commander of Battalion Landing Team
21 1-8.

22 THE COURT: Defenbaugh and Parker both went to the
23 scene at the time?

24 MR. FAY: Well, Parker did not but Defenbaugh did,
25 Your Honor. Parker will testify from the records. He's

1 reviewed extensive records. There are a number of physical
2 findings of people on the scene that he's reviewed, such as
3 objects thrown away from the scene during the course of the
4 explosion from which he can come to a conclusion, give an
5 opinion as to the strength of the explosive.

6 THE COURT: Okay.

7 MR. FAY: Then Debbie Peterson --

8 THE COURT: Gerlach was the relief force?

9 MR. FAY: No, Lieutenant Gerlach was in charge of 1-8
10 Battalion Landing Team that was in the sector that was bombed.

11 THE COURT: Oh. Okay.

12 MR. FAY: And he is here to testify. He's here today
13 also. And then there will be testimony from Debbie Peterson
14 and Lynn Smith Derbyshire, sisters of two Marines who died in
15 the assault. And finally we end up with testimony from Michael
16 Ledeen who was the Special Assistant to the Secretary of State
17 at that time, with regard to the political objectives and
18 course being followed by Iran. And then testimony finally by
19 Dr. Patrick Clawson with regard to Iran, the way it was
20 organized and so forth.

21 THE COURT: Okay. All right. Anything else you need
22 to raise today?

23 MR. FAY: Not today, Your Honor. Thank you.

24 THE COURT: All right. The Court will be in recess
25 until ten o'clock tomorrow.

1 MR. FAY: Thank you, Your Honor.

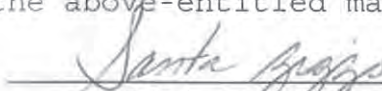
2 THE COURT: Thank you very much.

3 For those of you unable to return tomorrow, thank you
4 for your attention and your quietness today. I appreciate it
5 and I'll see you back tomorrow morning.

6 (Proceedings recessed at 4:40 p.m., to resume on March
7 18, 2003 at 10:00 a.m.)

8 CERTIFICATE OF REPORTER

9 I certify that the foregoing is a correct transcription from
10 the record of proceedings in the above-entitled matter.

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12 Official Court Reporter

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ANNEX 38

496 F.Supp.2d 1
United States District Court,
District of Columbia.

Donna Marie HOLLAND, et al., Plaintiffs,
v.
ISLAMIC REPUBLIC OF IRAN, et al., Defendants.

Civil Action No. 01–1924(CKK).

|
Oct. 31, 2005.

Synopsis

Background: Estate of serviceman and his surviving family members brought action against Islamic Republic of Iran, the Iranian Ministry of Information and Security (MOIS), and the Iranian Islamic Revolutionary Guard Corps, seeking damages arising from a 1983 Marine barracks bombing in Beirut, Lebanon, during which 241 American servicemen acting as part of a multinational U.N. authorized peacekeeping force were murdered in their sleep by a suicide bomber.

Holdings: The District Court, Kollar–Kotelly, J., held that:

Foreign Sovereign Immunities Act (FSIA) exception to sovereign immunity for state-sponsored acts of terrorism removed the sovereign immunity of defendants;

law of domicile state provided basis for the suit;

only surviving spouse and minor children had viable causes-of-action against defendants; and

defendants were immune from punitive damages.

Judgment for plaintiffs.

Attorneys and Law Firms

*3 Paul Gaston, Law Offices of Paul G. Gaston, Washington, DC, Joshua M. Ambush, Baltimore, MD, for Plaintiffs.

MEMORANDUM OPINION

KOLLAR–KOTELLY, District Judge.

“May the days flow sweetly with music to your ears and may your time be spent *4 knowing that the love you have given me shall never become dull in the wind.”

-Robert Holland, August 1983 letter to his wife

This action arises from the most deadly state-sponsored terrorist attack against American citizens prior to September 11, 2001—the October 23, 1983 Marine barracks bombing in Beirut, Lebanon, during which 241 American servicemen acting as part

of a multinational U.N. authorized peacekeeping force were murdered in their sleep by a suicide bomber. Twenty-eight year-old Petty Officer Robert S. Holland, son of Charles and Rosemary Holland, brother of Patrick Holland, husband of Donna Marie Holland,¹ and father of James Robert and Chad Phillip Holland (collectively, “Plaintiffs”), was one of these unfortunate victims, killed while serving his country and upholding the greater cause of regional peace and stability. Due to the nature and force of the explosion, the Holland family suffered through two more agonizing weeks of waiting until Robert Holland was conclusively identified as “killed in action.” The memory of this horror continues to this day for the Holland family, who—in order to obtain some form of compensation, however small, for their tragic loss—brought this action against the Islamic Republic of Iran (“Iran”); the Iranian Ministry of Information and Security (“MOIS”); the Iranian Islamic Revolutionary Guard Corps (“IRGC”); Hezbollah, Muhsin Rafiq-Dust, former Commander-in-Chief of the IRGC; Ali Akbar Hashemi-Rafsanjani, former Speaker of the Majlis of Iran; Mohammad Rayshari, former Minister of the MOIS; and Ali Akbar Mohtashemi, former Interior Minister of Iran and former Iranian Ambassador to Syria (collectively, “Defendants”).

On January 19, 2005, this Court conducted a bench trial to determine the liability of Defendants for this cowardly and inhumane act. Having reviewed the extensive evidence presented during trial by both lay and expert witnesses, the Court concludes that Plaintiffs Donna, James, and Chad Holland have established their right to obtain judicial relief against Defendants Iran, the MOIS, and the IRGC. The Court's findings of fact and conclusions of law are set forth below.

I: PROCEDURAL BACKGROUND

Finally provided a jurisdictional avenue with which to obtain redress for their loss when Congress altered the traditional parameters of the Foreign Sovereign Immunities Act (“FISA”), 28 U.S.C. § 1604, through the 1996 enactment of Section 1605(a)(7) to the FISA, *see* Pub.L. No. 104–132, Title II, § 221(a), Apr. 24, 1996, 110 Stat. 1241 (codified at 28 U.S.C. § 1605(a)(7)), and the so-called “Flatow Amendment,” *see* Omnibus Consolidated Appropriations Act of 1997, Pub.L. No. 104–208, Div. A, Title I, § 101(c) [Title V, § 589], 110 Stat. 3009–172 (codified at 28 U.S.C. § 1605 note), Plaintiffs filed a Complaint in the above-captioned action on September 13, 2001. Plaintiffs then served the required number of copies of the Notice of Suit, Complaint, and Summons along with their respective translations to Iran, the MOIS, and the IRGC, as required by 22 C.F.R. 93 and 28 U.S.C. § 1608(a)(3). After service was executed and these three defendants failed to respond within the required time period, Plaintiffs moved for a default judgment on December 9, 2002. The Court granted *5 Plaintiffs' Motion for Entry of Default against these three defendants on June 3, 2003. However, given Plaintiffs' stated desire to amend their Complaint, the Court vacated the entry of default, permitted Plaintiffs to file their First Amended Complaint, and ordered that Plaintiffs re-serve Defendants.

After some problems with service, Plaintiffs successfully effectuated service pursuant to 28 U.S.C. § 1608(3) and § 1608(4) against Defendants Iran, the MOIS, and the IRGC in early 2004. Once again, these defendants failed to respond within the required time period. After Plaintiffs filed a Motion for Entry of Default and an Affidavit supporting that motion, the Clerk of this Court entered default against Iran, the MOIS, and the IRGC on March 16, 2004. This Court subsequently approved the entry of default on March 22, 2004. However, despite the entries of default, the Court is required to make a further inquiry prior to entering any judgment against defendants. Indeed, the FSIA mandates that “[n]o judgment by default shall be entered by a court of the United States or of a State against a foreign state ... unless the claimant establishes his claim or right to relief by evidence that is satisfactory to the Court.” 28 U.S.C. § 1608(e); *see also* *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 6 (D.D.C.1998); *Peterson v. Islamic Republic of Iran*, 264 F.Supp.2d 46, 48 (D.D.C.2003). “In evaluating the plaintiffs' proof, the court may ‘accept as true the plaintiffs' uncontroverted evidence.’ ” *Campuzano v. Islamic Republic of Iran*, 281 F.Supp.2d 258, 268 (D.D.C.2003) (quoting *Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97, 100 (D.D.C.2000)). Plaintiffs' evidence may take the form of sworn affidavits. *Id.* (citing *Weinstein v. Islamic Republic of Iran*, 184 F.Supp.2d 13, 19 (D.D.C.2002)).

During this time period, the D.C. Circuit issued a decision in *Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024 (D.C.Cir.2004), holding that “neither 28 U.S.C. § 1605(a)(7) nor the Flatow Amendment, nor the two considered in tandem, creates a private right of action against a foreign government,” *id.* at 1033. Given the obvious implications of the *Cicippio-*

Puleo decision for this case, the Court issued an Order on March 31, 2004 inviting briefing from Plaintiffs regarding the issues raised by that decision and the continuing viability of their claims. In responding to the Court's Order, Plaintiff's submitted a Memorandum of Law regarding the *Cicippio–Puleo* decision on April 9, 2004, and provided supplements including additional authority in support of their position on August 31, 2004, and September 13, 2004. A trial date in this action was then set for January 19, 2005, and—as directed—Plaintiffs submitted a Memorandum in Support of Their Causes of Action on January 5, 2005. At trial, Plaintiffs presented two expert witnesses: Dr. Bruce Tefft, an expert in counter-terrorism, and Dr. Jerome S. Paige, an expert on projected economic losses in cases of wrongful death. Plaintiffs also presented four lay witnesses in support of their claims: Donna Holland, Rosemary Holland, Charles Holland, and Pat Holland.

Following the trial on January 19, 2005, given concerns raised by yet another recent FISA-related decision by the D.C. Circuit, *Acree v. Republic of Iraq*, 370 F.3d 41 (D.C.Cir.2004), which held that plaintiffs cannot state a right of action under the “generic common law” or merely “allude[] to the traditional torts ... in their generic form” but instead must “identify a particular cause of action arising out of a specific source of law,” *id.* at 58–59 (quotation omitted), this Court ordered that

in addition to Plaintiffs planned section of [their post-trial] brief dealing with *6 federal common law, Plaintiffs shall also include a discussion of (1) whether the relevant probate statute governing the administration of decedent's estate allows for the recovery of economic damages under a wrongful death action; and (2) whether the state in which each Plaintiff-claimant resides allows for the collection of damages under solatium for a person of their status in relation to the decedent.

Holland v. Islamic Republic of Iran, Civ. No. 01–1924 (D.D.C. Jan. 19, 2005) (minute order requiring further briefing). Plaintiffs, pursuant to the Court's Order, concluded the briefing in this matter with their Post–Trial Brief submitted on February 18, 2005.

II: FINDINGS OF FACT

After listening to the testimony in the case, reviewing the evidentiary record, personally observing the demeanor and credibility of the witnesses, and making all reasonable inferences to be drawn therefrom in accordance with the Federal Rules of Evidence, the Court sets forth the following findings of fact.

A. Historical Background

The Republic of Lebanon is a small, largely mountainous country of approximately 3,800,000 people situated at the eastern edge of the Mediterranean Sea, bordered by Syria on the east and north, and Israel on the south, with a narrow coastline on its west. While Lebanon is one of fifteen present-day countries that comprise what is considered to be “the Cradle of Humanity,” Lebanon did not become an independent nation until November 22, 1943, having completed the League of Nations mandate process begun after the disintegration of the Ottoman Empire in World War I. Unlike its regional neighbors, Lebanon did not participate militarily in the 1967 and 1973 Arab–Israeli wars. During this time period, Lebanon was known as “the Switzerland of the Middle East,” with its gleaming capital, Beirut, labeled “the Paris of the Middle East” given its wide boulevards, French-style architecture, and modernity.

Unfortunately, by the early 1970s, Lebanon had become increasingly destabilized due to the influx of Palestinian refugees; by 1973, approximately one out of every ten persons living in Lebanon was a Palestinian refugee, many of whom supported the efforts of the Palestine Liberation Organization (“PLO”) against Israel. From bases in southern Lebanon, some of these refugees engaged in guerilla warfare against Israel, leading to reprisals by Israel against these Palestinian strongholds beginning in 1968. In April 1975, full-scale civil war broke out in Lebanon, with the fault lines breaking largely according to religion. On one side were a number of mostly Maronite (i.e., Arab Christian) militias, while the other side was comprised of a coalition of largely

Palestinian, Sunni, and Druze forces. With the war going poorly for the Maronites by early 1976, Syria sent 40,000 troops into the country to prevent them from being overrun. By 1978, however, many of the Maronites had become convinced that the Syrians were really occupying Lebanon for reasons of their own, and by September of that year, the two groups were openly feuding; despite this feud, Syrian forces remained in Lebanon, effectively dominating its government, until their final military withdrawal on April 26, 2005. The Lebanese civil war would not come to a complete end until the Arab League-sponsored Taif Agreement of 1989. The roughly fifteen-year-long civil war led to the deaths of approximately 20,000 Lebanese, with approximately the same number of Lebanese wounded. *See Peterson*, 264 F.Supp.2d at 49.

**7 B. The Arrival of the 24th Marine Amphibious Unit*

In this post-1975 chaos and power vacuum, the PLO's armed forces continued to use Lebanon as a base to attack Israel with rockets and artillery. As such, Israel again invaded Lebanon in 1982 with the objective of evicting the PLO, eventually occupying areas from the southern Lebanese border with Israel northward into areas of Beirut. On August 20, 1982, with the concurrence of the United Nations, a multinational peacekeeping coalition consisting of American, British, French, and Italian soldiers arrived in the Lebanese capital of Beirut. In May of 1983, the 24th Marine Amphibious Unit ("24th MAU") joined this coalition. The rules of engagement issued to the servicemen of the 24th MAU made clear that they possessed neither combatant nor police powers. Rather, the rules of engagement ordered that the servicemen were not to carry weapons with live rounds in their chambers, and were not authorized to chamber the rounds in their weapons unless (1) they were directly ordered to do so by a commissioned officer or (2) they found themselves in a situation requiring the immediate use of deadly force in self-defense. *See Pl.'s Ex. 5* (December 20, 1983 Report of the DoD Commission on Beirut International Airport Terrorism Act, October 23, 1983); 1/19/05 Tr. at 15:1–17:13. As Dr. Tefft's testimony in this case established, and other courts in similar cases have found, *see Peterson*, 264 F.Supp.2d at 50, the members of the 24th MAU, and the service members supporting the unit, were clearly non-combatants operating under peacetime rules of engagement.²

Having previously served his country in the Hospital Corps of the United States Navy from June 1973 to June 1977, Robert Holland chose to re-enlist with the United States Navy in March 1981 in order to support his growing family, which eventually included his wife, Donna Marie Holland, and two young sons—James Robert and Chad Phillip Holland. *Pl.'s Ex. 11* (Enlisted Commissioning Program Application); 1/19/05 Tr. at 77:8–24, 78:24–79:8. After his re-enlistment with the United States Navy, Robert Holland went into the battalion aid station ("BAS"), and was involved in the maintenance of medical records in a manner consistent with the military's code. 1/19/05 Tr. at 79:9–16. As part of this process, Robert Holland and his family moved from Illinois, where they had moved temporarily from Kentucky to accommodate Donna's position in the Air Force, to Camp Lejeune in Jacksonville, North Carolina. 1/19/05 Tr. at 77:8–24. Because the United States Marine Corps is actually a division of the United States Navy and does not have its own medical staff, Robert Holland was stationed in Beirut, Lebanon, in May 1983 along with the 24th MAU as the corpsman in charge of medical records at the BAS headquarters division. 1/19/05 Tr. at 82:17–84:9; 87:12–22. Robert saw this position as a temporary one, as he had already applied for the Navy's "Enlisted Commissioning Program" in January 1983. *See Pl.'s Ex. 11* (Enlisted Commissioning Program Application); 1/19/05 Tr. at 79:20–81:1.

C. The Iranian Government and the Formation of Hezbollah

Following the 1979 revolution spearheaded by the Ayatollah Ruhollah Khomeini, the nation of Iran was transformed ***8** into an Islamic theocracy. The new government promptly drafted a constitution, still in effect today, which boldly declares its commitment to spread the goals of the 1979 revolution to other nations. 1/19/05 Tr. at 24:1–26:4. Towards that end, the government of Iran spent approximately \$50 to \$150 million between 1983 and 1988 financing terrorist organizations in the Near East.³ Sensing a power vacuum in the destabilized, war-torn Lebanon, Iran had begun efforts to export the fundamentalist revolution to the area by early 1982 and had already sent roughly 1500 members of the IRGC to the Bekaa Valley in Lebanon—then an area outside of the control of the Lebanese government. 1/19/05 Tr. at 26:5–28:20. These members of Iran's Revolutionary Guard Corps sought to radicalize the Lebanese Shi'ite community by recruiting members of a faction (known as "Hezbollah")⁴ within a larger group of moderate Lebanese Shi'ites (known as "Amal"). 1/19/05 Tr. at 39:12–40:1. Through the encouragement of Iran and its agents, Hezbollah split from Amal and—once it was established as a separate entity

—the government of Iran framed the primary objective of Hezbollah: to engage in terrorist activities in furtherance of the transformation of Lebanon into an Islamic theocracy modeled after Iran. 1/19/05 Tr. at 32:3–14; Pl.'s Ex. 10 (Magnus Ranstorp, *Hizbollah's Command Leadership: Its Structure, Decision-Making and Relationship with Iranian Clergy and Institutions*, in *TERRORISM AND POLITICAL VIOLENCE*, Vol. 6, No. 3 (Autumn 1994)).

Given the testimony provided in this case, and consistent with the findings of other courts on this matter, *see Peterson*, 264 F.Supp.2d at 53, it is evident that the formation and emergence of Hezbollah as a major terrorist organization was due to the government of Iran. According to Dr. Tefft, almost since its founding, the Iranian government has provided Hezbollah with roughly \$100 million per annum in financing, and has also provided it with arms, training, and strategic planning in its operations against the United States and Israel. 1/19/05 Tr. at 28:14–20. The primary agency through which the Iranian government established and exercised operational control over Hezbollah was through the MOIS. The MOIS had formerly served as the secret police of the Shah of Iran prior to his overthrow in 1979; after the 1979 revolution, the new regime allowed the MOIS to continue its operations as the intelligence organization of the new government. The engagement with and promotion of Hezbollah marked a profound shift for the MOIS which, until 1983, had focused on the assassination of former Iranian government officials under the Shah and other Iranian dissidents living in Europe; from 1983 forward, Iran and the MOIS would look to employ international terrorism against non-Iranians. 1/10/05 Tr. at 37:11–38:7.

Based on the evidence presented at trial, the Court concludes that the MOIS was a vital conduit for Iran's provision of funds to Hezbollah, providing explosives to Hezbollah, and—at all times relevant to these proceedings—exercising near-complete operational control over Hezbollah. *See, e.g.*, Pl.'s Ex. 6 (MAJOR DAVID E. SMITH USMC, *THE TRAINING OF TERRORIST ORGANIZATIONS* (1995)); Pl.'s Ex. 10 (Magnus *9 Ranstorp, *Hizbollah's Command Leadership: Its Structure, Decision-Making and Relationship with Iranian Clergy and Institutions*, in *TERRORISM AND POLITICAL VIOLENCE*, Vol. 6, No. 3 (Autumn 1994)). Importantly, the connection between Iran, the MOIS, and the IRGC, on one hand, and Hezbollah, on the other hand, in the operation culminating in the October 23, 1983 attack on the United States Marine barracks in Beirut, Lebanon, has been conclusively established by Plaintiffs. During the months immediately preceding the October attack, there was a great deal of communication between the Iranian ambassador to Syria, Ali Akbar Mohtashemi, and various Iranian officials connected with the MOIS such as Sheik Ol-Islam-Zadi, who closely monitored the whole progress of the operation, frequently met with the heads of Hezbollah, and traveled between Damascus and Tehran. 1/19/05 Tr. at 32:15–33:5, 57:10–59:13. Indeed, on September 26, 1983, MOIS sent a message to Ambassador Mohtashemi, directing that he contact Hussein Musawi, the leader of the terrorist group Islamic Amal, and to instruct him to have his group investigate attacks against the multinational coalition in Lebanon, and “to take a spectacular action against the United States Marines” in order to force the United States to withdraw militarily from the region. 1/19/05 Tr. at 33:6–34:14, 57:10–59:13; *see also Peterson*, 264 F.Supp.2d at 54–56. While it is unclear whether Mohtashemi contacted Musawi, he did contact the leader of the Lebanese headquarters of the IRGC (known as “Kanani”) and instructed him to investigate and plan a bombing of the United States Marine barracks in Beirut. This order led to a meeting in Baalbek, Lebanon, during which Kanani, Sheik Sobhi Tufaili, Sheik Abbas Musawi, and Sheik Hassan Nasrallah—the leaders of Hezbollah—formed the plan to carry out simultaneous attacks against the American and French barracks in Lebanon. *Id.*

In addition to conceiving and ordering that Hezbollah undertake simultaneous attacks on the American and French forces stationed in Beirut, Iran provided substantial support for the operation in other ways. First, because the explosives that were to be used in the operation were covered by end-use requirements that mandated only government-to-government sales, the government of Iran actually purchased the explosive materials used in the operation from the government of Bulgaria and then provided the explosives to Hezbollah. 1/19/05 Tr. at 53:15–54:9. Second, the Iranian government, MOIS, and the IRGC provided complete financial support for the operation, going so far as to use the Iranian embassy in Damascus to cash various checks to provide funding for Hezbollah. 1/19/05 Tr. at 54:10–23. Indeed, even at its inception during the 1982–83 period, Hezbollah was provided \$50 million or more by Iran; as Dr. Tefft noted, “economically Hezbollah would not have existed or been able to be formed without the Iranian financial support.” 1/19/2005 Tr. at 55:13–16. Third, Iran provided Hezbollah with virtually all of its operational training, as the members of Hezbollah were highly inexperienced and required training by the IRGC and other Iranian agencies in various terrorist camps located in Lebanon's Beka'a Valley, Syria, and outside of Tehran.

1/19/05 Tr. at 56:10–57:9. More specifically, the MOIS was directly involved in the preparations for the attack, conducting the relevant surveillance and intelligence, coordinating with Syrian officials for safe passage for the trucks and materials used in the attacks, and paving the way for the operation through a variety of liaising activity. 1/19/05 Tr. at 61:24–62:6. The IRGC was the primary mover behind the attack itself, acting as *10 the authorizing agent for the Iranian government in Tehran in addition to recruiting the individuals involved, training the suicide bombers, preparing the explosives, and installing the explosives in the trucks in camps located in the Beka'a Valley. 1/19/05 Tr. at 62:7–22.

D. The October 23, 1983 Bombing

Following the meeting in Baalbek, Lebanon, a 19-ton Mercedes Benz cargo truck, manufactured under license in Iran, was flown from Tehran to Damascus and then driven to the Beka'a Valley. 1/19/05 Tr. at 20:5–13. It was then disguised so that it would resemble the water delivery truck that routinely arrived at the Beirut International Airport, located near the U.S. Marine barracks, and modified to transport an explosive device. Another truck was acquired in Beirut by Hezbollah, brought to the Beka'a Valley, painted red, and outfitted with explosives for a planned simultaneous attack on the French barracks in Beirut. 1/19/05 Tr. at 20:1–4, 21:18–22.⁵ On the morning of October 23, 1983, members of Hezbollah ambushed the real delivery truck before it arrived at the U.S. Marine barracks. Hezbollah then placed an observer on the hill near the barracks to the operation, and the fake water delivery truck then set out for the barracks, driven by Ismalal Ascari, an Iranian. 1/19/05 Tr. at 21:2–22:1; *Peterson*, 264 F.Supp.2d at 56.

At approximately 6:25 a.m. Beirut time, the truck drove passed the Marine barracks, circling in the large parking lot behind the barracks while increasing its speed. The truck then crashed through a concertina wire barrier and a wall of sandbags, entering the barracks. 1/19/05 Tr. at 22:1–17. Due to the limitations imposed by the standing rules of engagement, the seconds it took for the Marine sentries to load and chamber their rifles cost them the opportunity to engage the smiling suicide bomber behind the wheel of the truck. *See* Pl.'s Ex. 2 (Gunnery Sgt. Keith A. Milks, *Marines in Beirut III: Disaster, Withdrawal, and Legacy*, MARINE CORPS NEWS (Oct. 18, 2003)). When the truck reached the center of the barracks, the bomb in the truck detonated.

The resulting explosion was the largest non-nuclear explosion that had ever been detonated on the face of the earth. 1/19/05 Tr. at 22:1–17. Due the bomb's use of “bulk form” pentaerythritol tetranitrate, the force of the explosion was equal to between 15,000 to 21,000 pounds of TNT: the explosion created a crater in the earth nearly nine feet deep, shredded trees located 370 feet away, shattered all of the windows at the traffic control tower of the Beirut International Airport over half a mile away, and reduced the four-story Marine barracks to rubble as the concrete building collapsed on itself. *Id.*; Pl.'s Ex. 2 (Gunnery Sgt. Keith A. Milks, *Marines in Beirut III: Disaster, Withdrawal, and Legacy*, MARINE CORPS NEWS (Oct. 18, 2003)); *Peterson*, 264 F.Supp.2d at 56–57. As the result of the Marine barracks explosion, 220 Marines, 18 Sailors, and 3 soldiers were killed, and more than 100 others were wounded.

As the court concluded in *Peterson*, 264 F.Supp.2d at 58. and as supported by the testimony offered by Dr. Tefft, *see* 1/19/05 Tr. at 22:18–23:20, the Court finds it beyond *11 question that Hezbollah and its agents received massive material and technical support from the Iranian government. Indeed, the sophistication demonstrated in the placement of an explosive charge in the center of the Marine barracks building, the configuration of the bomb for maximum impact, and the devastating effect of the detonation of the charge indicates that it is highly unlikely that this attack could have resulted in such loss of life without the assistance of regular military forces, such as those of Iran.

Petty Officer Robert Holland was one of the servicemen killed instantly in the blast. *See* Pl.'s Ex. 15 (Holland Record of Identification Processing). His family learned of the bombing through phone calls early that morning made by friends watching the events on television, 1/19/05 Tr. at 88:12–89:24, 128:25–129:7. However, given the nature of the explosion, the Holland family was forced to wait nearly two weeks until Robert was conclusively identified—a period filled with nerve-racking calls from Donna in Camp Lejeune to Robert's parents in Kentucky as the family searched for any information regarding Robert. As Donna Holland described it,

That was probably the worst two weeks of my life. You know, but you don't know. You don't want to admit it. There's no—I would never wish that on my worst enemy. That is the most horrific two weeks that any family member [] can go through, not knowing anything specific about what their future holds, and having those two boys [i.e., James and Chad].

1/19/05 Tr. at 95:21–96:2. Robert's body was finally identified by a childhood injury that he had in his elbow. 1/19/05 Tr. at 129:10–21. As his father Charles Holland described the funeral,

it was a large crowd, and it was cold and it was rainy, and ... we had some high-ranking officers from the military, and it was a typical military funeral, and to this day I can—I still hear them playing Taps. I can hear that all the time.... [Life] has never been the same. Never.

1/19/05 Tr. at 140:5–10, 145:19–22.

Robert's death had a profound emotional and substantive impact on the Holland family. According to his brother Patrick, Robert's parents—Charles and Rosemary Holland—“died a little bit” after his passing. 1/19/05 Tr. at 153:12–14. Donna, who never remarried, became a twenty-three year old widow, forced to raise a three year-old (James) and a one year-old son (Chad) with limited resources.⁶ As Donna noted, “it was my responsibility, I felt, that I make sure they turn out to be good people, and well rounded. But I didn't have the tools or the interests to encourage those things that they were interested in. And Bob did.” *Id.* at 112:2–7. The record is replete with testimony regarding Donna Holland's struggle to support two young sons, including discussions of their behavioral problems caused—in part—by the lack of a father figure, their need for medications and counseling since they were five or six years old, the fact that their growth and development was stunted by the loss of the one person who could have brought out their artistic abilities and strengths in writing, and their struggles to define themselves and overcome life-long *12 depression while growing up without the love of their father. *See* 1/19/05 Tr. at 103:20–114:11, 143:15–145:22.

Moreover, Robert's premature death at the hands of terrorists also had a significant effect on the finances of the Holland family, depriving his wife and children of between \$1.019 and \$1.241 million dollars of present value income. *See* Pl.'s Ex. 22 (Economic Loss Data submitted by Dr. Jerome S. Paige); 1/19/05 Tr. at 167:5–171:11. As Robert's mother Rosemary Holland concluded when thinking of her twenty-eight year old son murdered by the efforts of Iran-sponsored terrorism, “we just miss him very much.” 1/19/05 Tr. at 133:7–9.

III: LEGAL DISCUSSION

Every case brought against a foreign state raises two distinct and crucial legal questions. *See Cicippio-Puleo*, 353 F.3d at 1029–30; *Price v. Socialist People's Libyan Arab Jamahiriya*, 389 F.3d 192, 199 (D.C.Cir.2004); *Dammarell v. Islamic Republic of Iran*, Civ. No. 01–2224(JDB), 2005 WL 756090, at *5 (D.D.C. Mar.29, 2005) (Bates, J.) (“*Dammarell II*”). First, the Court must look to whether it has jurisdiction to hear the claim. In the context of claims implicating the parameters of the FSIA, this jurisdictional determination is guided by an inquiry into whether the case falls within one of the statutory exceptions to the sovereign immunity of a foreign state. *See Kilburn v. Socialist People's Libyan Arab Jamahiriya*, 376 F.3d 1123, 1126–27 (D.C.Cir.2004); *Simpson v. Socialist People's Libyan Arab Jamahiriya*, 326 F.3d 230, 232 (D.C.Cir.2003); *Dammarell II*, 2005 WL 756090, at *5. Second, the Court must consider the actual liability of the defendant foreign sovereign. In the context of the

FSIA, this inquiry requires that the Court assess what—if any—causes of action the plaintiffs may bring against the defendants, and whether the foreign state is liable on any of those claims. *See Kilburn*, 376 F.3d at 1133–36; *Cicippio–Puleo*, 353 F.3d at 1029–30; *Dammarell II*, 2005 WL 756090, at *5. It is this second question that has been profoundly impacted by the D.C. Circuit's post-*Cicippio–Puleo* line of cases that call into question many of the key assumptions of many previous FSIA-related decisions. *Compare Cicippio–Puleo*, 353 F.3d at 1027 with *Dammarell v. Islamic Republic of Iran*, 281 F.Supp.2d 105, 194 (D.D.C.2003) (“*Dammarell I*”); *Cronin v. Islamic Republic of Iran*, 238 F.Supp.2d 222, 231 (D.D.C.2002); *Regier v. Islamic Republic of Iran*, 281 F.Supp.2d 87, 98–99 (D.D.C.2003); *Kilburn v. Republic of Iran*, 277 F.Supp.2d 24, 36–41 (D.D.C.2003). Given the bifurcated nature of the relevant inquiry, the Court shall address each question in turn.

A. Jurisdiction

The FSIA establishes the broad rule that “foreign states,” including “a political subdivision of a foreign state or an agency or instrumentality of a foreign state,” 28 U.S.C. § 1603, are immune from suit in the courts of the United States. *See* 28 U.S.C. § 1604 (“Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.”). However, the FSIA also sets out certain exceptions to this general rule of immunity for limited categories of cases. *See id.* § 1605. The most recent of the exceptions in the statute was enacted in 1996 and revokes the sovereign immunity of a foreign state that sponsors acts of terrorism. *See* Pub.L. No. 104–132, § 221, 110 Stat. 1214 (codified at 28 U.S.C. § 1605(a)(7)).

***13** Importantly, this latest exception—Section 1605(a)(7)—provides that a foreign state “shall not be immune from the jurisdiction of courts of the United States or of the States in any case” where

money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources ... for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

28 U.S.C. § 1605(a)(7). This provision applies to a foreign state only if three other criteria in the statute are met as well: (1) the foreign state was designated as a state sponsor of terrorism at the time of the terrorist act or as a result of the act; (2) the foreign state was afforded a reasonable opportunity to arbitrate the claim if the act occurred *within the foreign state* against which the claim has been brought; and (3) either the claimant or the victim was a national of the United States at the time of the terrorist act. *See id.* § 1605(a)(7)(A), (B); *Kilburn*, 376 F.3d at 1127; *Dammarell II*, 2005 WL 756090, at *5.

Upon a review of the evidence presented at the bench trial in this action, the Court concludes that Plaintiffs have satisfied the jurisdictional requirements under Section 1605(a)(7) necessary to circumvent the traditional barrier of sovereign immunity. First, Iran was designated as a state sponsor of terrorism under Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. app. 2405(j), and Section 620A of the Foreign Assistance Act of 1961, 22 U.S.C. § 2371, in response to the April 18, 1983 bombing of the United States Embassy in Beirut, Lebanon, and the October 23, 1983 bombing of the United States Marine barracks in Beirut, Lebanon, and has remained on the State Department list of state sponsors of terrorism ever since. *See* 22 C.F.R. § 126.1(d); 31 C.F.R. § 596.201. Second, the bombing occurred within the borders of Lebanon, not Iran, rendering the “opportunity to arbitrate” requirement irrelevant in this case. *See* 28 U.S.C. § 1605(a)(7)(B). Third, all of the Plaintiffs in this action are citizens of the United States, as was the victim, Robert Holland. Fourth, the murder of Robert Holland and 240 other American servicemen certainly qualifies as an “extrajudicial killing,” i.e., “a deliberate killing not authorized by previous judgment pronounced by a regularly constituted court affording all judicial guarantees which are recognized as indispensable by civilized people,” *see* Pub.L. No. 102–256, § 3(a), 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note) (incorporated by

reference into 28 U.S.C. § 1605(e)). *See, e.g., Peterson*, 264 F.Supp.2d at 60–61 (finding that the October 23, 1983 bombing of the United States Marine barracks constituted an “extrajudicial killing”); *Flatow*, 999 F.Supp. at 18 (“[A] suicide bombing ... is an act of ‘extrajudicial killing’ within the meaning of 28 U.S.C. § 1605(a)(7).”). Fifth, and finally, as the Court has concluded, *see supra* Section II(C)-(D), Iran, the MOIS, and the IRGC provided “material support or resources” for the killing within the meaning of Section 1605(a)(7) sufficient to constitute a proximate cause in the 1983 United States Marine barracks bombing and the death of Robert Holland. *See Kilburn*, 376 F.3d at 1126–31 (rejecting the argument that a plaintiff must show that the foreign state’s material support was the “but for” cause, and holding that a plaintiff need only establish proximate causation). Given that Plaintiffs have met the statutory prerequisites, *14 the Court concludes that Section 1605(a)(7) removes the sovereign immunity of Iran, the MOIS, and the IRGC for their role in the barracks bombing.

B. Liability

Having concluded that Iran, the MOIS, and the IRGC are not immune from suit, the Court now must turn to an analysis of the causes-of-action that are permitted against a foreign state for its sponsorship of terrorism. As noted previously, *see supra* Section I, two recent decisions by the D.C. Circuit have altered the previous FSIA landscape. In *Cicippio–Puleo*, 353 F.3d at 1033, the court held that “neither 28 U.S.C. § 1605(a)(7) nor the Flatow Amendment, nor the two considered in tandem, creates a private right of action against a foreign government.” *Id.* In *Acree*, 370 F.3d at 58, the court emphasized that “generic common law cannot be the source of a federal cause of action” against a foreign state. *Id.* However, these decisions expressly leave open the question of whether a cause-of-action against a foreign nation might exist under “some other source of law, including state law.” *Cicippio–Puleo*, 353 F.3d at 1036; *but see id.* at 1033 (indicating that it “cannot be assumed” that there is any cause of action against a foreign state at all).

As provided in Plaintiff’s Memorandum of Law Responding to the Court’s Order Requesting Briefing on the *Cicippio–Puleo* Decision and Plaintiff’s Memorandum of Law in Support of Their Causes of Action, Plaintiffs maintain that there are several causes-of-action available against foreign states consistent with the D.C. Circuit’s recent rulings. Plaintiffs propose that causes-of-action exist under state common and statutory law, federal common law, the law of foreign countries, the Torture Victims Protection Act, and even the Flatow Amendment (though the operation of Section 1606 of the FSIA). Importantly, between the submission of Plaintiff’s filings and this Court’s present decision, another judge serving on the United States District Court for the District of Columbia, the Honorable John D. Bates, issued two decisions specifically addressing identical contentions made by plaintiffs seeking to recover for damages sustained in the April 18, 1983 car bombing of the United States Embassy in Beirut, Lebanon. *See Dammarell II*, 2005 WL 756090; *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d 105 (D.D.C.2005). A review of these persuasive decisions, and the authoritative *Dammarell II* decision in particular, indicates that the causes-of-action available against a foreign state are much narrower than claimed by Plaintiffs in this case. *See also Price v. Socialist People’s Libyan Arab Jamahiriya*, 384 F.Supp.2d 120, 132–33 (D.D.C. July 26, 2005) (upon remand from the D.C. Circuit, choosing to follow the twin holdings of *Dammarell II* and *Salazar*); *Wyatt v. Syrian Arab Republic*, 398 F.Supp.2d 131, 137–38 (D.D.C.2005) (joining in the FSIA analysis propounded in *Dammarell II*). Guided by the supple and convincing reasoning set out by Judge Bates in a more exhaustive manner in *Dammarell II*, 2005 WL 756090, at *7–*32, the Court shall review each potential source identified by Plaintiffs and examine the plausible resonance of each claim.

1. The Collaboration Between Section 1606 and Various Federal Statutes

Section 1606 of the FSIA provides, in relevant part:

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances[.]

*15 28 U.S.C. § 1606. The Supreme Court has stated that this language means exactly what it says—for instance, where “state law provides a rule of liability governing private individuals, the FSIA requires the application of that rule to foreign states in like circumstances.” *First Nat’l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 622 n. 11, 103 S.Ct. 2591, 77 L.Ed.2d 46 (1983). As a consequence, a plaintiff should be able to bring a cause of action under state or common law, federal statutes (where Congress has not indicated otherwise), and even possibly the law of a foreign country in a Section 1605(a)(7) case, as long as the plaintiff would be able to bring such a claim against an individual in similar circumstances. *See Dammarell II*, 2005 WL 756090, at *11. However, Section 1606, much like the analogous section of its sister statute, the Federal Tort Claims Act (“FTCA”), *see* 28 U.S.C. § 2674, is a mere pass-through to causes of action that would exist against private individuals; Section 1606 does not—by itself—create a cause of action against a foreign sovereign. *Dammarell II*, 2005 WL 756090, at *12 (“For twenty years, courts have read section 1606 as a pass-through to existing causes of action.”); *Roeder v. Islamic Republic of Iran*, 195 F.Supp.2d 140, 174 (D.D.C.2002) (rejecting argument that plaintiffs “unambiguously have a cause of action against Iran by virtue of ... § 1606” because “the Supreme Court has made clear that this provision does not impact the substantive liability of a foreign government”) (citations omitted).

In this case, Plaintiffs wish to enforce two federal statutes against Iran, the MOIS, and the IRGC through the pass-through mechanism provided by Section 1606:(1) the Flatow Amendment, 28 U.S.C. § 1605 note, and (2) the Torture Victims Protection Act (“TVPA”), 28 U.S.C. § 1350 note. *See* Pl.’s Mem. of Law in Support of Their Causes of Action at 5–10. The Flatow Amendment, passed in the wake of the changes implemented by Section 1605(a)(7), provides that:

An official, employee, or agent of a foreign state designated as a state sponsor of terrorism ... while acting within the scope of his or her office, employment, or agency shall be liable to a United States national or the national’s legal representative for personal injury or death caused by acts of that official, employee, or agent for which the courts of the United States may maintain jurisdiction under section 1605(a)(7) ... for money damages which may include economic damages, solatium, pain and suffering, and punitive damages if the acts were among those described in section 1605(a)(7).

28 U.S.C. § 1605 note (emphasis added); *see also Flatow*, 999 F.Supp. at 28–34. The TVPA, passed in 1992, authorizes a federal statutory cause-of-action against certain individuals for acts of torture or extrajudicial killing. The statute provides:

An individual who, under actual or apparent authority, or color of law, of any foreign nation—

(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable to damages to the individual’s legal representative, or to any person who may be a claimant in an action for wrongful death.

Pub.L. No. 102–256, 106 Stat. 73 (reprinted at 28 U.S.C. § 1350 note) (emphasis added). According to Plaintiffs, these “[t]wo federal statutes are applicable to foreign states under Section 1606’s prescription requiring them to be held liable in the same manner as individuals in like *16 circumstances.” Pl.’s Mem. of Law in Support of Their Causes of Action at 5.

Unlike the other federal statutes that have been applied to foreign states through the pass-through provided by Section 1606, *see Southway v. Cent. Bank of Nigeria*, 198 F.3d 1210, 1215 (10th Cir.1999) (applying the federal RICO statute through the FSIA after a lengthy examination of the statutes and an analysis of congressional intent); *Mukaddam v. Permanent Mission of Saudi Arabia to the United Nations*, 111 F.Supp.2d 457, 470 (S.D.N.Y.2000) (holding that Title VII applies to foreign states through Section 1606 only after a careful examination of text, structure, and purpose of Title VII), the Flatow Amendment and the TVPA are not statutes of general application. Rather, their very terms confine their scope to officials or agents of foreign states. As such, Plaintiffs’ assertion that these statutes, through the filter of Section 1606, can be expanded to apply to foreign states as well

as foreign officials is far from established. Indeed, other judges on the United States District Court for the District of Columbia have reached wildly different conclusions on this point in recent post-*Cicippio-Puleo* decisions. Compare *Dodge v. Islamic Republic of Iran*, Civ. No. 03-252, 2004 WL 5353873, at *3-4 & n. 8 (D.D.C. Aug. 25, 2004) (Jackson, J.) (concluding that the Flatow Amendment and the TVPA, through Section 1606, create a cause-of-action against foreign states) with *Dammarell II*, 2005 WL 756090, at *28-*31 (Bates J.) (rejecting such an approach); *Price*, 384 F.Supp.2d at 132-33 (rejecting such an approach) (Lamberth, J.); *Wyatt*, 398 F.Supp.2d at 137-38 (rejecting such an approach) (Urbina, J.).

Plaintiffs place a great deal of emphasis on the Judge Thomas Penfield Jackson's decision in *Dodge*, see Pl.'s Mem. of Law in Support of Their Causes of Action at 10-11, which deals with this issue in a rather cursory manner. The *Dodge* court begins with the initial proposition that “[t]he D.C. Circuit's recent ruling in *Cicippio-Puleo* ... does not undermine the ability of any victim of terrorism to bring an action under any potentially applicable law otherwise applicable to individuals. In particular, *Cicippio-Puleo* did not address § 1606, and therefore did not consider whether 28 U.S.C. § 1606 provides a basis for asserting federal statutory causes of action against foreign states.” *Dodge*, 2004 WL 5353873, at 4 n. 8 (emphasis in original). From this uncontroversial reading of *Cicippio-Puleo*, the *Dodge* court makes a significant logical leap to conclude that “[t]hese two statutes [the Flatow Amendment and the TVPA] provide a basis for plaintiffs' recovery [against the Republic of Iran] under the facts as found,” *id.* at *4, while providing no analysis into the assumptions underlying its implicit expansion of the Flatow Amendment and the TVPA. Upon a review of *Cicippio-Puleo*, the plain text of the relevant statutes, and their legislative histories, the Court joins the *Dammarell II*, *Price*, and *Wyatt* courts in concluding that the Flatow Amendment and the TVPA cannot be read to create a private right of action against a foreign state through Section 1606. See *Dammarell II*, 2005 WL 756090, at *28-*31; *Price*, 384 F.Supp.2d at 132-33; *Wyatt*, 398 F.Supp.2d at 137-38.

i. The Flatow Amendment

As set out first by the court in *Dammarell II*, *id.* at *29-*30, four considerations weigh against expanding the cause-of-action created by the Flatow Amendment to foreign states through Section 1606. First, the plain text of the Flatow Amendment limits its reach to actions against an “official, employee, or agent of a foreign state.” See 28 U.S.C. § 1605 note. On its face, there is nothing *17 to indicate the Congress intended—or even anticipated—that the statute would apply to foreign states and, given the traditional canon of statutory interpretation “*expressio unius est exclusio alterius*,” a court should be cautious in inferring such a significant expansion into an otherwise-silent statute. Second, the legislative history of the Flatow Amendment does not contain “any indication that Congress intended to take the more provocative step of creating a private right of action against foreign governments themselves.” *Cicippio-Puleo*, 353 F.3d at 1031. Importantly, the legislative history does not contain any evidence that Congress anticipated that the statute would encompass foreign states through the operation of one statute it had enacted only five months earlier—Section 1605(a)(7)—and another than it had created twenty years earlier—Section 1606. See *Dammarell II*, 2005 WL 756090, at *29. “Given the proximity in time between the enactment of the Flatow Amendment and section 1605(a)(7), one would expect some indication that Congress expected the Flatow Amendment to apply to foreign states, and the Court would require as much before writing that result into a silent federal statute.” *Id.*

Third, in creating a cause-of-action against an “official, employee, or agent of a foreign state,” it appears as though the Flatow Amendment did not create a cause-of-action against a “private individual” within the meaning of Section 1606. See 28 U.S.C. § 1606 (“[T]he foreign state shall be liable in the same manner and to the same extent as a *private individual* under like circumstances.”) (emphasis added). As such, in contrast to RICO, Title VII, and other statutes that clearly expose a private individual to liability, and therefore may be read to act in conjunction with Section 1606, the Flatow Amendment is more specific and therefore more limited: it is aimed at public officials, not private individuals. While it may be the case that a “private individual” within the meaning of Section 1606 can also be considered an “agent” within the meaning of the Flatow Amendment, there is no reason to believe that Congress was aware of this potential for converting claims against private individuals into claims against states when it was enacting the Flatow Amendment. Due to the inherent nature of the Flatow Amendment, the Court concludes that it is “far from obvious that Congress would have understood that the small subset of Flatow Amendment cases that could involve a private party would lead to wholesale liability for [foreign] states through section 1606.” *Dammarell*

II, 2005 WL 756090, at *30. Fourth, and finally, while *Cicippio-Puleo* does not completely foreclose the possibility that a cause-of-action might exist under the Flatow Amendment other than of its own force or through Section 1605(a)(7), the D.C. Circuit specifically emphasized—after a careful examination of the text and legislative history of the Flatow Amendment and Section 1605(a)(7)—that neither of those statutes, “nor the two considered in tandem, creates a private right of action against a foreign government.” *Cicippio-Puleo*, 353 F.3d at 1032. To circumvent the clear spirit of the D.C. Circuit’s language and allow a Flatow Amendment cause-of-action to proceed against foreign states through Section 1606 would produce a result that is clearly in tension with the general drift of recent D.C. Circuit caselaw. Given these problems, the Court joins the *Dammarell II* court in concluding that “the cause of action in the Flatow Amendment cannot be read to apply to foreign states through section 1606.” *Dammarell II*, 2005 WL 756090, at *30.

ii. *The TVPA*

As the *Dammarell II* court found, “[a] similar analysis disposes of the Torture *18 Victims Protection Act.” *Id.* at *31. Two factors weigh against using Section 1606 to expand the reach of the TVPA. First, on its face, the TVPA authorizes a federal statutory cause-of-action against “[a]n individual” who subjects victims to torture or extrajudicial killing. *See* 28 U.S.C. § 1350 note. By limiting itself only to individuals, the plain language of the text guards against an expansion of the TVPA to foreign states. Second, the legislative history of the TVPA indicates that Congress was quite emphatic in its intent that the TVPA was not to apply to foreign states. The Senate Report directs that:

The legislation uses the term “individual” to make crystal clear that foreign states or their entities cannot be sued under this bill under any circumstances: only individuals may be sued. Consequently, the TVPA is not meant to override the Foreign Sovereign Immunities Act (FSIA) of 1976, which renders foreign governments immune from suits in U.S. courts, except in certain circumstances.

S.Rep. No. 102–249, at 7 (1991). The House Report contains similar limiting language. *See* H.R.Rep. No. 102–367, at 2 (1992), U.S. Code Cong. & Admin.News 1992, pp. 84, 87 (“Only ‘individuals,’ not foreign states, can be sued under the [TVPA].”). These clear manifestations indicate Congress’ plain intent in enacting the TVPA to confine liability for acts of torture and extrajudicial killing to individuals.

In an effort to escape this compelling evidence of congressional intent, Plaintiff offer only the enactment of Section 1605(a)(7). *See* Pl.’s Mem. of Law in Support of Their Causes of Action at 6–7. The relevant question becomes whether Section 1605(a)(7) reflects a specific desire by Congress to reverse its earlier clearly expressed intent to create a cause-of-action for torture victims only against individuals. Upon an analysis, the Court joins the *Dammarell II* court in finding that to overcome the strong evidence of intent aimed at cabining the reach of the TVPA, “the Court would require something more than the textual gymnastics of reading a 1996 statute (section 1605(a)(7)) as operating through a 1976 statute (section 1606) to expand a 1992 cause of action (the TVPA) to [foreign] states.” *Dammarell II*, 2005 WL 756090, at *31. As such, the Court concludes that “Congress’s clearly expressed intent in 1992 should prevail over any speculative intent to the contrary in 1996.” *Id.* Plaintiffs, therefore, cannot use the Flatow Amendment or the TVPA as the starting point, funneled through Section 1606, for a cause-of-action against Iran, the MOIS, and the IRGC. Instead, Plaintiffs must look to other sources of law for a sustainable cause-of-action in this case.

2. *Federal Common Law*

Plaintiffs next propose causes-of-action arising under federal “common law” as the basis for their claims against Iran, the MOIS, and the IRGC. *See* Pl.’s Mem. of Law in Support of Their Causes of Action at 11–18 (“In sum, federal common law

provides a basis for a full award of damages for victims of state sponsored terrorism.”). Several pre-*Cicippio-Puleo* decisions by federal district courts concluded that federal common law should provide the substantive rule of decision for claims brought under Section 1605(a)(7) to the exclusion of state common law or statutory principles. *See, e.g., Stethem v. Islamic Republic of Iran*, 201 F.Supp.2d 78, 87 (D.D.C.2002) (“Consistent with its approach in previous FSIA cases involving claims for personal injury or death resulting from state-sponsored terrorism, this Court will evaluate plaintiffs’ claims under federal common law.”); *Wagner v. Islamic Republic of Iran*, 172 F.Supp.2d 128, 134–35 (D.D.C.2001) (“Specifically, in FSIA cases involving claims for personal injury or death resulting from state-sponsored terrorism, the application of federal common law will ensure the greatest level of predictability and uniformity.”); *Jenco v. Islamic Republic of Iran*, 154 F.Supp.2d 27, 33–37 (D.D.C.2001) (same); *Sutherland v. Islamic Republic of Iran*, 151 F.Supp.2d 27, 48–50 (D.D.C.2001) (same); *Flatow*, 999 F.Supp. at 14–15 (same). Despite these previous decisions, the Court joins with the *Dammarrell II* court in concluding that “developments in the law during the past several years, and a careful consideration of the entire area of jurisprudence, now compel the Court to find that federal common law should not serve as a rule of decision in the run of section 1605(a)(7) cases.” *Dammarrell II*, 2005 WL 756090, at *23; *see also Price*, 384 F.Supp.2d at 132–33.

Upon a review, it is evident that multiple problems exist with an application or creation of federal common law in this context. *See id.* at *23–*28. First, the D.C. Circuit in *Bettis v. Islamic Republic of Iran*, 315 F.3d 325 (D.C.Cir.2003), sent a strong signal that Section 1606 is incompatible with the creation of a federal common law of tort. In *Bettis*, the court was presented with the question of whether nieces and nephews of a kidnapped and tortured victim could obtain recovery for intentional infliction of emotional distress against Iran and the MOIS under the Flatow Amendment. *See id.* at 333 (assuming without deciding that a claim could be asserted against a foreign state under the Flatow Amendment, an argument that was later rejected in *Cicippio-Puleo*). In responding to the argument, first propounded by amicus curiae, that the court should look to federal common law to determine the scope of the emotional distress claim, the D.C. Circuit explained that the term “‘federal common law’ seems to us to be a misnomer.” *Id.* at 333. The court stressed that “it is a mistake, we think, to label actions under the FSIA and Flatow Amendment for solatium damages as ‘federal common law’ cases, for these actions are based on *statutory* rights. Without the statute, the claims would not arise.” *Id.* (emphasis in original). More importantly, the D.C. Circuit went even further in its condemnation of the application of federal common law in the FSIA context, quoting Section 1606 and emphasizing that “we have no free-wheeling commission to construct common law as we see fit.” *Id.* at 337. As the court delineated:

Of course, because these claims are based on a federal statute, their “extent and nature” are “federal questions.” *Burks v. Lasker*, 441 U.S. 471, 476, 99 S.Ct. 1831, 1836, 60 L.Ed.2d 404 (1979). But that does not, in this case, “authorize the federal courts to fashion a complete body of federal law.” *Id.* at 477, 99 S.Ct. at 1837. Rather, ... because the FSIA instructs that “the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances,” 28 U.S.C. § 1606, it in effect instructs federal judges to find the relevant law, not to make it.

Id. at 338; *see also Burks*, 441 U.S. at 479–80, 99 S.Ct. 1831, 60 L.Ed.2d 404 (counseling against the creation of an entire body of federal law “out of whole cloth” in situations where it is not shown that state laws poses a “significant threat to [an] identifiable federal policy or interest”). Given the tenor and language of *Bettis*, the Court is quite reluctant to employ federal common law as the basis for a cause-of-action through the prism of Section 1606.

***20** Second, as the *Dammarrell II* court described, *Bettis* is a mere reflection of “the modern rule that the federal common law should only be employed in the rarest of circumstances.” *Dammarrell II*, 2005 WL 756090, at *24 (citing *O’Melveny & Myers v. Fed. Deposit Ins. Co.*, 512 U.S. 79, 87, 89, 114 S.Ct. 2048, 129 L.Ed.2d 67 (1994) (noting that “cases in which judicial creation of a special federal rule would be justified” are “few and restricted” and “extraordinary” (quotation marks omitted)); *Resolution Trust Corp. v. Maplewood Invs.*, 31 F.3d 1276, 1294 (4th Cir.1994) (“In light of *O’Melveny*, there is a heavy presumption in favor of application of a rule of decision in accordance with Virginia law as opposed to the creation of a federal rule of decision.”); Erwin Chemerinsky, *Federal Jurisdiction* § 6.1, at 350 (3d ed. 1999) (“There long has been a strong presumption against the federal courts fashioning common law to decide cases.”)). Importantly, a court should craft a federal common law rule only in cases where there are both (1) “significant federal interests” and (2) a “significant conflict between some federal policy or interest and the use of state law.” *Boyle v. United Tech. Corp.*, 487 U.S. 500, 506, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988).

The principal rationale identified by Plaintiffs for the use of federal common law in Section 1605(a)(7) and other FSIA-related cases is that it promotes “predictability and uniformity” in a sensitive area of jurisprudence. See Pl.’s Mem. of Law in Support of Their Causes of Action at 14. Unfortunately, an interest in uniformity is the “most generic (and lightly invoked) of alleged federal interests,” *O’Melveny*, 512 U.S. at 88, 114 S.Ct. 2048, 129 L.Ed.2d 67, and—as the Supreme Court has stressed—if uniformity, facilitation of nationwide litigation, the elimination of state-by-state research, and the reduction of uncertainty “qualified as an identifiable federal interest, we would be awash in ‘federal common-law’ rules,” *id.*; see also *United States v. Kimbell Foods, Inc.* 440 U.S. 715, 730, 99 S.Ct. 1448, 59 L.Ed.2d 711 (1979) (“generalized pleas for uniformity” not a basis for resort to federal common law). Due to these considerations, the goal of uniformity has frequently been rejected “as a basis for the fashioning of a federal common law rule in the specific context of mass disasters and even terrorist attacks overseas.” *Dammarell II*, 2005 WL 756090, at *25.

For instance, the Supreme Court declined to read the pass-through Warsaw Convention as an “implicit authorization for national courts to create uniformity” in the case of injury or death during international air transportation, as the Court explained that the pass-through element of the Convention (similar to Section 1606) does not “empower us to develop some common-law rule—under cover of general admiralty law or otherwise—that will supersede the normal federal disposition.” *Zicherman v. Korean Air Lines Co.*, 516 U.S. 217, 231, 116 S.Ct. 629, 133 L.Ed.2d 596 (1996); see also *Pescatore v. Pan Am. World Airways, Inc.*, 97 F.3d 1, 6, 11 (2d Cir.1996) (holding that the federal concern “between the Warsaw Convention’s goal of uniformity and the unruliness of applying multiple state laws” is “insufficient to justify imposition of federal common law”); *Piamba Cortes v. Am. Airlines, Inc.*, 177 F.3d 1272 (11th Cir.1999) (applying Florida law in Warsaw Convention case involving airplane crash in Colombia). Courts have also reached the same conclusion in the context of the Federal Tort Claims Act (“FTCA”), holding that the presence of a “pass-through” provision similar to Section 1606 in the statutory scheme entails that courts are merely to apply existing causes-of-action, and are not to develop a new federal rule. See *21 *Dammarell II*, 2005 WL 756090, at *26 (citing *Devlin v. United States*, 352 F.3d 525, 532 (2d Cir.2003) (“[T]he FTCA’s basic thrust was decidedly not to create a federal common law of torts, but rather—as expressed in the final clause of section 1346(b)(1) and in section 2674—to tie the government’s liability—albeit subject to a host of qualifications—to the disparate and always evolving tort law of the several states.”)). Finally, courts have declined to fashion a common law rule in cases brought under the other exceptions in Section 1605. *Id.* (citing *Lord Day & Lord v. Socialist Republic of Vietnam*, 134 F.Supp.2d 549, 561 (S.D.N.Y.2001) (“[T]he FSIA does not provide for a federal substantive law rule of decision but operates merely as a ‘pass-through’ to state law principles.”); *In re Aircrash Disaster Near Roselawn, Ind. on Oct. 31, 1994*, 948 F.Supp. 747, 758 (N.D.Ill.1996) (“As for federal common law, the only reason cited in favor of creating and applying a federal common law of pre-impact fear damages is uniformity. This base desire to achieve an identical result in every case is insufficient to override the interest of each injured person’s domiciliary state.”)).

Ultimately, this Court joins with the *Dammarell II* court in holding that “[w]here courts have rejected a federal common law rule under the Warsaw Convention, other section 1605 cases, and the Federal Tort Claims Act, finding each time that such a rule would be incompatible with a ‘pass-through’ statute and cannot be justified by an interest in uniformity,” *Dammarell II*, 2005 WL 756090, at *26, there is no compelling reason to conclude that the value of uniformity somehow creates a “unique federal interest” requiring the creation and application of federal common law in this instance. Rather, given the dictates of *Bettis* and the modern presumption against federal common law, the Court finds that—given the absence of conflict between some important federal policy or interest and the application of state law here—Plaintiffs cannot use federal common law in conjunction with Section 1606 as the basis of their claims against Iran, the MOIS, and the IRGC.

3. Foreign Law

Plaintiffs also suggest that generic “international law,” or the laws and customs of Lebanon or Iran may provide a foundation for their Section 1605(a)(7) claims against Iran, the MOIS, and the IRGC. See Pl.’s Mem. of Law in Support of Their Causes of Action at 12–13; Pl.’s Mem. of Law Regarding the *Cicippio–Puleo* Decision at 11–12. Upon a review of the relevant caselaw and legal framework, the Court joins with the *Dammarell II* court in concluding it is clear that in either case, foreign law should not supply the rule of decision. See *Dammarell II*, 2005 WL 756090, at *32.

First, the application of Lebanese law—i.e., the law of the place of the tort—would be inappropriate in this situation.⁷ In the absence of a contractual choice of law by the parties, the District of Columbia—the forum state—employs a “constructive blending” of the “governmental interests” analysis and the “most significant relationship” test. *Stephen A. Goldberg Co. v. Remsen Partners, Ltd.*, 170 F.3d 191, 193 (D.C.Cir.1999); cf. *Buchheit v. Palestine Liberation Org.*, Civ. No. 00–1455(GK), 2003 WL 24011414, at *5 (D.D.C. Aug.15, 2003) (applying the choice of law rules of the foreign state in a FSIA case); *Lloyds Bank PLC v. Republic of Ecuador*, Civ. No. 96–1789(DC), 1998 WL 118170, at *6 (S.D.N.Y. Mar.16, 1998) (same). In interpreting the District of Columbia's unique *22 “choice of law” mixture, the D.C. Court of Appeals has described the blending as follows:

In determining which law governs the dispute, this court has used the “government interests analysis.” In applying that analysis, we also consider the factors enumerated in the Restatement, § 145, to assist in identifying the jurisdiction with the “most significant relationship” to the dispute.

Hercules & Co., Ltd. v. Shama Rest. Corp., 566 A.2d 31, 40 (D.C.1989). As the *Hercules* court explained, “[u]nder the government interests analysis as so refined, we must evaluate the government policies underlying the applicable laws and determine which jurisdiction's policy would be most advanced by having its law applied to the facts of the case under review.” *Id.* As for the “most significant relationship” component of the analysis, the court focused on Section 145 of the Restatement of the Conflict of Laws, which identifies four relevant factors: (1) “the place where the injury occurred”; (2) “the place where the conduct causing the injury occurred”; (3) “the domicile, residence, nationality, place of incorporation and place of business of the parties”; and (4) “the place of the relationship, if any, between the parties is centered.” *Id.* (citing Restatement (Second) of Conflict of Laws § 145 (1971)). Importantly, Restatement Section 145 also references the factors in Section 6 of the Restatement. *Id.* These other Section 6 factors for consideration include the needs of the interstate and international systems, the relevant policies of the forum, the relevant policies of other interested states, certainty, predictability and uniformity of result, and ease in the determination and application of the law to be applied. *Id.*

While the law of a foreign country has provided the cause-of-action in some cases arising out of mass disasters that occurred on foreign soil, see *Dammarell II*, 2005 WL 756090, at * 19 (citing examples), the “government interests” approach governing in the first instance in the District of Columbia ensures that the law of the domicile of the plaintiff is more often applied, as courts are usually swayed by the strong and often paramount interest of the plaintiff's jurisdiction in guaranteeing redress to its citizens, *id.* Given the characteristics of this particular case certainly heightens the interests of the domestic forum and diminishes the interests of the foreign state. The injuries suffered by Plaintiffs and the loss of Robert Holland's life are the result of a intentional, well-planned state-sponsored terrorist attack on U.S. servicemen that occurred for purely political reasons. The United States has a unique interest in having its domestic law—rather than the law of a foreign nation—used in the determination of damages in a suit involving such an attack. See Restatement (Third) of Foreign Relations Law § 402(3) (1987) (noting that the United States has an interest in projecting its laws overseas for “certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests”) & cmt. g. (this principle is “increasingly accepted as applied to terrorist and other organized attacks on a state's nationals by reason of their nationality, or to assassination of a state's diplomatic representatives or other officials”). While these considerations do not justify the use of federal common law, “they do elevate the interests of the United States to nearly it[s] highest point.” *Dammarell II*, 2005 WL 756090, at *20. Accordingly, under the District of Columbia choice of law analysis, it is clear that domestic law—and not the law of Lebanon—should control. *Id.*; see also *Price*, 384 F.Supp.2d at 132–33 (using District of Columbia choice of law *23 analysis to apply domestic state law rather than foreign law); *Wyatt*, 398 F.Supp.2d at 138–39 (using District of Columbia choice of law analysis to apply domestic state law rather than the law of Turkey or Syria).

Second, an application of some form of “international law” would also be inappropriate in the present context. Importantly, as the Supreme Court emphasized in *Sosa v. Alvarez-Machain*, 542 U.S. 692, 124 S.Ct. 2739, 159 L.Ed.2d 718 (2004), not every “violation” of international law is remedial by a private right of action in United States courts, and there is a “high bar” on recognition of international principles as part of the common law, enforceable by such private action, *id.* at 2763. The *Sosa* Court, in considering whether acts committed in violation of the law of nations could be redressed using a combination of international law and the Alien Tort Statute, 28 U.S.C. § 1350, concluded that “federal courts should not recognize private claims under federal common law” if the allegations concerned “violations of any international law norm with less definite

content and acceptance among civilized nations than the historical paradigms familiar when § 1350 was enacted.” *Id.* at 2765. According to the Court, this leaves only a “narrow set of violations of the law of nations” actionable under the Alien Tort Statute. *Id.* at 2761. Given this limiting language, the fact that Congress has entered this field and spoken through Sections 1605(a)(7) and 1606, and the inherent problems in blending international law, federal common law, and Section 1606, *see supra* Section III(B)(2), the Court finds that an application of international law would not be appropriate in this setting. *See Damarell II*, 2005 WL 756090, at *27–*28, *32; *Price*, 384 F.Supp.2d at 132–33; *Wyatt*, 398 F.Supp.2d at 137–39.

4. State Law

While the Court has rejected Plaintiffs' contention that some combination of Section 1606, the Flatow Amendment, the TVPA, federal common law, foreign law, and international law provides a basis for their causes-of-action against Iran, the MOIS, and the IRGC, the Court concludes that—at least in the circumstances of this case—Plaintiffs may assert causes-of-action against the defendants under state common and statutory law. “As a general rule, state law should provide a cause of action against a foreign nation in a section 1605(a)(7) claim.” *Dammarell II*, 2005 WL 756090, at * 17 (citing *First Nat'l City Bank*, 462 U.S. at 621, 103 S.Ct. 2591, 77 L.Ed.2d 46 (“Where state law provides a rule of liability governing private individuals, the FSIA requires the application of that rule to foreign states in like circumstances.”); *Pescatore*, 97 F.3d at 12 (“[T]he FSIA ... operates as a ‘pass-through’ to state law principles.”); *Virtual Def., Dev. Int'l, Inc. v. Republic of Moldova*, 133 F.Supp.2d 9, 14 (D.D.C.2001) (“[A]s a general matter, state substantive law is controlling in FSIA cases.”)); *see also Brink's Ltd. v. South African Airways*, 93 F.3d 1022, 1030–32 (2d Cir.1996) (noting that “state law generally controls in FSIA cases”). Here, as previously described, state law is not pre-empted or otherwise displaced by federal law, and the governing choice of law principles do not point the Court in the direction of the law of a foreign state. As the *Dammarell II* court noted, *Damarell II*, 2005 WL 756090, at * 17, given that state law provides the cause-of-action in mass disaster cases under the FSIA where corporations owned by foreign governments are defendants, *e.g.*, *In re Aircrash Disaster*, 948 F.Supp. at 756, in wrongful death actions arising out of terrorist attacks where a private corporation is the defendant, *e.g.*, *Pescatore*, 97 F.3d at 13, and in every other category of damages' actions where foreign states are *24 defendants, *e.g.*, *First Nat'l City Bank*, 462 U.S. at 621, 103 S.Ct. 2591, 77 L.Ed.2d 46, it is not surprising that state common and statutory law provides the substantive causes-of-action for Plaintiffs' claims in this case. Indeed, “[f]ar from preempting state law in section 1605(a)(7) cases, the FSIA invites the application of state law through section 1606.” *Dammarell II*, 2005 WL 756090, at *16; *see also Price*, 384 F.Supp.2d at 132–33 (following *Dammarell II* approach and applying the laws of California and Texas as the foundation for plaintiffs' causes-of-action arising out of torture by the Libyan government); *Wyatt*, 398 F.Supp.2d at 139–143 (following *Dammarell II* approach and applying Tennessee and Texas law as the foundation for plaintiffs' causes-of-action arising out of hostage taking by the Syrian government); *Salazar*, 370 F.Supp.2d at 114 (using *Dammarell II* approach to apply Illinois state law as foundation for plaintiff's causes-of-action against Iran arising out of 1983 U.S. embassy bombing).

IV: CONCLUSIONS OF LAW

While the Court has determined that state law provides the applicable causes-of-action for Plaintiffs under the circumstances of this case, the Court still must decide exactly which state's law to apply to each plaintiff. There are two conceivable choices of law left in this case, given the Court's determination that it would be inappropriate to apply the law of the place of the tort (*i.e.*, Lebanon): the Court could apply the law of the forum state, *i.e.*, the District of Columbia, or it could apply the law of the domicile state of the plaintiff. Upon analysis, the District of Columbia can lay claim to very little interest: all plaintiffs (as well as the decedent) are from outside the District of Columbia, the attack occurred outside of the District of Columbia, and Iran, the MOIS, and the IRGC have no particular connection to the District of Columbia. While choosing the law of the District of Columbia would certainly allow for greater uniformity and ease in applying a single set of legal standards, these considerations—certainly relevant under the Restatement—are trumped when another location otherwise has “a significantly greater interest than does the District” in the cause-of-action. *See Dammarell II*, 2005 WL 756090, at *19 (citing *Mims v. Mims*, 635 A.2d 320, 324–25 (D.C.App.1993); *Kaiser–Georgetown Cmty. v. Stutsman*, 491 A.2d 502, 509 n. 10 (D.C.App.1985) (efficiency concerns enter the analysis only where the interests of “both jurisdictions are equally weighty” to “tilt the balance in favor of applying

the law of the forum state’’)). Given the strong and recognized interest of the domicile state in ensuring that its citizens are compensated for harm, the law of the forum state in this case must give way to the law of the domicile of the plaintiff. *See Dammarell II*, 2005 WL 756090, at *22–*23 (law of domicile prevails in FSIA context under District of Columbia choice of law rules); *Price*, 384 F.Supp.2d at 132–33 (same); *Wyatt*, 398 F.Supp.2d at 138–143 (same); *Salazar*, 370 F.Supp.2d at 114 (same).

A. Choosing the Appropriate State Laws to Apply

In this case, Plaintiffs fall into two categories: (1) the estate of Robert Holland, the decedent in the attack; and (2) the surviving family members of Robert Holland. As to the first category, the claims of a decedent's estate—brought here by Donna Holland as the Administrator of Robert Holland's estate—are “ ‘traditionally governed by the laws of the decedent's domicile,’ because such an approach ‘respects the decedent's deliberate choice to make his or her home in a state and be governed by the laws of that state.’ ” *25 *Dammarell II*, 2005 WL 756090, at *21 (citing *In re Aircrash Disaster*, 948 F.Supp. at 758; *Datskow v. Teledyne Cont'l Motors Aircraft Prods.*, 807 F.Supp. 941, 944 (W.D.N.Y.1992) (holding that the law of New York, which was the decedent's domicile, should apply in wrongful death and survival action claims brought by decedents' estates, even though administratrix of one of the estates was a resident of Pennsylvania); *Doetsch v. Doetsch*, 312 F.2d 323, 328 (7th Cir.1963) (“The decedent's domicile is a traditional starting point of reference in the solution of many problems involving decedent's estates.”)).

However, certain difficulties emerge at this point in determining the decedent's domicile at the time of his death on October 23, 1983. Upon Robert Holland's re-enlistment in March 1981, the Holland family—Robert, Donna, and James⁸—moved from Rantoul, Illinois, to North Carolina, where the family eventually settled in Camp Lejeune in the city of Jacksonville. 1/19/05 Tr. at 77:8–24; Pl.'s Ex. 11 (Enlisted Commissioning Program Application). However, North Carolina follows the rule that “[t]o establish domicile in North Carolina there must not only be a residence, but also an intention to make the location of that residence a home or to live there permanently or indefinitely.” *Hernandez v. Santiago*, 140 F.Supp.2d 567, 570 (E.D.N.C.2001); *see also Martin v. Martin*, 253 N.C. 704, 707, 118 S.E.2d 29, 32 (1961); N.C.G.S.A. § 50–18. North Carolina's rule of domicile is implicitly consistent with the view of the Second Restatement, which states that “[a] person does not usually acquire a domicile of choice by his presence in a place under physical or legal compulsion.” Restatement (Second) of Conflicts of Laws § 17 (1988 Revisions); *see also* 13B Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, *Federal Practice and Procedure* § 3617, at 567 (2d ed. 1984 & Supp.2003) (“A serviceman is presumed not to acquire a new domicile when he is stationed in a place pursuant to orders; he retains the domicile he had at the time of entry into the service.”); *Agee v. Bush*, Civ. No. 95–1909(RCL), 1996 WL 914110, at *4 (D.D.C. Aug.26, 1996). In the commentary to Section 17, the Second Restatement suggests that a member of the armed services may, in certain circumstances, acquire the domicile of the place where he is stationed, but only if he regards that place as his home. *Id.* at comment c. The comment further states that “[s]uch an attitude on his part may be difficult to establish in view of the nomadic character of military life and particularly if he intends, upon the termination of his service, to move to some other place.” *Id.*

Based upon these considerations and the present record, the Court concludes that Robert Holland was a domiciliary of the State of Kentucky at the time of his death. There is no indication on the record that Robert—who, as a corpsman in the U.S. Navy, was required to take extended trips at sea—spent significant time in North Carolina or intended to reside in the state following his military service. Rather, Robert had spent a good portion of his adolescence in Kentucky, lived most of his life in that state, and intended to return to school within the state to complete his education. *See* 1/19/05 Tr. at 123:1–7; Pl.'s Ex. 11 (Enlisted Commissioning Program Application). Moreover, upon his death, his wife and two children moved back to Kentucky, where both of Robert's parents still lived—indicating that *26 the Holland family still saw Kentucky as “home.” Finally, and perhaps most importantly for the purposes of determining Robert Holland's intent, in his will, drafted and effectuated on September 1, 1981 in Camp Lejeune in North Carolina, Robert identifies himself as “a legal resident of the State of Kentucky,” notes that his presence in North Carolina is “by virtue of my military obligation,” and expresses his desire for the will to be interpreted according to the laws of the State of Kentucky. *See* Pl.'s Ex. 19 (Will of Robert Holland).⁹ Because the Court concludes that Robert Holland was a domiciliary of the State of Kentucky at the time of his death, Kentucky state law will shape the rights and relief of his estate in the present action.

Plaintiffs Donna, James, Chad, Charles, Rosemary, and Patrick Holland each fall into the second category for choice of law purposes: each are survivors (family members) of the decedent. “In the case of survivors, the dominant rule is that the law of the state of the survivor (rather than the decedent) should provide the rule of decision, on the theory that the survivor is usually the injured party in these claims, asserting his or her own claims for economic losses, loss of solatium, intentional infliction of emotional distress, and the like.” *Dammarell II*, 2005 WL 756090, at *21 (citing *Pescatore*, 97 F.3d at 5, 13–14 (applying Ohio law to determine compensatory damages in case arising out of airline crash in Scotland, because “the harms inflicted on the plaintiff (loss of society, loss of financial contribution, and loss of services) are harms inflicted on her in Ohio,” where she was domiciled); *Patten v. Gen. Motors Corp.*, 699 F.Supp. 1500, 1506 (W.D.Okla.1987) (suggesting that the state of domicile of survivors “has a strong interest in the welfare of the survivors and in ensuring that they are fully compensated for their loss”); *Stevens v. Cessna Aircraft Co.*, 599 F.Supp. 481, 483 (E.D.Pa.1984) (applying the law of Pennsylvania to wrongful death action brought on behalf of decedent with uncertain domicile, because Pennsylvania “has a strong interest in suits brought for wrongful death where the beneficiaries are Pennsylvania citizens”)). While some of the Plaintiffs have moved at least once since the October 23, 1983 bombing of the United States Marine barracks, the basic rule is that “[t]he state of domicile for these plaintiffs should be assessed as of the date that the ... bombing occurred.” *Id.* at *22; see also *Perloff v. Symmes Hosp.*, 487 F.Supp. 426, 428 (D.Mass.1980) (“Although plaintiffs now reside in California, their residence and domicile at the time of the accident are the relevant residence and domicile. At the time of the accident the plans to change the family domicile were not definite and fixed, and if the choice of law were made to turn on events happening after the accident, forum shopping would be encouraged.”); *Roll v. Tracor, Inc.*, 140 F.Supp.2d 1073, 1080 n. 5 (D.Nev.2001) (“It is well settled in tort cases that for the purpose of determining domiciliary in choice-of-law analyses the relevant consideration is the domiciliary of the plaintiff at the time of the accident.”).

*27 In an analysis similar to the one conducted for Robert Holland, the Court concludes that his wife Donna Holland was a resident and domiciliary of the State of Kentucky at the time of his death. Likewise, given the traditional rule that “[t]hroughout its minority, a legitimate child's domicile continues to be that of the father unless separation of the parents or the death of the father results in custody passing to the mother, at which point her domicile becomes controlling,” 13B Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, *supra* § 3615, at 560, the Court finds that Robert Holland's sons, James and Chad Holland (minors at the time of the accident), were residents and domiciliaries of the State of Kentucky at the time of the accident. Robert Holland's parents, Charles and Rosemary Holland, were residents of Kentucky at the time of the bombing. See 1/19/05 Tr. at 123, 134. Finally, Robert Holland's brother, Patrick Holland, was also a resident of Kentucky on October 23, 1983. See 10/25/05 Patrick Holland Aff. at 1, ¶ 2.

B. Application of the Relevant State Laws

Plaintiffs' First Amended Complaint sets out claims for wrongful death (Count I), solatium (Count II), and punitive damages (Count III). See First Am. Compl. ¶¶ 35–52. It is the case that in Kentucky, “[a]t common law, no civil action could be maintained for the wrongful death of a person.” *Sturgeon v. Baker*, 312 Ky. 338, 227 S.W.2d 202, 203 (Ky.1950). However, two Kentucky statutes do provide for recovery under a wrongful death theory as alleged by Plaintiffs. The first, initially enacted in 1854 and developed through the result of Section 241 of the Constitution of 1890, provides:

Whenever the death of a person results from an injury inflicted by the negligence or wrongful act of another, damages may be recovered for the death from the person who caused it, or whose agent or servant caused it. If the act was willful or the negligence gross, punitive damages may be recovered. The action shall be prosecuted by the personal representative of the deceased.

Ky. Rev. St. § 411.130(1).¹⁰ The second statute, initially enacted in 1856 and amended in 1866, is complementary to Section 411.130, expanding the reach of a wrongful death action in some ways and limiting it in other ways. This second statute—Section 411.150—provides:

The surviving spouse and child, under the age of eighteen (18) or either of them, of a person killed by a careless, wanton, or malicious use of a deadly weapon, not in self-defense, may have an action against the person who committed the killing and all others aiding or promoting, or any one (1) of them. In such actions the jury may give vindictive damages.

Ky.Rev.Stat. § 411.150. Section 411.150 could apply under the circumstances of this case, as Kentucky's definition of a "deadly weapon" includes "[a] weapon of mass destruction," thereby including the *28 explosive device that killed Robert Holland and 240 other United States servicemen in the U.S. Marine barracks bombing. *See* Ky.Rev.Stat. § 500.080(4)(a). The two statutes do not provide two different causes-of-action, and double recovery is impermissible; rather,

Section [411.130] merely enlarges the remedy and gives a right of action not authorized by [Section 411.150]. And so, if the widow or minor children will not prosecute the action under [Section 411.150], then the personal representative may do so under [Section 411.130], and, if the personal representative fails or refuses, the widow or minor child may sue.

Howard's Adm'r v. Hunter, 126 Ky. 685, 104 S.W. 723, 725 (Ky.1907); *see also Wells' Adm'r v. Lewis*, 213 Ky. 846, 281 S.W. 996, 997 (Ky.1926) ("The two sections harmonize perfectly when read and considered together...."); *Sturgeon*, 312 Ky. 338, 227 S.W.2d at 202–03.

Importantly, by its very terms, recovery under Section 411.150 is limited only to the surviving spouse and minor children. *See* Ky.Rev.Stat. § 411.150. As such, it creates a cause-of-action only for Donna Holland, Robert's wife, and his two children, James and Chad Holland, who were minors at the time of the terrorist attack. Section 411.130 also limits recovery: "When the decedent is survived by a widow and children, as in this case, Kentucky's wrongful death statute does not allocate any damages to the decedent's siblings or parents; rather, half of the damages goes to the widow and half goes to the children." *Bogges v. Price*, Civ. No. 04–5761, 2005 WL 1385943, at *1 (6th Cir. June 10, 2005) (quoting Ky.Rev.Stat. § 411.130(2)); *see also Shepherd v. Shelter Mut. Ins. Co.*, 2 S.W.3d 794, 796 (Ky.App.1999) ("Thus, since Shepherd was Bray's sister and Bray left children surviving him, Shepherd does not qualify as a survivor entitled to benefits under KRS 411.130 and KRS 304.39–020(14)."). Similarly, one other statutory cause-of-action for wrongful death is also unavailable for Charles and Rosemary Holland, Robert's parents: while Section 411.135 allows for a wrongful death action for parents to recover damages for "loss of affection and companionship" due to the death of a child, by its very terms, Section 411.135 requires that the child must be a minor at the time of his or her death. *See* Ky.Rev.Stat. § 411.135. Because Robert Holland was not a minor at the time of his death, Charles and Rosemary Holland cannot recover under this section. Accordingly, under Kentucky law, only Plaintiffs Donna, James, and Chad Holland have viable causes-of-action against Iran, the MOIS, and the IRGC through Section 1605(a)(7) and Section 1606 for the wrongful death of Robert Holland.¹¹

Plaintiffs have also brought a claim for solatium (Count II), which they characterize as a dual claim for "loss of consortium" and "intentional infliction of emotional distress." *See* Pl.'s Post-Trial Mem. of Law Responding to Court's Order at 8–16. Under Section 411.145, Kentucky allows that "[e]ither a wife or a husband may recover damages against a third person for loss of consortium, resulting from a negligent or wrongful action of such third person." Ky.Rev.Stat. § 411.145(2). "Consortium" is defined as "the right to services, assistance, aid, society, companionship, and conjugal relationship between husband and wife, or wife and husband." *Id.* § 411.145(1). However, Donna Holland's claim for loss of consortium is not *29 sustainable on the present facts. Importantly, "[a] claim for loss of consortium is viable only for the period of time between the date of injury and the date of death. It does not reach beyond." *Clark v. Hauck Mfg. Co.*, 910 S.W.2d 247, 252 (Ky.1995); *see also Brooks v. Burkeen*, 549 S.W.2d 91, 92 (Ky.1977) ("This claim fails because it is well settled law that her recovery would be limited to damages which she sustained before her husband's death. His death occurred instantaneously at work. Consequently, she lost no services, society, fellowship or affectionate relations prior to death.") (citations omitted). Accordingly, because Robert Holland died instantaneously from his injuries, *see* Pl.'s Ex. 15 (Holland Record of Identification Processing), Donna Holland has no cause-of-action for loss of consortium. *See Clark*, 910 S.W.2d at 252 ("To extend the damages for loss of consortium beyond the date of death would result in a double recovery for the surviving spouse beyond that which the wrongful death

statute affords. This was never available under the common law.”); *Estate of Presley v. CCS of Conway*, Civ. No. 03–117(H), 2004 WL 1179448, at *2 (W.D.Ky. May 18, 2004) (“Kentucky case law has been clear that a surviving spouse cannot claim loss of consortium after the death of the other spouse.”).¹²

In contrast, Plaintiffs James and Chad Holland can sustain a common law cause-of-action for loss of consortium against the relevant defendants. While not traditionally allowed in Kentucky, *see Burkeen*, 549 S.W.2d at 92 (declining opportunity to expand loss of consortium claim to cover loss of parental care of minor children because “no court or legislature in the United States has yet seen fit to recognize such an action”), the Supreme Court of Kentucky in *Giuliani v. Guiler*, 951 S.W.2d 318 (Ky.1997) recognized for the first time the right of minor children to claim loss of parental consortium following the death of a parent. The *Giuliani* court stated that public policy goals now recognized the importance of compensating children for the loss of parental love and nurturing when the loss was caused by another person's wrongdoing. *Id.* at 320. The court concluded that loss of parental consortium was the converse of the related claim of the parents for a “loss of a child's consortium,” which Kentucky already recognized by statute, *see* Ky.Rev.Stat. § 411.135, and that “there [was] no legal distinction” between the two claims. *Id.* at 321. Importantly, the *Giuliani* court further held that such a loss of consortium claim “is independent and separate from a wrongful death action and shall not be treated as a single claim.” *Id.* at 322. Accordingly, James and Chad Holland may bring a separate cause-of-action under the *Giuliani* expansion of “loss of consortium” because they were minors at the time of Robert Holland's death. *But see Clements v. Moore*, 55 S.W.3d 838, 840 (Ky.App.2000) (holding that children who were adults at the time of parent's wrongful death may not recover under this theory). Unfortunately, no other Holland family member can obtain relief for loss of consortium under Kentucky law.

Upon an analysis of Kentucky's restrictive caselaw, the Court concludes that no Plaintiff may recover damages for “intentional infliction of emotional distress” under a solatium theory, despite the claims of Plaintiffs. *See* Pl.'s Post-Trial *30 Mem. of Law Responding to Court's Order at 12–16. “The Kentucky Supreme Court first recognized the tort of intentional or reckless infliction of emotional distress, also known as the tort of outrage, in *Craft v. Rice*, 671 S.W.2d 247 (Ky.1984).” *Mineer v. Williams*, 82 F.Supp.2d 702, 706 (E.D.Ky.2000). However, as numerous decisions since *Craft* have emphasized, the Kentucky Supreme Court only adopted Restatement (Second) of Torts Section 46(1) in *Craft*, not Section 46(2). *See Allen v. Clemons*, 920 S.W.2d 884, 886 (Ky.App.1996). Importantly, Section 46(2) states:

Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress:

(a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm; or

(b) to any other person who is present at the time, if such distress results in bodily harm.

Restatement (Second) of Torts § 46(2). Because the conduct at issue was directed at a third person (Robert Holland) and not Plaintiffs in this case, the only conceivable cause-of-action that Robert Holland's family members could have for intentional infliction of emotional distress would be under Restatement (Second) of Torts Section 26(2); however, because Kentucky has not adopted that section—and has refused to do so since the *Craft* decision—family members of an individual upon whom the conduct was directed may not recover. *See Allen*, 920 S.W.2d at 886 (denying claim because plaintiffs' action was based on the section of the Restatement that the Supreme Court of Kentucky did not adopt); *Mineer*, 82 F.Supp.2d at 707 (“Similarly in the present case, the publication by defendant of any allegations regarding Chris Mineer was not directed at Ms. Mineer. Therefore, as a third party she cannot establish a cause of action for the tort of outrage under Kentucky law.”).¹³ Accordingly, Plaintiffs cannot recover under a combination of a solatium/intentional infliction of emotional distress theory.

Finally, Plaintiffs claim that punitive damages are appropriate against Iran, the MOIS, and the IRGC for their actions vis-à-vis the bombing that took Robert Holland's life. *See* First Am. Compl. ¶¶ 49–52 (Count III). As the Court has concluded, 28 U.S.C. § 1605(a)(7) provides the jurisdictional hook for Plaintiffs' state law causes-of-action in this case. *See supra* Section III(A). Section 1606 limits, in some ways, the relief that plaintiffs may obtain through actions brought through Section 1605(a)(7),

providing that while the “foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances,” “a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages.” 28 U.S.C. § 1606.

In this case, three defendants are before this Court: the Islamic Republic of Iran, the MOIS, and the IRGC. Iran, as the foreign state itself, is clearly not liable for punitive damages under the restrictions explicit in Section 1606. Likewise, because the core functions of the MOIS—Iran's Ministry of Foreign Affairs—are *31 “governmental” in nature, the entity must be considered the foreign state of Iran itself rather than its agent. As such, MOIS is also not liable for punitive damages in this case. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 234–35 (D.C.Cir.2003) (concluding that MOIS is equivalent to the foreign state of Iran itself, and denying punitive damages); *see also* 1/19/05 Tr. at 25:9–20 (Dr. Tefft likens the MOIS to the CIA). As to the third relevant defendant, the IRGC, this determination is a bit more difficult. The *Roeder* court set down a categorical approach for determining if an entity should be considered the foreign state itself for the purposes of the FSIA: “if the core functions of the entity are governmental, it is considered the foreign state itself; if commercial, the entity is an agency or instrumentality of the foreign state.” *Id.* at 234. This Court, in a decision entered prior to the D.C. Circuit's ruling in *Roeder*, concluded—in rather summary fashion—that the IRGC could not be considered to be the state of Iran, and was instead its agent or instrumentality; as such, the Court concluded that punitive damages against the IRGC were appropriate. *See Higgins v. Islamic Republic of Iran*, Civ. No. 99–0377(CKK), 2000 WL 33674311, at *7 (D.D.C. Sept.21, 2000) (Kotelly, J.). However, the D.C. Circuit's strict dichotomy outlined in *Roeder* and its determination that “[a] nation's armed forces are clearly on the governmental side” compels the Court to re-examine its conclusion vis-à-vis the IRGC as stated in *Higgins*. Given the contours of *Roeder*, an analysis of the factual testimony presented in this case regarding the IRGC is in order.

At trial, Dr. Tefft described the IRGC, i.e., the Iranian Revolutionary Guard Corps, in this manner:

There were a couple of Iranian governmental, quasi-governmental departments involved with this [bombing]. The Iranian Revolutionary Guard Corps is a—it's a paramilitary organization. It's an organization that probably does not have a counterpart in the Western world, *per se*. The closest metaphor I could give you probably would be the Brown Shirts, the SA of the Nazi Party during World War II. This is the personal party militia of the Islamic Party and the Supreme Leader of Iran, the Ayatollah. He set it up to guard the revolution. The Ayatollah and the religious government that is—was and is currently in Iran took power in 1979, and they overthrew the shah of Iran at that time and not—and did not completely trust—did not trust at all the existing government, the department of defense, the security services and that sort of thing.

So to protect themselves against a counterrevolution, they set up their own parallel shadow military force and that's the revolutionary guard corps. It numbers about 500,000 troops and is not as heavily armed as a regular military, i.e., it doesn't have a lot of tanks and missiles and that sort of thing. It's basically a light infantry force, but it is a large force and it is the main body guard of the Islamic Party and the ruling mullahs. It is not subject to the Ministry of Defense or the regular Iranian army.

1/19/05 Tr. at 24:3–25:8. Based upon these facts, Plaintiffs contend that “[r]ooted in Islamic fundamentalist zeal, the core functions of the IRGC are to export the theology and ‘revolution’ of religious fanatics by violent means. The IRGC is therefore clearly not a ‘political subdivision’ of Iran and punitive damages should be awarded....” Pl.'s Post-Trial Mem. of Law Responding to Court's Order at 17.

Two recent cases have dealt with the issue of the IRGC in the post-*Roeder* era. *32 In *Salazar*, Judge Bates recognized that the IRGC does not easily fit into *Roeder's* “dichotomy of government entities with primarily governmental or commercial functions,” but ultimately concluded that “in its primarily military function and close association with MOIS, the IRGC is more like an ‘armed force’ under the ultimate command of the leadership of the Iranian government (if not is political functionaries), than like a commercial agency or instrumentality of the state.” *Salazar*, 370 F.Supp.2d at 116. According to the *Salazar* court, “[t]he IGC's mission is thus difficult to distinguish from the MOIS: both promulgated Islamist revolution in Lebanon on behalf of the revolutionary Iranian government, and the two shared operational responsibilities in preparing for the Embassy bombing and other terrorist activities.” *Id.* Finding “no meaningful distinction between the two organs for purposes of FSIA's punitive damages regime,” the *Salazar* court declined plaintiff's efforts to obtain punitive damages against the IRGC. *Id.* Similarly, in

Welch v. Islamic Republic of Iran, Civ. No. 01–863(CKK), 2004 WL 2216534 (D.D.C. Sept.27, 2004) (Kay, J.), Magistrate Judge Alan Kay concluded that the IRGC's core functions were analogous to those of the MOIS and concluded that the IRGC was “a political subdivision of Iran.” *Id.* at *5.

Given the strict dichotomy set down by *Roeder*, the Court joins with the *Salazar* and *Welch* courts in concluding that Plaintiffs may not obtain punitive damages against the IRGC. However, the Court is much more hesitant than these courts to conclude that the IRGC is actually equivalent to “the foreign state itself”—i.e., Iran. Rather, from a historical and factual perspective, the IRGC—like the Brown Shirts—appears to be a true “instrumentality” of the dominant party of the state, used by the government and its officials in largely “illegal,” paramilitary, and *sub rosa* activities to supplement the goals of its official agencies and foreign policy needs. However, *Roeder's* reading of Section 1606, which is binding on this Court, essentially subverts the natural reading of “agency or instrumentality thereof.” By limiting “agency or instrumentality” only to commercial entities, the *Roeder* court ensured that punitive damages cannot be obtained against organizations such as the IRGC. However, perhaps overlooked by the *Roeder* court, suits against commercial entities—i.e., “non-governmental” entities—likely would not implicate the FSIA or its concerns in the first instance. Instead, a lawsuit against a foreign commercial entity would have to look outside of the FSIA and Sections 1605 through 1607 for its jurisdictional hook. As such, through its narrow reading of Section 1606 in general, and “agency or instrumentality” in particular, the *Roeder* court has essentially read the phrase “agency or instrumentality” out of Section 1606 and deprived FSIA plaintiffs the kind of deterrent, punitive damages envisioned by Congress when it enacted Section 1605(a)(7), the Flatow Amendment, and Section 1606.¹⁴ Indeed, Plaintiffs here are left in a rather peculiar situation legally: while Kentucky law, which provides the basis for their causes-of-action, allows for punitive damages for their claims, Plaintiffs cannot recover punitive damages against any Defendant in this case, even when one of the defendants is a paramilitary organization serving a party—not the state itself—and exists outside of the control of *33 the regular military. However, bound by the D.C. Circuit's reading of the relevant statute, the Court concludes that Plaintiffs may not obtain punitive damages as a form of redress in this case.

C. Damages

As set forth previously, *see supra* Section IV(B), Plaintiff Donna Holland may recover under a wrongful death action against Iran, the MOIS, and the IRGC—with one-half of the total wrongful death recovery going to her, and the other half going to her children with Robert, James and Chad Holland. Moreover, James and Chad Holland are also provided with another cause-of-action by Kentucky law—loss of parental consortium—and therefore they may also be compensated for the fifteen and seventeen years of parental love and affection lost when the defendants effectuated their terrorist attack that killed Robert Holland on October 23, 1983.¹⁵ Kentucky law provides no redress for Robert's parents, Charles and Rosemary Holland, or his brother, Patrick Holland, in these circumstances. Moreover, Plaintiffs cannot obtain punitive damages against the defendants in this case.

To obtain damages against a non-immune foreign state under the FSIA, a plaintiff must prove that the consequences of the foreign state's conduct were “‘reasonably certain’ (i.e., more likely than not) to occur, and must prove the amount of damages by a ‘reasonable estimate’ consistent with this [Circuit's] application of the American rule on damages.” *Hill v. Republic of Iraq*, 328 F.3d 680, 681 (D.C.Cir.2003); *see also Salazar*, 370 F.Supp.2d at 115–16; *Price*, 384 F.Supp.2d at 134. Here, it was reasonably certain that Robert Holland's death and the attendant suffering of his family would occur given the defendants' actions. The evidence adduced at trial in this case shows conclusively that Defendants Iran, the MOIS, and the IRGC were engaged in a deliberate and unfortunately successful campaign to destroy the U.S. Marine barracks, cause the massive loss of American lives, and compel the United States to withdraw from Lebanon. Furthermore, Plaintiffs' expert generated a reasonable estimate of Plaintiffs' damages based on well-reasoned assessments of Robert Holland's lost salary and earning potential.

In terms of pure financial compensation, Dr. Jerome S. Paige testified about the lost earnings to the Holland family caused by Robert's premature death. *See* 1/19/05 Tr. at 156:5–171:17. Using a methodology that this Court concludes is reliable, Dr. Paige set out two possible present value incomes for the Court's consideration. *See* Pl.'s Ex. 22 (Economic Loss Data submitted by Dr. Jerome S. Paige). The first possibility, representing a present value amount of \$1,019,735, was based on essentially “a plain-vanilla generic set of assumptions that relate to anybody who might have ... [Robert Holland's] age, his race, his educational

attainment of two years in college....” 1/19/05 Tr. at 169:1–9; 170:15–22. This figure was based on “Federal data collected by the U.S. Department of Labor, Bureau of Labor Statistics, and ... a survey which is referred to as the current population survey.” 1/19/05 Tr. at 160:10–19. The second possibility, representing a present value amount of \$1,241,486,

takes into account [Robert Holland's] exact position in the military, it makes the assumption that he would have been accepted into the commissioned officer *34 training program that he had applied for at the time, that he would have completed his military career in 20 years altogether, ... [and] would have received a pension from that military career ... and would have gotten a job in the regular civilian workforce commensurate with his training in the military up to that point.

1/19/05 Tr. at 169:22–170:14, 170:23–171:11. Upon a review of the two possibilities before it, the Court concludes that the second figure—\$1,241,486—more accurately and precisely reflects the lost earnings caused by Robert's murder that would have otherwise accrued to the Holland family. As such, under a pure “lost earnings” subdivision to the compensatory damages due Plaintiffs Donna, James, and Chad Holland under their wrongful death cause-of-action, the Court concludes that they are entitled to \$1,241,486 in damages.

Unfortunately for Plaintiffs, recovery under the wrongful death cause-of-action in Kentucky is inherently limited.

The damages recoverable in the wrongful death action have been clearly defined and limited almost from its inception. The damages are such sum as will fairly and reasonably compensate the decedent's estate for the destruction of the decedent's earning power, and do *not* include the affliction which has overcome the family by reason of the wrongful death.

Dep't of Educ. v. Blevins, 707 S.W.2d 782, 783 (Ky.1986) (emphasis in original) (citing cases); *Rivas v. Doering*, Civ. No. 01–346(H), 2002 WL 1313127, at *2 (W.D.Ky. May 22, 2002) (same); see also *Bogges*, 2005 WL 1385943, at *4 (“the wrongful death action is a cause of action that inures to the benefit of decedent's estate, as a result of, not the person injury suffered by the *decedent*, but rather, injuries to his estate caused by his wrongful death”) (quoting *Jaco v. Bloechle*, 739 F.2d 239, 242 (6th Cir.1984)). Accordingly, because Plaintiff Donna Holland has no other viable cause-of-action outside of her wrongful death claim, and her wrongful death claim allows for no further damages outside of Robert Holland's lost earnings, her damage award is therefore complete. The Court therefore awards her one-half of the \$1,241,486 owed to Robert Holland's estate under Kentucky law—i.e., \$620,743. Pursuant to Kentucky state law, see Ky.Rev.Stat. 411.130(2)(b), Plaintiffs James and Chad Holland are to share equally in the other one-half of the award—i.e., \$310,371.50 each in compensatory damages for their father's wrongful death.

As set forth above, Plaintiffs James and Chad Holland also have a separate cause-of-action against the relevant defendants—loss of parental consortium as set forth in the *Giuliani* decision. Unlike a wrongful death action or a spouse's claim for loss of consortium, the Kentucky loss of parental consortium cause-of-action contains no inherent limitations on damages. See *Charash v. Johnson*, 43 S.W.3d 274, 279 (Ky.App.2000) (“the claim for loss of parental consortium does not end at the parent's death”). Plaintiffs James and Chad Holland assert that the evidence submitted and legal principles underlying their case supports the separate awards of \$12,000,000 each in compensatory damages “for loss of consortium and solatium” caused by the defendants' malfeasance. See Pl.'s Post-Trial Mem. of Law Responding to Court's Order at 18. Such a request is relatively in-line with previous FSIA precedents. See, e.g., *Salazar*, 370 F.Supp.2d at 117 (awarding victim's daughter, who was 13 months old at the time of her father's death in the 1983 U.S. Embassy bombing in Beirut, \$5 million for intentional infliction of emotional distress and loss of consortium, and awarding her *35 widowed mother \$10 million in damages for the same claims).

At the time of Robert Holland's death, his oldest son James was roughly three and one-half years old, having been born on February 2, 1980, *see* 1/19/05 Tr. at 73:7–13, and his youngest son Chad was a little over one year old, having been born in August 1982, *see* 1/19/05 Tr. at 91:6–24. In this case, the actions of Defendants Iran, the MOIS, and the IRGC robbed James and Chad of a father at any extremely young age, a loss that was exceedingly detrimental to their upbringing and well-being. The record is rife with information regarding Donna Holland's struggle to support two young sons, their behavioral problems caused—in part—by the lack of a father figure, the fact that their growth and development was stunted by the loss of the one person who could have brought out their artistic abilities and strengths in writing, and their struggles to define themselves and overcome life-long depression while growing up without the love of their father. *See* 1/19/05 Tr. at 103:20–114:11, 143:15–145:22. All evidence in the record indicates that Robert was—and would have been—an exceptional and attentive father; indeed, Robert, given his training as a corpsman, was able to take the primary responsibility in actually delivering Chad in the hospital. *See* 1/19/05 Tr. at 91:18–92:1. Given the present record, the Court concludes that an award of \$12,000,000 each is also appropriate to James and Chad Holland as compensation for the loss of parental consortium that they suffered due to the actions of Defendants' on October 23, 1983.

D. Pleading Deficiencies

Although Plaintiffs suggested a variety of different sources of law for their claims in the briefs, none of these sources appear in their First Amended Complaint. There, Plaintiffs only reference the generic torts of wrongful death and solatium, and request punitive damages; Plaintiffs do not explain if these are common law or statutory claims, and do not identify a specific source of law for any of their claims. *See generally* Pl.'s First Am. Compl. In their briefing, however, Plaintiffs offered a number of “coherent alternatives,” and one of them—state common and statutory law—is viable as the source of the claims made by Donna, James, and Chad Holland. Following in the footsteps of *Dammarell II*, 2005 WL 756090 at *32, *Cicippio–Puleo*, 353 F.3d at 1036, *Simpson v. Socialist People's Libyan Arab Jamahiriya*, 362 F.Supp.2d 168, 183 (D.D.C.2005), and *Welch*, 2004 WL 2216534, at *4, the Court shall grant Plaintiffs' leave to amend their First Amended Complaint pursuant to Federal Rule of Civil Procedure 15(b) to explicitly incorporate Kentucky state law and the sustainable causes-of-action arising under it. In doing so, the Court notes that judgment for Plaintiffs Donna, James, and Chad Holland shall be contingent upon their filing of a Second Amended Complaint that adequately identifies their causes-of-action and the legal basis for those claims.

V: CONCLUSION

For the reasons set forth above, the Court enters judgment for Plaintiffs Donna, James, and Chad Holland against Defendants Iran, the MOIS, and the IRGC in the amounts specified in Section IV(c), subject to an amendment of Plaintiffs' First Amended Complaint setting forth in greater specificity Plaintiffs' causes-of-action that must be filed by Monday, November 14, 2005. An Order accompanies this Memorandum Opinion.

All Citations

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Footnotes

- 1 Donna Holland is acting as a plaintiff in this case both as an individual and as the Administrator of Robert Holland's estate.
- 2 Indeed, the United States Navy listed “terrorist bombing” rather than “killed in action” as the “circumstances surrounding death due to external cause” on its Record of Identification Processing for Robert Holland, indicating the non-combatant nature of the U.S. force. *See* Pl.'s Ex. 15 (Holland Record of Identification Processing).
- 3 In response to these efforts and the October 23, 1983 Marine barracks attack, the United States designated Iran as a state sponsor of terrorism pursuant to Section 6(h) of the Export Administration Act of 1979, 50 U.S.C. app. § 2405(j).
- 4 “Hezbollah,” a translation based on an Arabic word meaning “the party of God,” may also be spelled “Hizbollah,” “Hizbullah,” “Hizballah,” “Hezbollah,” and “Hizb Allah.”

- 5 This simultaneous attack took place approximately eight minutes after the attack on the U.S. Marine barracks on October 23, 1983. While this vehicle was disguised as the delivery truck that brought vegetables to the French soldiers stationed there for their daily meals, its driver was shot and killed before the vehicle could enter the barracks. However, the explosive device on this truck was detonated by remote control, killing fifty-six French soldiers.
- 6 Robert's oldest son, James Holland, was born on February 2, 1980, *see* 1/19/05 Tr. at 73:7–13, and his youngest son, Chad Holland, was born in August 1982, *see* 1/19/05 Tr. at 91:6–24. Accordingly, at the time of Robert Holland's death, James was roughly three and one-half years old, and Chad was a little over one year old. Robert's wife, Donna Holland, was born in 1960, *see* 1/19/05 Tr. at 65:12–18, and was only twenty-three years old at the time of his death.
- 7 Under this analysis, the law of Iran would be equally inapplicable.
- 8 Chad Holland, Robert's other son, had not yet been born at the time of the move. 1/19/05 Tr. at 91:6–17.
- 9 While technically Robert Holland lived in Rantoul, Illinois, from January 1981 to April 1981, *see* Pl.'s Ex. 11 (Enlisted Commissioning Program Application), he had spent almost all of the previous five years in Kentucky and was only in Illinois for his wife's basic training in the Air Force, *see* 1/19/05 Tr. at 75:2–78:20. Donna Holland was honorably discharged from the Air Force pursuant to the Air Force's "breach of contract" on April 7, 1981, removing the need for the Holland family to stay in Illinois. *Id.* Given these facts, it is clear that Robert Holland could not be considered a legal resident of Illinois during his time in the U.S. Navy.
- 10 Section 241 of the 1890 Constitution laid the groundwork for Section 411.130 by providing:
- Recovery for wrongful death—Whenever the death of a person shall result from an injury inflicted by negligence or wrongful act, then, in every case, damages may be recovered for such death, from the corporations and persons so causing the same. Until otherwise provided by the law, the action to recover such damages in all cases shall be prosecuted by the personal representative of the deceased person. The General Assembly may provide how the recovery shall go and to whom belong; and until such provision is made, the same shall form part of the personal estate of the deceased person.
- 11 The statute of limitations problems inherent in Section 411.130, *see* Ky.Rev.Stat. §§ 44.110(3), 413.180, are overcome by equitable tolling and the 10 year extension granted by the 1996 enactment of Section 1605(f). *See* 28 U.S.C. § 1605(f).
- 12 The *Estate of Presley* court predicted that the Kentucky Supreme Court would not use the reasoning in *Giuliani* to extend spousal recovery for loss of consortium after death. As such, it reaffirmed the traditional limitations that would prevent recovery by Donna Holland under this theory. *See Estate of Presley*, 2004 WL 1179448, at *2–*3.
- 13 Even if Kentucky had adopted Section 46(2), in all likelihood Plaintiffs would still be without a cause-of-action for intentional infliction of emotional distress, as "recovery under this theory is typically limited to circumstances in which a plaintiff *observes* a sudden, traumatic injury to a family member." *Mineer*, 82 F.Supp.2d at 707 n. 6 (citations and internal quotation marks omitted). Here, no Plaintiff observed the actual bombing.
- 14 Under the *Roeder* court's reading of Section 1606, the Court finds it difficult to conceive of a situation where a plaintiff could ever gain punitive damages against an FSIA defendant, even though Section 1606 clearly contemplates such damages. Such a reading appears to be contrary to the plain intent of Congress.
- 15 The age of majority in Kentucky is eighteen, except with respect to alcohol and the care and treatment of children with disabilities, for whom the age of majority is twenty-one. *See* Ky.Rev.Stat. § 2.015 (Baldwin 1994).

ANNEX 39

U.S. DEPARTMENT OF THE TREASURY

Press Center

Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism

10/25/2007

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hp-644

The U.S. Government is taking several major actions today to counter Iran's bid for nuclear capabilities and support for terrorism by exposing Iranian banks, companies and individuals that have been involved in these dangerous activities and by cutting them off from the U.S. financial system.

Today, the Department of State designated under Executive Order 13382 two key Iranian entities of proliferation concern: the Islamic Revolutionary Guard Corps (IRGC; aka Iranian Revolutionary Guard Corps) and the Ministry of Defense and Armed Forces Logistics (MODAFL). Additionally, the Department of the Treasury designated for proliferation activities under E.O. 13382 nine IRGC-affiliated entities and five IRGC-affiliated individuals as derivatives of the IRGC, Iran's state-owned Banks Melli and Mellat, and three individuals affiliated with Iran's Aerospace Industries Organization (AIO).

The Treasury Department also designated the IRGC-Qods Force (IRGC-QF) under E.O. 13224 for providing material support to the Taliban and other terrorist organizations, and Iran's state-owned Bank Saderat as a terrorist financier.

Elements of the IRGC and MODAFL were listed in the Annexes to UN Security Council Resolutions 1737 and 1747. All UN Member States are required to freeze the assets of entities and individuals listed in the Annexes of those resolutions, as well as assets of entities owned or controlled by them, and to prevent funds or economic resources from being made available to them.

The Financial Action Task Force, the world's premier standard-setting body for countering terrorist financing and money laundering, recently highlighted the threat posed by Iran to the international financial system. FATF called on its members to advise institutions dealing with Iran to seriously weigh the risks resulting from Iran's failure to comply with international standards. Last week, the Treasury Department issued a warning to U.S. banks setting forth the risks posed by Iran. (For the text of the Treasury Department statement see: http://www.fincen.gov/guidance_fi_increasing_mlt_iranian.pdf.) Today's actions are consistent with this warning, and provide additional information to help financial institutions protect themselves from deceptive financial practices by Iranian entities and individuals engaged in or supporting proliferation and terrorism.

Effect of Today's Actions

As a result of our actions today, all transactions involving any of the designees and any U.S. person will be prohibited and any assets the designees may have under U.S. jurisdiction will be frozen. Noting the UN Security Council's grave concern over Iran's nuclear and ballistic missile program activities, the United States also encourages all jurisdictions to take similar actions to ensure full and effective implementation of UN Security Council Resolutions 1737 and 1747.

Today's designations also notify the international private sector of the dangers of doing business with three of Iran's largest banks, as well as the many IRGC-affiliated companies that pervade several basic Iranian industries.

Proliferation Finance – Executive Order 13382 Designations

E.O. 13382, signed by the President on June 29, 2005, is an authority aimed at freezing the assets of proliferators of weapons of mass destruction and their supporters, and at isolating them from the U.S. financial and commercial systems. Designations under the Order prohibit all transactions between the designees and any U.S. person, and freeze any assets the designees may have under U.S. jurisdiction.

The Islamic Revolutionary Guard Corps (IRGC): Considered the military vanguard of Iran, the Islamic Revolutionary Guard Corps (IRGC; aka Iranian Revolutionary Guard Corps) is composed of five branches (Ground Forces, Air Force, Navy, Basij militia, and Qods Force special operations) in addition to a counterintelligence directorate and representatives of the Supreme Leader. It runs prisons, and has

numerous economic interests involving defense production, construction, and the oil industry. Several of the IRGC's leaders have been sanctioned under UN Security Council Resolution 1747.

The IRGC has been outspoken about its willingness to proliferate ballistic missiles capable of carrying WMD. The IRGC's ballistic missile inventory includes missiles, which could be modified to deliver WMD. The IRGC is one of the primary regime organizations tied to developing and testing the Shahab-3. The IRGC attempted, as recently as 2006, to procure sophisticated and costly equipment that could be used to support Iran's ballistic missile and nuclear programs.

Ministry of Defense and Armed Forces Logistics (MODAFL): The Ministry of Defense and Armed Forces Logistics (MODAFL) controls the Defense Industries Organization, an Iranian entity identified in the Annex to UN Security Council Resolution 1737 and designated by the United States under E.O. 13382 on March 30, 2007. MODAFL also was sanctioned, pursuant to the Arms Export Control Act and the Export Administration Act, in November 2000 for its involvement in missile technology proliferation activities.

MODAFL has ultimate authority over Iran's Aerospace Industries Organization (AIO), which was designated under E.O. 13382 on June 28, 2005. The AIO is the Iranian organization responsible for ballistic missile research, development and production activities and organizations, including the Shahid Hemmat Industries Group (SHIG) and the Shahid Bakeri Industries Group (SBIG), which were both listed under UN Security Council Resolution 1737 and designated under E.O. 13382. The head of MODAFL has publicly indicated Iran's willingness to continue to work on ballistic missiles. Defense Minister Brigadier General Mostafa Mohammad Najjar said that one of MODAFL's major projects is the manufacturing of Shahab-3 missiles and that it will not be halted. MODAFL representatives have acted as facilitators for Iranian assistance to an E.O. 13382-designated entity and, over the past two years, have brokered a number of transactions involving materials and technologies with ballistic missile applications.

Bank Melli, its branches, and subsidiaries: Bank Melli is Iran's largest bank. Bank Melli provides banking services to entities involved in Iran's nuclear and ballistic missile programs, including entities listed by the U.N. for their involvement in those programs. This includes handling transactions in recent months for Bank Sepah, Defense Industries Organization, and Shahid Hemmat Industrial Group. Following the designation of Bank Sepah under UNSCR 1747, Bank Melli took precautions not to identify Sepah in transactions. Through its role as a financial conduit, Bank Melli has facilitated numerous purchases of sensitive materials for Iran's nuclear and missile programs. In doing so, Bank Melli has provided a range of financial services on behalf of Iran's nuclear and missile industries, including opening letters of credit and maintaining accounts.

Bank Melli also provides banking services to the IRGC and the Qods Force. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services. From 2002 to 2006, Bank Melli was used to send at least \$100 million to the Qods Force. When handling financial transactions on behalf of the IRGC, Bank Melli has employed deceptive banking practices to obscure its involvement from the international banking system. For example, Bank Melli has requested that its name be removed from financial transactions.

Bank Mellat, its branches, and subsidiaries: Bank Mellat provides banking services in support of Iran's nuclear entities, namely the Atomic Energy Organization of Iran (AEOI) and Novin Energy Company. Both AEOI and Novin Energy have been designated by the United States under E.O. 13382 and by the UN Security Council under UNSCRs 1737 and 1747. Bank Mellat services and maintains AEOI accounts, mainly through AEOI's financial conduit, Novin Energy. Bank Mellat has facilitated the movement of millions of dollars for Iran's nuclear program since at least 2003. Transfers from Bank Mellat to Iranian nuclear-related companies have occurred as recently as this year.

IRGC-owned or -controlled companies: Treasury is designating the companies listed below under E.O. 13382 on the basis of their relationship to the IRGC. These entities are owned or controlled by the IRGC and its leaders. The IRGC has significant political and economic power in Iran, with ties to companies controlling billions of dollars in business and construction and a growing presence in Iran's financial and commercial sectors. Through its companies, the IRGC is involved in a diverse array of activities, including petroleum production and major construction projects across the country. In 2006, Khatam al-Anbiya secured deals worth at least \$7 billion in the oil, gas, and transportation sectors, among others.

- Khatam al-Anbiya Construction Headquarters
- Oriental Oil Kish
- Ghorb Nooh
- Sahel Consultant Engineering
- Ghorb-e Karbala
- Sepasad Engineering Co
- Omran Sahel
- Hara Company
- Gharargahe Sazandegi Ghaem

IRGC Individuals: Treasury is designating the individuals below under E.O. 13382 on the basis of their relationship to the IRGC. One of the five is listed on the Annex of UNSCR 1737 and the other four are listed on the Annex of UNSCR 1747 as key IRGC individuals.

- General Hosein Salimi, Commander of the Air Force, IRGC
- Brigadier General Morteza Rezaie, Deputy Commander of the IRGC
- Vice Admiral Ali Akhbar Ahmadian, Most recently former Chief of the IRGC Joint Staff
- Brigadier Gen. Mohammad Hejazi, Most recently former Commander of Bassij resistance force
- Brigadier General Qasem Soleimani, Commander of the Qods Force

Other Individuals involved in Iran's ballistic missile programs: E.O. 13382 derivative proliferation designation by Treasury of each of the individuals listed below for their relationship to the Aerospace Industries Organization, an entity previously designated under E.O. 13382. Each individual is listed on the Annex of UNSCR 1737 for being involved in Iran's ballistic missile program.

- Ahmad Vahid Dastjerdi, Head of the Aerospace Industry Organization (AIO)
- Reza-Gholi Esmaili, Head of Trade & International Affairs Dept., AIO
- Bahmanyar Morteza Bahmanyar, Head of Finance & Budget Department, AIO

Support for Terrorism -- Executive Order 13224 Designations

E.O. 13224 is an authority aimed at freezing the assets of terrorists and their supporters, and at isolating them from the U.S. financial and commercial systems. Designations under the E.O. prohibit all transactions between the designees and any U.S. person, and freeze any assets the designees may have under U.S. jurisdiction.

IRGC-Qods Force (IRGC-QF): The Qods Force, a branch of the Islamic Revolutionary Guard Corps (IRGC; aka Iranian Revolutionary Guard Corps), provides material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC).

The Qods Force is the Iranian regime's primary instrument for providing lethal support to the Taliban. The Qods Force provides weapons and financial support to the Taliban to support anti-U.S. and anti-Coalition activity in Afghanistan. Since at least 2006, Iran has arranged frequent shipments of small arms and associated ammunition, rocket propelled grenades, mortar rounds, 107mm rockets, plastic explosives, and probably man-portable defense systems to the Taliban. This support contravenes Chapter VII UN Security Council obligations. UN Security Council resolution 1267 established sanctions against the Taliban and UN Security Council resolutions 1333 and 1735 imposed arms embargoes against the Taliban. Through Qods Force material support to the Taliban, we believe Iran is seeking to inflict casualties on U.S. and NATO forces.

The Qods Force has had a long history of supporting Hizballah's military, paramilitary, and terrorist activities, providing it with guidance, funding, weapons, intelligence, and logistical support. The Qods Force operates training camps for Hizballah in Lebanon's Bekaa Valley and has reportedly trained more than 3,000 Hizballah fighters at IRGC training facilities in Iran. The Qods Force provides roughly \$100 to \$200 million in funding a year to Hizballah and has assisted Hizballah in rearming in violation of UN Security Council Resolution 1701.

In addition, the Qods Force provides lethal support in the form of weapons, training, funding, and guidance to select groups of Iraqi Shi'a militants who target and kill Coalition and Iraqi forces and innocent Iraqi civilians.

Bank Saderat, its branches, and subsidiaries: Bank Saderat, which has approximately 3200 branch offices, has been used by the Government of Iran to channel funds to terrorist organizations, including Hizballah and EU-designated terrorist groups Hamas, PFLP-GC, and Palestinian Islamic Jihad. For example, from 2001 to 2006, Bank Saderat transferred \$50 million from the Central Bank of Iran through its subsidiary in London to its branch in Beirut for the benefit of Hizballah fronts in Lebanon that support acts of violence. Hizballah has used Bank Saderat to send money to other terrorist organizations, including millions of dollars on occasion, to support the activities of Hamas. As of early 2005, Hamas had substantial assets deposited in Bank Saderat, and, in the past year, Bank Saderat has transferred several million dollars to Hamas.

ANNEX 40

459 F.Supp.2d 40
United States District Court,
District of Columbia.

Paul Alexander BLAIS, et al., Plaintiffs,
v.
ISLAMIC REPUBLIC OF IRAN, et al., Defendants.

Civil Action No. 02–285(RCL).
|
Sept. 29, 2006.

Judgment entered.

Attorneys and Law Firms

*45 Joshua M. Ambush, Law Offices Joshua M. Ambush, Baltimore, MD, Paul Gaston, Law Offices of Paul G. Gaston, Washington, DC, for Plaintiffs.

Synopsis

Background: American serviceman injured in terrorist bombing on a U.S. military base in Saudi Arabia, and his parents, brought action under Foreign Sovereign Immunities Act (FSIA) against the Islamic Republic of Iran (Iran), its Ministry of Intelligence and Security (MOIS), and the Islamic Revolutionary Guard Corps (IRGC), alleging that they provided material support and assistance to the organization that carried out the bombing.

Holdings: Upon motion for default judgment, the District Court, [Lamberth, J.](#), held that:

Iran, MOIS, and IRGC came within FSIA's state-sponsored terrorism exception to immunity from liability for their role in bombing;

Florida law applied to serviceman's claims;

Virginia law applied to claims of serviceman's parents;

under Florida law, serviceman was entitled, under theory of vicarious liability, to recovery for battery;

serviceman's parents were entitled to recover for intentional infliction of emotional distress under Virginia law;

under Florida law, serviceman was entitled to recover damages in amount of \$21,801,792 for lost wages and pain and mental anguish; and

under Virginia law, appropriate damages awards for mental anguish and suffering of serviceman's parents were \$3.5 million each.

MEMORANDUM OPINION

[LAMBERTH](#), District Judge.

BACKGROUND

These actions arise from the June 25, 1996 bombing at Khobar Towers, a residence on a United States military base in Dhahran, Saudi Arabia. Plaintiffs allege that the Islamic Republic of Iran ("Iran"), the Iranian Minister of Intelligence and Security ("MOIS"), and the Iranian Islamic Revolutionary Guard Corp ("IRGC" or "the Paskaran") are liable for damages from the attack because they provided material support and assistance to Hezbollah, the terrorist organization that orchestrated and carried out the bombing.¹ Plaintiffs have relied upon causes of action founded upon provisions of the Foreign Sovereign Immunities Act ("FSIA"), *inter alia*, [28 U.S.C. § 1605\(a\)\(7\)](#).

PROCEDURAL HISTORY

On February 13, 2002, plaintiffs filed their original complaint seeking redress for their losses under FSIA. On October 1, 2002, Plaintiffs filed an amended complaint adding plaintiffs Curtis A. Taylor and Maria Taylor, and Thaddeus Fenning.² On January 29, 2003, return of service of summons *46 and complaint on defendants

Iran, MOIS and the IRGC was executed on January 13, 2003. Later in the year, on July 22, 2003, plaintiffs filed a second amended complaint, which was served on defendants via diplomatic channels on February 2, 2004, with an Answer due February 23, 2004. After defendants failed to respond, default was entered against them on July 29, 2004.

On January 12, 2005, in light of recent decisions by the Court of Appeals for this Circuit, this Court subsequently denied Entry of Default against defendants. After an Order of this Court directing plaintiffs to show cause why the complaint should not be dismissed as to those named defendants who had not yet been served at that time, this Court entered an Order dismissing the complaint without prejudice as to defendants Hizballah, Ayatollah Ali Hoseini Khamenei, Ali Akbar Mohtashemi, Osama Bin Laden, and Ali Akbar Hashemi-Rafsanjani.

Plaintiffs subsequently filed their third amended complaint against the remaining three defendants: Iran, MOIS, and the IRGC.³ As compared to the initial complaint, the third amended complaint served to put the remaining defendants on notice that the claims sought by plaintiffs were grounded in state substantive law as well as in the federal statutory scheme. It also sought redress from only those three defendants who had been served. Even were these changes characterized as substantive Iran, the MOIS and the IRGC had fair notice of the allegations and relief sought, because the changes to the third amended complaint were not substantial. See *Dammarell v. Islamic Republic of Iran*, 370 F.Supp.2d 218, 225 (D.D.C.2005) (Bates, J.) (noting that only “additions to a complaint [which are] substantial” might warrant the service of an amended complaint). Accordingly, this Court will not require plaintiff to serve the amended complaint. Based on all of the evidence presented, the Court makes the following findings of fact and conclusions of law and will, consistent with them, enter default judgment in favor of plaintiffs and against defendants Iran, MOIS, and the IRGC.

FINDINGS OF FACT

1. Plaintiff Paul Blais was born on June 24, 1970, and had just celebrated his 26th birthday the day before the attack on the Khobar Towers. He was and is a United States citizen, and resides today in Hampton, Virginia, in the same house as his parents, Curtis and Maria Taylor. Tr. 101–02; 110.⁴

2. Mr. Blais had served about four and a half years in the United States Air Force after enlisting in October 1991. Tr. 104. He was stationed at Patrick Air Force Base in Cocoa Beach Florida when he was sent to perform a ninety day rotation of duty in Saudi Arabia. Tr. 107–08. He was trained and served as an airborne search and rescue coordinator who had the responsibility to coordinate and direct the recovery efforts for any downed air crew members. Tr. 106.

3. He was assigned as a permanent member of an aircrew that included four other airmen, all with specialized and well-defined duties. Tr. 108–09.

*47 4. The United States military presence in Saudi Arabia was with the consent of that host country. Ex. 14 at 3. It was part of a coalition of forces, primarily from the United States, Great Britain, and France, that was charged with monitoring Iraq’s compliance with United Nations Security Council resolutions enforcing the cease-fire that had brought an end to the 1991 “Desert Storm” ejection of Iraqi occupying forces from Kuwait. *Id.* at 3–4; Tr. at 40–41.

5. The deployment of U.S. troops to the region was considered a peacetime deployment within a friendly host country. Tr. at 42–43. Blais’s unit engaged in routine peace time operations, such as practice runs and transfer of personnel. Tr. at 111.

6. Blais held a pilot’s license and had amassed sufficient flying time to qualify for certification as a commercial pilot. Tr. 104, Ex. 20. He was ready to take the commercial flying certification examinations. Tr. 104, 99.

7. From his earliest days that he could remember, Blais had always wanted to be an airline pilot. Tr. 104; 98–99. He loved flying and joined the Air Force because of his love of flying. Tr. 104.

8. As a young man, he had been active, athletic, and popular, with many friends and an active social life. Tr. 139, 118. He was an accomplished skier and snowboarder, and enjoyed many other active and demanding sports as well. Tr. 103, 98.

9. He had worked as a radio announcer throughout his late teens and prior to enlisting with the Air Force. He had a “radio-quality” voice. Tr. 98.

10. Defendant Iran “is a foreign state and has been designated a state sponsor of terrorism pursuant to section 69(j) of the Export Administration Act of 1979 (50 U.S.C.A. § 2405(j)) continuously since January 19, 1984.” *Flatow v. Islamic Republic of*

Iran, 999 F.Supp. 1, 11, (D.D.C.1998) (Lamberth, J.).

11. Defendant the IRGC is a non-traditional instrumentality of Iran. It is the military arm of a kind of shadow government answering directly to the Ayatollah and the mullahs who hold power in Iran. It is similar to the Nazi party's SA organization prior to World War II. The IRGC actively supports terrorism as a means of protecting the Islamic revolution that brought the Ayatollah to power in Iran in 1979. It has its own separate funding sources, derived from confiscation of the assets of the former Shah of Iran in 1979, when the Shah was deposed. Tr. 15–17; Ex. 11.

12. The Khobar Towers was a residential complex in Dhahran, Saudi Arabia, which housed the coalition forces charged with monitoring compliance with U.N. security council resolutions. Tr. 41.

The Attack on the Khobar Towers

13. At approximately 10 minutes before 10 pm on June 25, 1996, a large gasoline tanker truck pulled up alongside the perimeter wall of the Khobar Towers complex. The driver jumped out, ran into a waiting car that had pulled up near the truck, and sped off. Tr. 9–10.

14. Although security guards near the top of Building 131 started to give warnings about the unusual vehicle location, the truck exploded with great force within about 15 minutes. The investigation determined that the force of the explosion was the equivalent *48 of 20,000 pounds of TNT. The Defense Department said that it was the largest non-nuclear explosion ever up to that time. Tr. 10.

15. The explosion sheared off the face of Building 131, where Paul Blais and his crewmates were housed, and reduced most of it to rubble. Nineteen United States Air Force personnel were killed in the explosion, and hundreds of others were injured. Tr. 11; Ex. 2.

Iranian Support and Sponsorship of the Attack

16. The attack was carried out by individuals recruited

principally by a senior official of the IRGC, Brigadier General Ahmed Sharifi. Sharifi, who was the operational commander, planned the operation and recruited individuals for the operation at the Iranian embassy in Damascus, Syria. He provided the passports, the paperwork, and the funds for the individuals who carried out the attack. Tr. 12–13; Ex. 13.

17. The truck bomb was assembled at a terrorist base in the Bekaa Valley which was jointly operated by the IRGC and by the terrorist organization known as Hezbollah. Tr. 13. The individuals recruited to carry out the bombing referred to themselves as “Saudi Hezbollah,” and they drove the truck bomb from its assembly point in the Bekaa Valley to Dhahran, Saudi Arabia. *Id.*

18. The terrorist attack on the Khobar Towers was approved by Ayatollah Khomeini, the Supreme leader of Iran at the time. Tr. 13–14. It was also approved and supported by the Iranian Minister of Intelligence and Security (“MOIS”) at the time, Ali Fallahian, who was involved in providing intelligence security support for the operation. Tr. 14. Fallahian's representative in Damascus, a man named Nurani, also provided support for the operation. *Id.*

19. Under Louis Freeh, the FBI conducted a massive and thorough investigation of the attack, using over 250 agents. Ex. 4 at 37.

20. Based on that investigation, an Alexandria, Virginia, grand jury returned an indictment on June 21, 2001, against 13 identified members of the pro-Iran Saudi Hezbollah organization. The indictment's description of the plot to bomb the Khobar Towers complex frequently refers to direction and assistance from Iranian government officials. Tr. 25–26; Exs. 7, 7A.

21. Louis Freeh has publicly and unequivocally stated his firm conclusion, based on evidence gathered by the FBI during their five-year investigation, that Iran was responsible for planning and supporting the Khobar Towers attack. Ex. 3 at 16; Exs. 5,6; Tr. at 19–20, 23.

22. Dale Watson was formerly the deputy counterterrorism chief of the FBI in 1996, and subsequently became the section chief for all international terrorism in 1997. Mr. Watson was responsible for day to day oversight of the FBI investigation of the Khobar Towers attack. Mr.

Watson has given sworn testimony that information uncovered in the investigation, “clearly pointed to the fact that there was Iran MOIS and IRGC involvement in the bombing.” Ex. 4, at 42; *see also id.* at 48–49.

23. Dr. Bruce Tefft was one of the founding members of the CIA’s counterterrorism bureau in 1985. Tr. 6. He served in the CIA until 1995, and has *49 continued to work as a consultant on terrorism since that time, including work as an unofficial adviser to the New York Police Department’s counterterrorism and intelligence divisions. *Id.* He retains a top-secret security clearance in connection with his work. *Id.* He has been qualified as an expert witness in numerous other cases involving Iranian sponsorship of terrorism. Ex. 1 at 3. He was qualified as an expert witness on terrorism in this case. Tr. 8.

24. Dr. Tefft expressed the opinion that defendants the Islamic Republic of Iran and the Iranian Revolutionary Guards Corp were responsible for planning and supporting the attack on the Khobar Towers, including providing operational and financial support. He stated that there was “no question about it. It wouldn’t have happened without Iranian support.” Tr. 43.

25. Dr. Tefft based his conclusion on publicly available sources that were not inconsistent with classified information known to him from his time at the CIA and from his security clearances since that time. He relied on the public sources described above, as well as several others, which he described as authoritative and reliable, including congressional testimony by Matthew Levitt, senior fellow and director of the Washington Institute’s Terrorism Studies Program, and articles published by the Federation of American Scientists as well as the Free Muslims Coalition. Exs. 8, 11, 12; Tr. 28–29, 31–33.

Injuries Sustained by Paul Blais

26. Blais had gone to bed early on the night of the attack because he had planned to get up at 4:00 am to get ready for an early morning flight mission. He woke just before 10:05 pm to use the bathroom, where he was when the explosion occurred. Tr. 112.

27. Blais’ aircrew consisted of four other men: Pilot and Command Captain Chris Evans; Flight Engineer Kevin Johnson; Navigator Leland Hahn; Loadmaster

Justin Wood; and Loadmaster Mike Heiser. All died as a result of injuries received in the explosion. Tr. 108–09.

28. The whole front of Blais’ apartment building was shorn off. Ex. 2. After the explosion, rescue personnel found him in the rubble, barely alive and unconscious.

29. After Blais was found, he was removed from the rubble and taken to the nearest Saudi hospital. He was admitted and treated there for three or four days before he was even identified. Tr. 46. On admission, his pulse was barely palpable, and he was experiencing respiratory distress. Tr. 48; Ex. 16 at 1. Hospital personnel noted an extensive [scalp laceration](#) and numerous other lacerations to his lower extremities. Ex. 16 at 2. He was given a Glasgow coma scale of eight, a figure that typically reflects only a fifty percent chance of survival for patients in that state of impaired consciousness and [injury to the brain](#). Tr. 47–48; Ex. 16 at 2. A [tracheotomy](#) was performed to safeguard his airway and to allow ventilatory assistance for his breathing. Ex. 16 at 2.

30. Hospital records showed that he had suffered severe [brain trauma](#), and he had also suffered from deprivation of oxygen. His [brain trauma](#) extended to areas of the brain that controlled basic bodily functions. Tr. 49.

*50 31. After he was identified, Blais was airlifted and transferred to Landstuhl Medical Center in Germany, a United States military hospital. Tr. 46–47. There he received intensive supportive care. Ex. 16 at 2. He was treated at Landstuhl for ten days, and his parents were allowed to visit him there. Tr. 48, 86. He was then airlifted and transferred to the Walter Reed Army Medical Center in the District of Columbia. Tr. 47.

32. The examining physician at Walter Reed diagnosed Blais as having severe axonal [brain injury](#), [anoxic brain injury](#), and organic [encephalopathy](#). The examining physician reported that Blais was in a [persistent vegetative state](#), and that he required a [tracheotomy](#) for respiratory function and a feeding tube for nourishment. Blais showed no signs of communication, spontaneous or otherwise, and needed constant supervision and total assistance with any activities of daily living. Ex. 16 at 2.

33. After about three more weeks of treatment at Walter Reed, Blais was transferred to the James A.

Haley Veterans' Hospital in Tampa, Florida. *Id.* He began to come out of his vegetative state there, about five weeks after his initial injury. *Id.* He was not discharged from James A. Haley until October 22, 1996, and even then had to return daily for outpatient care. Tr. 47; Ex. 16 at 2.

34. Blais' medical record contains descriptions of significant depression, several suicide attempts in the early years after his injury, [post-traumatic stress disorder](#), and survivor's guilt, which he still feels today. Ex. 16 at 2. He has continuing nightmares and flashbacks, despite treatment. *Id.*

35. In summary, Mr. Blais was hospitalized for approximately four months, from June 26 through October 22, 1996. He was in a coma, then, a vegetative state for approximately five weeks. He received intensive rehabilitation care for another six months after his discharge from full time hospitalization. He has continued to receive medical treatment and rehabilitation and other therapies through the Veterans' Administration hospital system to this day. Ex. 16 at 2.

36. Dr. Erik Kobylarz, an Assistant Professor of Neurology at the Weill Medical College of Cornell University, was qualified as an expert witness in neurology and [brain injury](#). Tr. 46. He testified about his neurological examination of Paul Blais and his review of Blais' medical records.

37. Dr. Kobylarz's neurological examination of Blais just prior to trial showed that even now, nearly 10 years after his injuries, Mr. Blais continued to have profoundly impaired and unstable ambulation, lack of coordination, and moderate right leg weakness. Mr. Blais' short term memory exhibited continued impairment, and his writing and reading were very labored and slow. His optic nerves showed signs of significant atrophy. Ex. 16 at 3; Tr. 52.

38. Dr. Kobylarz expressed the opinion that Paul Blais suffered severe and extensive [brain injury](#) as a result of the bomb blast at the Khobar Towers complex on June 25, 1996. Tr. 51, 58–59; Ex. 16 at 3. The [brain injury](#) adversely affected nearly all elements of his life and ability to function. Although Blais has made remarkable progress in the ten years since the injury, his ability to manage the functions *51 of daily living remains limited. Ex. 16 at 3. He has continuing problems with speech, balance, coordination and tolerance for frustration and impulse control. He has moderate cognitive impairment. *Id.*; Tr. 57–58.

39. Dr. Kobylarz testified that Blais prognosis remains guarded, and that patients with [brain injuries](#) such as his often are afflicted with other neurologic problems, including seizures and psychiatric illnesses, many years after the original injury. Ex. 16 at 3.

40. Dr. Kobylarz expressed the opinion that, given Blais' continuing problems and deficits, it was unlikely that he could live a fully independent life again, or that he would be able to hold meaningful gainful employment for any extended period. Ex. 16 at 4; Tr. 60.

41. Dr. Kobylarz stated that the degree of progress that Blais has made can in large part be attributed to the care and concern he received from, and interaction he enjoyed with, his parents, who were physically with him throughout his rehabilitation and stimulated him to improve his functioning from the first weeks after his injury to this day. Tr. 57–58; Ex. 16 at 3.

42. Blais was given an honorable medical discharge from the Air Force in October 1996. He had served 4 years and 10 months at that time.

43. Blais has been receiving Social Security Disability benefits continuously since December 1996. He has been rated as 100 percent disabled throughout that time. Ex. 18; Tr. 121, 95.

44. Blais has also been receiving disability payments from the Veterans' Administration, which has also rated him as 100 percent disabled. Ex. 17; Tr. 96–97.

45. The Court heard expert testimony from forensic economist Dr. Jerome Paige on estimated lost earnings suffered by Blais as a result of his [brain injury](#). Tr. 65–79. Dr. Paige testified that, had Blais been able to conclude his military career as he planned and become a commercial pilot upon leaving the military, and remained as a commercial pilot (but not an airline pilot) throughout his full expected worklife, he would have earned \$3,455,750, or \$1,801,792, discounted to present value. Tr. at 74; Ex. 24 at 1. Dr. Paige also testified that, had Blais left the military and immediately secured a job as a much higher paid airline pilot, his total expected earnings would have been \$8,755,070 or \$4,455,277 discounted to present value. Tr. at 75, Ex. 24 at 1.

Curtis and Maria Taylor

46. Curtis Taylor was Paul Blais's stepfather from the time he married Maria Taylor when Paul was only six. Tr. at 79. He was close to Paul and thought of him as his son, and Paul came to love him as his "real" father. Tr. 80, 129.

47. Both Curtis and Maria Taylor suffered intense, immediate, and continuing emotional distress when they learned that their son Paul had been a victim of the terrorist attack at the Khobar Towers. Tr. 132, 82, 84.

48. Their distress was heightened by the fact that, for three days after they first heard of the attack, they could obtain no information from the military authorities other than that Paul was "unaccounted for." This was because he was unidentified at a Saudi *52 hospital for those three days. Tr. 84–85.

49. In the absence of any information, Mr. and Mrs. Taylor came to believe that Paul had been killed. This was because other missing servicemen who had been initially listed as "unaccounted for" came off that list as their bodies were identified upon return to Dover Air Force base. Mr. and Mrs. Taylor logically concluded that Paul Blais would also be reported as killed once his remains were identified at Dover. Tr. 84–85; 132.

50. As the days passed, Mr. and Mrs. Taylor became convinced that Paul would be identified among the dead, and they made preparations for purchasing a cemetery plot for him and for buying clothes for his funeral. Indeed, one local newspaper reported him as dead. Tr. 85; 132–33.

51. It was only on the fourth day that they got word that Paul had been identified and was still alive at a Saudi hospital. Tr. 85.

52. Their relief and happiness soon turned into anxiety and distress again when they realized how seriously injured he was. They flew to be at his side in Landstuhl, Germany, and were deeply emotionally affected again when they saw his condition, with numerous tubes and hospital apparatus attached to him, keeping him alive. Tr. 86–88; 134–35.

53. Mr. Taylor left a good job with attractive benefits in Hampton, Virginia so that he and Mrs. Taylor could be at Paul's side throughout the long rehabilitation process in Tampa, Florida, and later in Tarboro, North Carolina. Tr. 89, 100. When they rented Paul a separate apartment in Tarboro next to

theirs, they took turns sleeping on the floor in his apartment because Paul's insistent nightmares often caused him to scream in the middle of the night and wake up neighbors, who complained. Tr. 92.

54. Throughout the ten years since Paul's injury, Mrs. Taylor has hardly left his side. She has been Paul's primary caretaker and constant nurse. Tr. 124, 135. She is still grieving for the loss of the vibrant, active young man with so much promise that Paul had been before his [brain injury](#). Tr. 139.

55. Both Mr. and Mrs. Taylor suffered profound emotional distress as a result of the injuries sustained by their son Paul. Tr. 100; 124–25; 143–44; 145. This was an intended consequence of the terrorist attack. Tr. 38–40. The terrorists' purpose is to inflict pain and suffering on the victims of their attack, and on the family members of those victims, so that those victims and family member will exert pressure on the United States government to change its policies in ways beneficial to the terrorists' cause (in this case, to cause the United States to withdraw its military presence from Saudi Arabia). Tr. 38–40.

56. Although Paul survived the attack, he was never the same vibrant and promising young man he had been before. Tr. 139. Both Mr. and Mrs. Taylor therefore also suffered the deprivation of the company, society, and support that a healthy son normally confers on close and well loved parents.

CONCLUSIONS OF LAW

I. Legal Standard for FSIA Default Judgment

Under the Foreign Sovereign Immunities Act, "[n]o judgement by default *53 shall be entered by a court of the United States or of a state against a foreign state ... unless the claimant establishes his claim or right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e); *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 232–33 (D.C.Cir.2003), *cert. denied*, 542 U.S. 915, 124 S.Ct. 2836, 159 L.Ed.2d 287 (2004). In default judgment cases, plaintiffs may present evidence in the form of affidavits. *Bodoff v. Islamic Republic of Iran*, 424 F.Supp.2d 74, 82 (D.D.C. Mar.29, 2006) (quoting *Campuzano v. Islamic Republic of Iran*, 281 F.Supp.2d 258, 268 (D.D.C.2003) (Urbina, J.)). Upon evaluation, the court may accept plaintiffs' uncontroverted evidence as

true. *Campuzano*, 281 F.Supp.2d at 268.

II. Jurisdiction

In the United States, the Foreign Sovereign Immunities Act provides the sole basis for asserting jurisdiction over foreign sovereigns. *Argentine Republic v. Amerasia Shipping Corp.*, 488 U.S. 428, 434–34, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989). Normally, a party may not bring an action for money damages in U.S. courts against a foreign state. 28 U.S.C. § 1604. The “state-sponsored terrorism” exception, however, removes a foreign state’s immunity to suits for money damages brought in U.S. courts where plaintiffs are seeking damages against the foreign state for personal injury or death caused by “an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment or agency.” 28 U.S.C. § 1605(a)(7).

In order to subject a foreign sovereign to suit under section 1605(a)(7), plaintiffs must show that: (1) the foreign sovereign was designated by the State Department as a “state sponsor of terrorism”; (2) the victim or plaintiff was a U.S. national at the time the acts took place; and (3) the foreign sovereign engaged in conduct that falls within the ambit of the statute. *Prevatt v. Islamic Republic of Iran*, 421 F.Supp.2d 152, 158 (D.D.C. Mar. 27, 2006) (Lamberth, J.).

Each of the requirements are met in this case. First, Defendant Iran has been designated a state sponsor of terrorism continuously since January 19, 1984, and was so designated at the time of the attack. See 31 C.F.R. § 596.201 (2001); *Flatow*, 999 F.Supp. at 11, ¶ 19. Second, the victim, Paul Blais, was a United States national at the time of the attack. Finally, defendant Iran’s support of an entity that committed an extrajudicial killing squarely falls within the ambit of the statute. Defendants MOIS and the IRGC are considered to be a division of state of Iran, and thus the same determinations apply to its conduct. *Roeder*, 333 F.3d at 234; see also *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d 105, 116 (D.D.C.2005) (Bates, J.) (analogizing the IRGC to the MOIS for purposes of liability, and concluding that both must be treated as the state of Iran itself).⁵

Personal jurisdiction over a non-immune sovereign exists so long as service of process has been made under section

1608 of the FSIA. See *Stern v. Islamic Republic of Iran*, 271 F.Supp.2d 286, 298 (D.D.C.2003) (Lamberth, J.). In this case, *54 such service has been made. Accordingly, this Court has *in personam* jurisdiction over defendants Iran, MOIS, and IRGC.

III. Liability

A. Proper Causes of Action Under the FSIA

Once a foreign state’s immunity has been lifted under Section 1605 and jurisdiction is proper, Section 1606 provides that “the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances.” 28 U.S.C. § 1606. Section 1606 acts as a “pass-through” to substantive causes of action against private individuals that may exist in federal, state or international law. *Dammarell v. Islamic Republic of Iran*, Civ. A. No. 01–2224, 2005 WL 756090, at *8–10, 2005 U.S. Dist. LEXIS 5343, at *27–32 (D.D.C. Mar. 29, 2005) (Bates, J.) [hereinafter *Dammarell I*].

In this case, state law provides a basis for liability. First, the law of the United States applies rather than the law of the place of the tort or any other foreign law because the United States has a “unique interest” in having its domestic law apply in cases involving terrorist attacks on United States citizens. See *Dammarell I*, 2005 WL 756090, at *20, 2005 U.S. Dist. LEXIS 5343, at *63.

Second, having established that the laws of the United States apply in this action, the Court must determine the applicable state law to govern the action. Here, the laws of Florida govern the claims brought by plaintiff Paul A. Blais, while the laws of the Commonwealth of Virginia govern the claims brought by plaintiffs Curtis and Maria Taylor. As the forum state, District of Columbia choice of law rules apply to determine which state’s law shall apply. Under District of Columbia choice of law rules, courts employ a modified government interest analysis under which they “evaluate the governmental policies underlying the applicable laws and determine which jurisdiction’s policy would be most advanced by having its law applied to the facts of the case under review.” *Hercules & Co. v. Shama Rest. Corp.*, 566 A.2d 31, 41 (D.C.1989) (citations and internal quotations omitted). Generally, application of this governmental interest test points to the law of plaintiff’s domicile as having the greatest interest in providing redress to its citizens. See

Dammarell I, 2005 WL 756090, at *20–21, 2005 U.S. Dist. LEXIS 5343, at *66–67 (citing RESTATEMENT (THIRD) FOREIGN RELATIONS LAW § 402(3) (1987)). Accordingly, the claims of plaintiff Paul A. Blais shall be governed by his domicile at the time of the attack, Florida.⁶ The claims of plaintiffs Curtis A. Taylor and Maria Taylor shall be governed by their domicile at the time of attack, Virginia.

Third, as required by 28 U.S.C. § 1606, Florida and Virginia provide a cause of action against private individuals for the kind of acts that defendants allegedly committed. Plaintiffs seek damages for battery and intentional infliction of emotional distress, both torts for which private individuals may face liability. The Court's next task is to determine whether plaintiffs have demonstrated defendants' liability and their right to damages under the laws of Florida and Virginia.

B. Vicarious Liability

The purported basis of defendants' liability is that they provided material support and resources to Hizbollah, the organization that personally completed the attack. A party may be liable for the acts of another under theories of vicarious liability, such as conspiracy, aiding and abetting, and inducement. This Court finds that civil conspiracy provides a basis of liability for defendants Iran, MOIS, and IRGC.

1. Florida

A civil conspiracy exists under Florida law where there is "(a) a conspiracy between two or more parties, (b) to do an unlawful act or to do a lawful act by unlawful means, (c) the doing of some overt act in pursuance of the conspiracy, and (d) damage to plaintiff as a result of the acts performed pursuant to the conspiracy." *Walters v. Blankenship*, 931 So.2d 137 (Fla. Dist. Ct. App. 2006). "The gist of a civil action for conspiracy is not the conspiracy itself, but the civil wrong which is done pursuant to the conspiracy and which results in damage to the plaintiff." *Liappas v. Augoustis*, 47 So.2d 582 (Fla. 1950). "The existence of a conspiracy can be inferred from the conduct of the participants or from circumstantial evidence." *Robinson v. State*, 610 So.2d 1288, 1289–90 (Fla. 1992).

As this Court has previously held, "sponsorship of

terrorist activities inherently involves a conspiracy to commit terrorist attacks." *Flatow*, 999 F.Supp. at 27. It is undisputed that Saudi Hezbollah committed the attack on the Khobar Towers.

In addition, it has been established by evidence satisfactory to this Court that Saudi Hezbollah and defendants Iran, MOIS and the IRGC conspired to commit the terrorist attack on the Khobar Towers. The evidence shows that senior Iranian, MOIS and IRGC officials participated in the planning of, and provided material support and resources to Saudi Hezbollah for the attack on the Khobar Towers, including providing financing, training and travel documents to facilitate the attacks. The evidence also shows that Saudi Hezbollah, Iran, MOIS and the IRGC reached an understanding to do an unlawful act, namely the murder and maiming of American servicemen. Moreover, the sheer gravity and nature of the attack demonstrate that the defendants also intended to inflict severe emotional distress upon the American servicemen as well as their close relatives. The financing, training and providing of travel documents ably satisfy the overt act requirement for civil conspiracy under Florida law. Finally, plaintiff Paul A. Blais has clearly suffered damage as a result of the conspiracy. Accordingly, the elements of civil conspiracy are established between Saudi Hezbollah and the defendants Iran, MOIS and the IRGC.

2. Virginia

Civil conspiracy under Virginia law "is a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose...." *Hechler Chevrolet, Inc. v. General Motors Corp.*, 230 Va. 396, 337 S.E.2d 744, 748 (1985). Similar to Florida law of civil conspiracy, in Virginia the basis for an action of civil conspiracy "is the wrong which is done under the conspiracy and which results in damage to *56 the plaintiff." *Gallop v. Sharp*, 179 Va. 335, 19 S.E.2d 84, 86 (1942). Accordingly, the elements of civil conspiracy under Virginia law are subsumed within the elements of the same doctrine under Florida law.

In this case, the elements of civil conspiracy between Iran, MOIS, the IRGC and Saudi Hezbollah have been satisfied under Florida law. Therefore, for the reasons noted above, the elements of civil conspiracy under Virginia law have also been established.

C. Plaintiff Paul A. Blais' Claims

1. Battery

Plaintiff Paul A. Blais first brings a claim for battery. Under Florida law, the tort of battery is “the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent.” *Quilling v. Price*, 894 So.2d 1061, 1063 (Fla.Dist.Ct.App.2005). The contact with the plaintiff is tortious if it is offensive to the plaintiff, notwithstanding the severity of the contact. *Paul v. Holbrook*, 696 So.2d 1311 (Fla.Dist.Ct.App.1997) (quoting PROSSER AND KEETON ON TORTS § 9 (5th ed.1984)). Moreover, this Court has previously held that an explosion caused by a suicide bomber on a bus was a battery. *Haim v. Islamic Republic of Iran*, 425 F.Supp.2d 56, 69–70 (D.D.C.2006) (Lamberth, J.).

Here, Mr. Blais unquestionably experienced harmful and offensive contact in the forms of the shockwaves of the explosion created by defendants’ co-conspirators, and the physical contact of the rubble from the Khobar Towers building that fell upon him as a result of the explosion. Accordingly, defendants Iran, MOIS, and the IRGC are liable for battery under the theory of vicarious liability.

2. Intentional Infliction of Emotional Distress

Mr. Blais next brings a claim for intentional infliction of emotional distress. Florida courts have adopted Section 46, RESTATEMENT (SECOND) OF TORTS (1965) as the definition of the tort of intentional infliction of emotional distress. *Metropolitan Life Ins. Co. v. McCarson*, 467 So.2d 277, 278–79 (Fla.1985). Specifically, under Florida law, a defendant is liable for intentional infliction of emotional distress if the defendant’s “extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another....” *Id.* (quoting RESTATEMENT (SECOND) OF TORTS § 46(1) (1965)).

In evaluating the degree of severity of the defendant’s conduct, Florida courts have held that liability for intentional infliction of emotional distress is found “only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *McCarson*, 467 So.2d at 278–79 (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. d (1965)). A

defendant’s conduct is deemed intentional where the defendant “knows that such distress is certain, or substantially certain, to result from his conduct...” *McCarson*, 467 So.2d at 278–79 (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. i (1965)).

The elements are ably satisfied in this case. First, defendants Iran, MOIS, and the IRGC provided material support to Saudi Hezbollah with the intent that Saudi Hezbollah would carry out attacks that would cause severe emotional distress. Second, the tragic bombing of the Khobar Towers by means of material support and civil conspiracy is an act that *57 is nothing short of extreme, outrageous, and beyond all bounds of civil decency. As is the nature of terrorism, terrorists seek to perform acts that are deliberately outrageous and bring about extreme suffering in order to achieve political ends. Third, defendants’ actions in facilitating and supporting the Khobar Towers bombing proximately caused Mr. Blais’ emotional distress because the material support and direction given to Saudi Hezbollah ensured the event would occur. Finally, the evidence shows that Mr. Blais suffered emotional distress, and that his emotional distress was severe.

D. Plaintiffs Curtis and Maria Taylor’s Claims

1. Intentional Infliction of Emotional Distress

Plaintiffs Curtis and Maria Taylor, Mr. Blais’ stepfather and mother respectively, bring a claim for intentional infliction of emotional distress. The Commonwealth of Virginia recognizes the tort of intentional infliction of emotional distress. *Harris v. Kreutzer*, 271 Va. 188, 624 S.E.2d 24, 33 (2006). Similar to Florida law, intentional infliction of emotional distress is met in Virginia if: “(1) the wrongdoer’s conduct was intentional or reckless; (2) the conduct was outrageous and intolerable; (3) there was a causal connection between the wrongdoer’s conduct and emotional distress; and (4) the emotional distress was severe.” *Id.* Virginia also recognizes this tort even if the plaintiff suffers no actual physical injury, provided the four elements of the tort are satisfied. *Womack v. Eldridge*, 215 Va. 338, 210 S.E.2d 145, 147–48 (1974).⁷ In addition, a parent may recover for severe emotional distress resulting from defendant’s outrageous and offensive conduct toward a child, even if the parent was not present during the outrageous conduct. *Morgan v. Foretich*, 846 F.2d 941, 950–51 (4th Cir.1988) (applying

Virginia state law, and holding that *Womack* does not require a parent to be present during defendant's outrageous conduct in order to recover for intentional infliction of emotional distress).

Here, the elements of plaintiffs' intentional infliction of emotional distress claim are met. As previously noted, defendants Iran, MOIS and the IRGC's conduct in providing material support and facilitation to bring about the Khobar Towers bombing was both intentional, as well as extreme and outrageous. The horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to the plaintiffs because, for a period of three days, they did not know whether their son had survived the attack. The evidence shows that plaintiffs have continued to experience emotional distress since that time *58 because they have had to care for Paul Blais, and live with the harsh reality that this attack has dashed his hopes of ever leading a normal life.

IV. Damages

To obtain damages against defendants under the FSIA, the plaintiffs must prove that the consequences of the defendants' conduct were "reasonably certain (i.e., more likely than not) to occur, and must prove the amount of damages by a reasonable estimate consistent with this [Circuit's] application of the American rule on damages." *Salazar*, 370 F.Supp.2d at 115–16 (quoting *Hill v. Republic of Iraq*, 328 F.3d 680, 681 (D.C.Cir.2003)) (internal quotations omitted).

A. Compensatory Damages

As a result of the wrongful conduct of defendants Iran, MOIS, and the IRGC, plaintiffs have suffered and will continue to suffer pain and mental anguish. Under the FSIA, if a foreign state may be held liable, it "shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. Accordingly, plaintiffs are entitled to the typical bases of damages that may be awarded against tortfeasors under the laws of Florida and Virginia.⁸

In determining the appropriate amount of compensatory damages, the Court may look to prior decisions awarding damages for pain and suffering, and to those awarding damages for solatium. *Prevatt*, 421 F.Supp.2d at 160. "While intervening changes in law have ruled many

cases' reliance on federal common law improper, such findings need not disturb the accuracy of the analogy between solatium and intentional infliction of emotional distress." *Haim*, 425 F.Supp.2d at 71.

1. Plaintiff Paul A. Blais' Compensatory Damages

a. Battery⁹

Under Florida law, upon a finding that defendant has committed tortious battery, a court may award damages for injuries as well as pain, humiliation, embarrassment and mental suffering when "they are a sequel to physical punishment." *Glickstein v. Setzer*, 78 So.2d 374, 375 (Fla.1955); see also *Smith v. Bagwell*, 19 Fla. 117 (Fla.1882) (holding in a tortious battery case that a jury instruction was proper that instructed the jury to consider expenses, time and bodily pain and suffering arising from the injury).

With respect to natural damages resulting from the attack, this Court finds that Mr. Blais is entitled to recover damages for past and future wages lost as a result of being unable to continue to perform his job as a pilot. Based on the evidence presented to the Court, Mr. Blais is entitled to recover compensatory damages from defendants for both direct injuries and pain and suffering resulting from the defendants' tortious misconduct. With respect to lost wages, Mr. Blais has demonstrated via an economic expert that, as a result of the bombing, Mr. Blais suffered \$1,801,792 in economic losses, specifically in lost wages and benefits.

*59 With respect to pain and mental anguish damages, the Court admits that assessing the amount of compensatory damages for pain and suffering due an injured plaintiff is undeniably difficult. This Court has, however, established a general framework for making such a determination. In cases that involve an attack where the victim survives, and where no captivity occurred, courts typically award a lump sum award based in large part on an assessment of the following factors: "the severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life." *Id.* at 73.

In one such case, *Mousa v. Islamic Republic of Iran*, 238 F.Supp.2d 1 (D.D.C.2001) (Bryant, J.), a survivor of a passenger bus bombing was awarded \$12 million for past and future pain and suffering. The Court arrived at this

figure in light of the fact that the victim was injured to make a political statement, and because she spent four weeks in the hospital, nine additional days in a rehabilitation center and three months receiving continued treatment after her release. *Id.* at 5–6. Further, the victim suffered several severe permanent maladies, including, *inter alia*, complete deafness, blindness in one eye, and disfigurement. *Id.* at 12–13. Similarly, in *Campuzano* this Court, following *Mousa*, granted a surviving victim with similar injuries a \$17 million award on the grounds that the plaintiff remained in the hospital for two weeks longer than Ms. Mousa, and the plaintiff’s injuries were “slightly more serious” than hers. *Id.* at 274. Comparing the factors to the injuries in *Haim*, this Court awarded an injury victim of a suicide bombing \$11 million on the grounds that the victim was hospitalized for less than four weeks and because the victim’s injuries were less severe than those of either Ms. Mousa or Ms. Campuzano. *Haim*, 425 F.Supp.2d at 73–75.

Applying the considerations set forth in the *Haim*, *Mousa*, and *Campuzano* cases, the Court finds that Mr. Blais was severely injured by the tragic attack on the Khobar Towers. Mr. Blais was in a coma as a result of the attack, and then a vegetative state for approximately five weeks. Tr. 47–48; Ex. 16 at 2. Mr. Blais suffered severe brain trauma and deprivation of oxygen, and had to be given a tracheotomy in order to enable him to breathe. Ex. 16 at 2; Tr. 49. As a result of the trauma to his brain, Mr. Blais suffered diminished motor skills, short term memory impairment, and has had trouble writing and reading. Ex. 16 at 3; Tr. 52. In total, Mr. Blais was hospitalized for a period of nearly four months, and has continued to receive medical treatment and rehabilitation since that time. Ex. 16 at 2. Even now, despite his best efforts at rehabilitating his injuries, Mr. Blais’ daily functions remain woefully impaired; he continues to have trouble with his speech, balance, and coordination. Ex. 16 at 3.

Taking all of these factors into account, this Court finds that Paul A. Blais is entitled to an award of \$21,801,792 for his lost wages, and for the pain and mental anguish Mr. Blais felt and continues to feel as a result of the battery brought about by the defendants.

2. Plaintiffs Curtis and Maria Taylor’s Compensatory Damages

a. Intentional Infliction of Emotional Distress

In determining the amount of compensatory damages awards to family members of a surviving victim, this Court has held that these awards are determined by the “nature of the relationship” between the family member and victim, and *60 “the severity of the pain suffered by the family member.” *Haim*, 425 F.Supp.2d at 75. Parents of victims typically receive smaller awards than spouses, but receive larger awards than siblings. *Id.* Moreover, “families of victims who have died are typically awarded greater damages than families of victims who remain alive.” *Id.*

Applying the approach adopted in *Haim*, this Court finds that Mr. and Mrs. Taylor suffered in many of the same ways the father in *Haim* suffered as a result of his son’s debilitating injuries. As in *Haim*, the Taylors experienced anguish when they first heard about the attack and in the three days thereafter when they did not know whether their son was dead or alive. Tr. 84–85. Similarly, as in *Haim*, the Taylors relationship with Mr. Blais has changed drastically. Mr. Taylor gave up his job so that he and Mrs. Taylor could move in with Mr. Blais to be at his side throughout his rehabilitation process. Tr. 89, 100. Since that time, the Taylors have tirelessly devoted themselves to their son’s rehabilitation, with Mrs. Taylor acting as Mr. Blais’ full-time caretaker and nurse. Tr. 124, 135. Throughout this process, both Mr. and Mrs. Taylor have experienced a great deal of emotional distress as a result of seeing their son in such a state. Tr. 100, 124–25, 143–44, 145.

In light of the similarities between the Taylors’ suffering and anguish and that of the father in *Haim*, it stands to reason that the amount of damages the Taylors may recover should parallel those in *Haim*. In *Haim*, the victim’s father received \$3.5 million for his mental anguish and suffering. *Haim*, 425 F.Supp.2d at 75. Likewise, here Mr. and Mrs. Taylor should each receive \$3.5 million for the mental anguish and suffering they felt and continue to feel since the day of the attack in 1996.

B. Punitive Damages

Punitive damages are not available against foreign states. 28 U.S.C. § 1606. Additionally, punitive damages are not recognized against divisions of a foreign state that are considered to be the state itself, instead of an agent or instrumentality thereof.¹⁰ For punitive damages purposes, the court must consider the core functions of the entity. *Roeder*, 333 F.3d at 234. Entities that are governmental are considered a part of the foreign state itself, while

commercial entities are deemed agencies or instrumentalities of the foreign state, and thereby subject to punitive damages. *Id.*

Plaintiffs concede that punitive damages are not available against defendant Iran, but argue they should be available against the IRGC as an agent or instrumentality of Iran. Plaintiffs allege that the evidence in the case supports the finding that the IRGC has no legitimate governmental functions. They point to evidence that the IRGC is the military arm of the Ayatollah and mullahs who control Iran, that it receives separate funding from the former Shah's confiscated assets, and that it can best be analogized to a group of thugs considered the muscle of those in power in Iran. Notwithstanding these facts, plaintiffs concede that this evidence does not affirmatively demonstrate that the IRGC has any commercial functions under the *Roeder* standard, but they argue that the IRGC should nonetheless be held liable for punitive damages.

This Court is not convinced. In previous cases, this Court has repeatedly *61 held that the IRGC is governmental and not commercial, and therefore not subject to punitive damages.¹¹ In each of these cases, plaintiffs' attempts to obtain punitive damages against the IRGC failed because plaintiffs in those cases did not provide sufficient *affirmative* evidence that the IRGC was commercial. The present case is no different. Plaintiffs cannot establish the IRGC as commercial based upon such an unfounded negative implication. Therefore, this Court lacks authority to grant plaintiffs' request for punitive damages against the IRGC because it is a governmental entity, and a part of the state of Iran itself. Accordingly, plaintiffs' claim for punitive damages is denied.

CONCLUSION

This Court takes note of plaintiffs' courage and steadfastness in pursuing this litigation and their efforts to take action to deter more tragic suffering of innocent Americans at the hands of terrorists. Their efforts are to be commended.

A judgment consistent with these findings shall issue this date.

SO ORDERED.

JUDGMENT

In accord with the Findings of Fact and Conclusions of Law issued this date, it is hereby

ORDERED that Default Judgment be entered in favor of plaintiffs and against defendants, jointly and severally, in the amount of \$28,801,792.00, of which \$21,801,792.00 shall be allocated to Paul Blais; \$3,500,000.00 shall be allocated to Mr. and Mrs. Taylor, each. It is further

ORDERED that plaintiffs, at their own cost and consistent with the requirements of 28 U.S.C. § 1608(e), send a copy of this Judgment and the Findings of Fact and Conclusions of Law issued this date to defendants. It is further

ORDERED that this case be terminated from the dockets of this Court.

SO ORDERED.

All Citations

459 F.Supp.2d 40

Footnotes

- 1 At other points during the case, plaintiffs sought redress for their losses from various other defendants who have since been dismissed from the case.
- 2 Mr. Fenning was subsequently dismissed without prejudice as a party on May 5, 2003.
- 3 The Third Amended Complaint was officially entered onto the docket on May 26, 2006.
- 4 References to the transcript of the hearing held on May 26, 2006, will be abbreviated throughout as "Tr.—." References to exhibits admitted into evidence at the hearing will be abbreviated "Ex.—."

- 5 Like the IRGC, the MOIS has been deemed “as the state of Iran itself,” thereby subjecting the MOIS to the same determinations of liability as the state of Iran. [Roeder](#), 333 F.3d at 234.
- 6 Plaintiffs have posited that Virginia law should govern the matter for each plaintiff because each is a domiciliary of Virginia at the time of the cause of action. See Plaintiff’s Proposed Findings of Fact and Conclusions of Law, at 15–16. The authority in this jurisdiction, however, holds to the contrary. In choice of law issues, the proper governing law is the law of the state where the plaintiff was domiciled *at the time of the injury*, not the law of domicile at the time the action was filed. See [Dammarell I](#), 2005 WL 756090, at *22, 2005 U.S. Dist. LEXIS 5343, at *70–71 (noting that the state of domicile for plaintiffs who have moved at least once since an embassy attack “should be assessed as of the date that the embassy bombing occurred”).
- 7 Central to this holding appears to be the notion that the defendant’s tortious conduct was conducted with the intent to bring about severe emotional distress in the plaintiff. As this Court has previously held, terrorist attacks such as the attack on the Khobar Towers are aimed at creating emotional distress in the victims’ families as well as in the victims themselves. [Dammarell v. Islamic Republic of Iran](#), 404 F.Supp.2d 261, 283 (D.D.C.2005) (Bates, J.) (citing [Salazar v. Islamic Republic of Iran](#), 370 F.Supp.2d 105, 115 n. 12 (D.D.C.2005)) (Bates, J.). In fact, this Court noted in [Dammarell](#) that, under Virginia law, emotional distress resulting from a “non-tactile tort” may be compensated if the plaintiff alleges, and proves by clear and convincing evidence, that the elements of intentional infliction of emotional distress have been met. [Dammarell](#), 404 F.Supp.2d at 296 (quoting [Russo v. White](#), 241 Va. 23, 400 S.E.2d 160, 162 (1991)). Accordingly, it stands to reason that plaintiffs Curtis and Maria Taylor are not precluded from bringing a claim for intentional infliction of emotional distress notwithstanding the fact that they did not suffer an actual physical injury.
- 8 Plaintiff Paul A. Blais’ compensatory damages will be determined under Florida law because he was domiciled in Florida at the time of the attack, while Plaintiffs Curtis and Maria Taylor’s compensatory damages will be determined under Virginia law.
- 9 Because Mr. Blais can recover for his mental anguish under his battery claim, the Court need not consider his intentional infliction of emotional distress claim, which would result in an impermissible double recovery.
- 10 [Prevatt v. Islamic Republic of Iran](#), 421 F.Supp.2d 152, 161 (D.D.C.2006) (Lamberth, J.) (citing [Roeder v. Islamic Republic of Iran](#), 333 F.3d 228, 234 (D.C.Cir.2003)).
- 11 [Prevatt](#), 421 F.Supp.2d at 162; [Holland, et al. v. Islamic Republic of Iran](#), Civ. A. No. 01–1924(CKK), 2005 WL 3439062, 2005 U.S. Dist. LEXIS 40254(D.D.C.2005) (Kollar-Kotelly, J.); [Salazar](#), 370 F.Supp.2d at 116; [Welch v. Islamic Republic of Iran](#), 2004 WL 2216534, 2004 U.S. Dist. LEXIS 19512 (D.D.C.2004) (Kay, J.)

ANNEX 41

466 F.Supp.2d 229
United States District Court,
District of Columbia.

ESTATE of Michael HEISER, et al., Plaintiffs,
v.
ISLAMIC REPUBLIC OF IRAN, et al., Defendants.
Estate of Millard D. Campbell, et al., Plaintiffs,
v.
Islamic Republic of Iran, et al., Defendants.

Civil Action Nos. 00–2329 (RCL), 01–2104(RCL).
|
Dec. 22, 2006.

Synopsis

Background: Family members and estates of 17 United States servicemen killed in bomb attack in Saudi Arabia brought two actions against Islamic Republic of Iran, Iranian Ministry of Information and Security (MOIS), and Iranian Islamic Revolutionary Guard Corp (IRGC), alleging that such defendants had provided material support and assistance to Hezbollah, which had carried out bombing. Actions were consolidated. The District Court, [Robinson](#), United States Magistrate Judge, [2006 WL 1530243](#), issued Report and Recommendation recommending that default judgments not be entered.

Holdings: The District Court, [Lamberth](#), J., rejecting Report and Recommendation, held that:

family members could subject Iran to suit under state-sponsored terrorism exception to Foreign Sovereign Immunities Act (FSIA);

appointment of Magistrate Judge did not violate family members' constitutional rights;

servicemen were non-combatants, as required for recovery under FSIA;

no conflict of interest arose on part of law firm representing families;

evidence was sufficient to support conclusion that Iran was liable for wrongful deaths of servicemen; and

appropriate amount of damages to be awarded to widow for loss of companionship and protection, as well as

mental pain and suffering, was \$8 million.

Default judgment entered.

Attorneys and Law Firms

*[248 Shale D. Stiller](#), [Elizabeth Renee Dewey](#), DLA Peper Rudnick Gray Cary U.S. LLP, Washington, DC, [Melissa Lea Mackiewicz](#), DLA Piper Rudnick Gray Cary U.S. LLP, Baltimore, MD, for Plaintiffs.

MEMORANDUM OPINION

[LAMBERTH](#), District Judge.

BACKGROUND

These actions arise from the June 25, 1996 bombing at Khobar Towers, a residence on a United States military base in Dhahran, Saudi Arabia. The plaintiffs in this consolidated action are the family members and estates of 17 of the 19 servicemen killed in the attack. Plaintiffs allege that the Islamic Republic of Iran ("Iran"), the Iranian Ministry of Information and Security ("MOIS"), the Iranian Islamic Revolutionary Guard Corp ("IRGC" or "the Pasdaran"), and "John Does 1–99" are liable for damages from the attack because they provided material support and assistance to Hezbollah,¹ the terrorist organization that orchestrated and carried out the bombing.² Plaintiffs have relied upon causes of action founded upon provisions of the Foreign Sovereign Immunities Act ("FSIA"), *inter alia*, [28 U.S.C. § 1605\(a\)\(7\)](#).

PROCEDURAL HISTORY

In their second amended complaints, plaintiffs named as defendants (1) the Islamic Republic of Iran; (2) the Iranian Ministry of Information and Security (“MOIS”); (3) the Iranian Islamic Revolutionary Guard Corps (“IRGC” or “the Pasdaran”); (4) and “John Does 1–99[.]” Second Amended Complaints, ¶ 1; see also *id.*, ¶¶ 24, 25, 27, 29. Plaintiffs sought damages for wrongful death (Count I); *249 survival action (Count II); “economic damages” (Count III); intentional infliction of emotional distress (Count IV); for plaintiffs Ibis S. Haun, Marie R. Campbell, Shyrl L. Johnson, Katie L. Marthaler and Dawn Woody, loss of consortium (Count V); solatium (Count VI); and “punitive damages” (Count VII).

Plaintiffs requested judgment in their favor against all of the defendants. In addition, the plaintiffs in Civil Action No. 00–2329 sought compensatory damages against all defendants in the amount of \$890,000,000, “plus economic damages in an amount to be determined at trial for each of Decedents’ Estates”; punitive damages against defendants MOIS, the IRGC and John Does 1–99 in the amount of \$500,000,000; and reasonable costs, expenses and attorneys’ fees. The plaintiffs in Civil Action No. 01–2104 sought compensatory damages against all defendants in the amount of \$3,660,000,000 “plus economic damages in an amount to be determined at trial for each of Decedents’ Estates”; punitive damages against defendants MOIS, the IRGC and John Does 1–99 in the amount of \$500,000,000; and reasonable costs, expenses and attorneys’ fees.

On February 1, 2002, the court (Jackson, J.) consolidated the two civil actions, and in Civil Action No. 00–2329, granted the plaintiffs’ motion for entry of default as to defendants Islamic Republic of Iran, MOIS and the IRGC. February 1, 2002 Order (Docket No. 9, Civil Action No. 00–2329) at 1. On February 6, 2002, the Clerk entered a default in Civil Action No. 00–2329 against defendants Islamic Republic of Iran, MOIS and the IRGC. Default (Docket No. 10, Civil Action No. 00–2329). On July 30, 2002, both actions were referred to Magistrate Judge Robinson for all purposes. (July 30, 2002 Order (Docket No. 11) at 1.) On October 4, 2002, Magistrate Judge Robinson granted plaintiffs’ motion in Civil Action No. 01–2104 for entry of default as to defendants Islamic Republic of Iran, MOIS and the IRGC. (October 4, 2002 Order (Docket No. 11, Civil Action No. 01–2104) at 1.) On October 8, 2002, the Clerk entered a default in Civil Action No. 01–2104 against defendants Islamic Republic of Iran, MOIS and the IRGC. Default (Docket No. 12, Civil Action No. 01–2104) at 1. On March 14, 2003, plaintiffs moved for a continuance of the hearing on liability and damages. Plaintiffs’ counsel represented that counsel “has learned that certain immediate family

members of the soldiers killed in the Khobar Towers terrorist attack—family members who have cognizable claims under the Foreign Sovereign Immunities Act (‘FSIA’)—are not currently named as parties in these consolidated actions.” (Motion for Continuance of Trial Date and Request for Scheduling Conference (Docket No. 16) at 2.) Counsel further represented that the firm “is in the process of identifying all such family members and anticipates filing amended complaints within the next several weeks.” *Id.* Magistrate Judge Robinson granted plaintiffs’ motion, and, in accordance with the request of plaintiffs’ counsel, “tentatively” scheduled the hearing for “the period of December 1, 2003 to December 18, 2003[.]” (March 17, 2003 Order (Docket No. 17) at 1.) Plaintiffs filed their second amended complaints on May 6, 2003.

Upon consideration of plaintiffs’ motions to vacate their consent to proceed before a magistrate judge for all purposes and to clarify the purpose of the referral to a magistrate judge, the court re-referred the consolidated civil actions to Magistrate Judge Robinson “to hear and determine pretrial matters as permitted thereby, and pursuant to 28 U.S.C. § 636(b)(1)(B), to conduct hearings, and to submit proposed findings and recommendations for the disposition *250 by the Court of any motion for judgment by default upon the evidence submitted in accordance with 28 U.S.C. § 1608(e).” (Docket No. [20] at 1–2.) The Court denied plaintiffs’ motion for clarification of the referral. (August 22, 2003 Order (Docket No. 25) at 1.) On September 3, 2003, Magistrate Judge Robinson scheduled the hearing on liability and damages for December 1 through December 18, 2003. (September 3, 2003 Order (Docket No. 26) at 1.)

Plaintiffs filed their pretrial statement on October 31, 2003 ((Docket No. 30).) In accordance with Magistrate Judge Robinson’s Final Pretrial Order (Docket No. 32), plaintiffs filed a memorandum regarding issues relevant to liability. See Supplemental Bench Memorandum on Liability Issues (“Memorandum on Liability”) (Docket No. 33). In the memorandum, plaintiffs stated that they “do not expect to identify [Defendants] John Does 1–99 before the commencement of the trial[.]” and that “[a]ccordingly, Plaintiffs will not seek a finding of liability against the co-conspirators John Does 1–99, who were named as defendants when the complaints in this consolidated action were filed.” (Memorandum on Liability at 9.) On November 19, 2003, plaintiffs moved for entry of default against the Islamic Republic of Iran, MOIS and the IRGC. (Plaintiffs’ Motion for Entry of Default (Docket No. 38) at 1.) The Court granted the motion. November 26, 2003 Order. (Docket No. 39, Civil

Action No. 00–2329; Docket No. 32, Civil Action No. 01–2104.)

Plaintiffs examined witnesses and offered other evidence with respect to liability and damages on December 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 16, 18 and 19, 2003. On December 19, 2003, plaintiffs moved to voluntarily dismiss Defendants “John Does 1–99,” and Magistrate Judge Robinson granted the motion. (December 19, 2003 Tr. (Docket No. 128) at 69–70.) The magistrate judge recessed the hearing until February 5, 2004, the earliest date that plaintiffs’ counsel, plaintiffs’ witnesses and the court were be available to continue. Magistrate Judge Robinson received further evidence on February 5, 6, 9 and 10, 2004.

During the recess in the evidentiary hearing a panel of the District of Columbia Circuit decided [Cicippio–Puleo v. Islamic Republic of Iran](#), 353 F.3d 1024 (D.C.Cir.2004). Plaintiffs asked that the hearing resume on February 5, 2004 as scheduled. On February 6, 2004, when the schedule for the conclusion of the evidentiary hearing and for closing argument was addressed by Magistrate Judge Robinson, counsel for plaintiffs asked that counsel’s closing argument be deferred until counsel filed Plaintiffs’ proposed findings of fact and conclusions of law. Magistrate Judge Robinson ordered that plaintiffs file their proposed findings and conclusions on April 1, 2004, the date proposed by plaintiffs’ counsel. Magistrate Judge Robinson scheduled plaintiffs’ closing argument for April 15, 2004, the date proposed by Plaintiffs’ counsel. On April 9, 2004, Magistrate Judge Robinson postponed the April 15 closing argument, intending to order supplemental briefing of issues relevant to the liability of the remaining defendants.

In light of the D.C. Circuit’s opinions in *Cicippio–Puleo* and *Acree v. Republic of Iraq*,³ plaintiffs moved to modify the magistrate judge’s Final Pretrial Order, or in the alternative to file third amended complaints so as to incorporate claims based in state law. On August 4, 2004, Magistrate Judge Robinson denied plaintiffs’ Motion for Reconsideration; granted plaintiffs’ motion for leave to file third amended *251 complaints; and ordered that plaintiffs file the third amended complaints by August 9, 2004. (Aug. 4, 2004 Order (Docket No. 103) at 2–3.)

Plaintiffs filed the third amended complaints on August 4, 2004. Plaintiffs named as defendants in the third amended complaints the Islamic Republic of Iran, the “Iranian Ministry of Information and Security[.]” and the “Iranian Islamic Revolutionary Guard Corps[.]” Plaintiffs again alleged that “[t]he Hizbollah terrorist organization is a creation and agent of the Islamic Republic of Iran”; that

“[i]n 1995, Hizbollah began plotting a terrorist attack against United States interests in Saudi Arabia”; and that “[Hizbollah] ultimately detonated a bomb outside Khobar Towers.” (Third Amended Complaints at 2.) Plaintiffs allege that “[u]nder United States law, the Islamic Republic of Iran—which funds, trains, and directs Hizbollah through the Iranian Ministry of Information and Security and the Iranian Revolutionary Guard Corps—is responsible for this terrorist attack and for the murder of [Plaintiffs’ decedents].” *Id.*

FINDINGS OF FACT⁴

1. In June 1996, Master Sergeant Michael Heiser, Captain Leland Timothy Haun, Airman First–Class Justin R. Wood, Senior Airman Earl F. Cartrette, Jr., Airman First–Class Brian McVeigh, Sergeant Millard D. Campbell, Staff–Sergeant Kevin J. Johnson, Airman First–Class Joseph E. Rimkus, Airman First–Class Brent E. Marthaler, Technical Sergeant Tranh (“Gus”) Nguyen, Airman First–Class Joshua E. Woody, Airman First–Class Peter J. Morgera, Master Sergeant Kendall Kitson, Jr., Captain Christopher Adams, Airman First–Class Christopher Lester, Senior Airman Jeremy A. Taylor, and Technical Sergeant Patrick P. Fennig were citizens of the United States and members of the United States Air Force. They were stationed in Dhahran, Saudi Arabia, and resided in the Khobar Towers.

2. The United States military presence in Saudi Arabia was with the consent of that host country. [Blais v. Islamic Republic of Iran](#), 2006 WL 2827372, *2 (D.D.C. Sept.29, 2006) (Lamberth, J.). It was part of a coalition of forces, primarily from the United States, Great Britain, and France, that was charged with monitoring Iraq’s compliance with United Nations Security Council resolutions enforcing the cease-fire that had brought an end to the 1991 “Desert Storm” ejection of Iraqi occupying forces from Kuwait. *Id.*

3. The deployment of U.S. troops to the region was considered a peacetime deployment within a friendly host country. *Id.*

4. The seventeen decedents represented in this action were engaged in routine peace time operations while stationed in Saudi Arabia, and were charged with enforcing the “no fly zone” in southern Iraq.

5. Defendant Iran “is a foreign state and has been designated a state sponsor of terrorism pursuant to section 69(j) of the Export Administration Act of 1979 ([50 U.S.C.A. § 2405\(j\)](#)) continuously since January 19,

1984.” *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 11, (D.D.C.1998) (Lamberth, J.).

6. Defendant the IRGC is a non-traditional instrumentality of Iran. It is the military arm of a kind of shadow government answering directly to the Ayatollah *252 and the mullahs who hold power in Iran. It is similar to the Nazi party’s SA organization prior to World War II. The IRGC actively supports terrorism as a means of protecting the Islamic revolution that brought the Ayatollah to power in Iran in 1979. It has its own separate funding sources, derived from confiscation of the assets of the former Shah of Iran in 1979, when the Shah was deposed. *Blais*, 459 F.Supp.2d at 46–47.

7. The Khobar Towers was a residential complex in Dhahran, Saudi Arabia, which housed the coalition forces charged with monitoring compliance with U.N. security council resolutions. *Id.* at 47–48.

The Attack on the Khobar Towers

8. At approximately 10 minutes before 10 pm on June 25, 1996, a large gasoline tanker truck pulled up alongside the perimeter wall of the Khobar Towers complex. The driver jumped out, ran into a waiting car that had pulled up near the truck, and sped off. *Id.*

9. Although security guards near the top of Building 131 started to give warnings about the unusual vehicle location, the truck exploded with great force within about 15 minutes. The investigation determined that the force of the explosion was the equivalent of 20,000 pounds of TNT. The Defense Department said that it was the largest non-nuclear explosion ever up to that time. *Id.*

10. The explosion sheared off the face of Building 131, where Paul Blais and his crewmates were housed, and reduced most of it to rubble. Nineteen United States Air Force personnel were killed in the explosion, and hundreds of others were injured. *Id.*

Iranian Support and Sponsorship of the Attack

11. The attack was carried out by individuals recruited principally by a senior official of the IRGC, Brigadier General Ahmed Sharifi. Sharifi, who was the operational commander, planned the operation and recruited individuals for the operation at the Iranian embassy in

Damascus, Syria. He provided the passports, the paperwork, and the funds for the individuals who carried out the attack. *Id.*

12. The truck bomb was assembled at a terrorist base in the Bekaa Valley which was jointly operated by the IRGC and by the terrorist organization known as Hezbollah. The individuals recruited to carry out the bombing referred to themselves as “Saudi Hezbollah,” and they drove the truck bomb from its assembly point in the Bekaa Valley to Dhahran, Saudi Arabia. *Id.*

13. The terrorist attack on the Khobar Towers was approved by Ayatollah Khomeini, the Supreme leader of Iran at the time. It was also approved and supported by the Iranian Minister of Intelligence and Security (“MOIS”) at the time, Ali Fallahian, who was involved in providing intelligence security support for the operation. Fallahian’s representative in Damascus, a man named Nurani, also provided support for the operation. *Id.*

14. Under Louis Freeh, the FBI conducted a massive and thorough investigation of the attack, using over 250 agents. *Id.*

15. Based on that investigation, an Alexandria, Virginia, grand jury returned an indictment on June 21, 2001, against 13 identified members of the pro-Iran Saudi Hezbollah organization. The indictment’s description of the plot to bomb the Khobar Towers complex frequently refers to direction and assistance from Iranian government officials. *Id.*

16. In addition, as a result of this investigation, the FBI also obtained a great deal of information linking the defendants *253 to the bombing from interviews with six admitted members of the Saudi Hezbollah organization, who were arrested by the Saudis shortly after the bombing. *Id.* at 11–30. These six individuals admitted to the FBI their complicity in the attack on the Khobar Towers, and admitted that senior officials in the Iranian government provided them with funding, planning, training, sponsorship, and travel necessary to carry out the attack on the Khobar Towers. (Exh. 7 at 11, 13–14, 27; see also Dec. 18, 2003 Tr. at 24–30.) The six individuals also indicated that the selection of the target and the authorization to proceed was done collectively by Iran, MOIS, and IRGC, though the actual preparation and carrying out of the attack was done by the IRGC. (Dec. 18, 2003 Tr. at 25.)

17. According to Director Freeh, the FBI obtained specific information from the six about how each was recruited and trained by the Iranian government *in Iran*

and Lebanon, and how weapons were smuggled into Saudi Arabia from Iran through Syria and Jordan. One individual described in detail a meeting about the attack at which senior Iranian officials, including members of the MOIS and IRGC, were present. (Dec. 18, 2003 Tr. at 23.) Several stated that IRGC directed, assisted, and oversaw the surveillance of the Khobar Towers site, and that these surveillance reports were sent to IRGC officials for their review. Another told the FBI that IRGC gave the six individuals a large amount of money for the specific purpose of planning and executing the Khobar Towers bombing.

18. Louis Freeh has publicly and unequivocally stated his firm conclusion, based on evidence gathered by the FBI during their five-year investigation, that Iran was responsible for planning and supporting the Khobar Towers attack. *Blais* at 48–49.

19. Dale Watson was formerly the deputy counterterrorism chief of the FBI in 1996, and subsequently became the section chief for all international terrorism in 1997. Mr. Watson was responsible for day to day oversight of the FBI investigation of the Khobar Towers attack. Mr. Watson has given sworn testimony that information uncovered in the investigation, “clearly pointed to the fact that there was Iran MOIS and IRGC involvement in the bombing.” *Id.*

20. Dr. Patrick Clawson testified as an expert in three areas: (1) the government of Iran; (2) Iran’s sponsorship of terrorism; and (3) the Iranian economy. Dr. Clawson’s expert opinion regarding the perpetrators of the Khobar Towers bombing is based on his involvement on a Commission investigating the bombing, his top-secret security clearance, his discussions with Saudi officials, as well as his academic research on the subject. Exh. 9 at 62–63.

21. Dr. Clawson testified that the government of Iran formed the Saudi Hezbollah organization. *Id.* at 56. He testified that the IRGC was responsible for providing military training to Hezbollah terrorists as to how to carry out a terrorist attack. *Id.* at 28. He also testified as to the defendants’ state-sponsorship of terrorism, noting that at the time of the Khobar Towers bombing, Iran spent an estimated amount of between \$50 million and \$150 million on terrorist activities. Exh. 10 at 46.

22. In light of all these facts, Dr. Clawson stated conclusively his opinion that the government of Iran, MOIS, and IRGC were responsible for the Khobar Towers bombing, and that Saudi Hezbollah carried out the attack under their direction. Exh. 9 at 67–68.

23. Dr. Clawson’s expert opinion is supported by Dr. Bruce Tefft, whose expert ***254** opinion this Court adopted in *Blais*. Dr. Tefft was one of the founding members of the CIA’s counterterrorism bureau in 1985. He served in the CIA until 1995, and has continued to work as a consultant on terrorism since that time, including work as an unofficial adviser to the New York Police Department’s counterterrorism and intelligence divisions. He retains a top-secret security clearance in connection with his work. He has been qualified as an expert witness in numerous other cases involving Iranian sponsorship of terrorism. He was qualified as an expert witness on terrorism in this case. *Id.*

24. Dr. Tefft expressed the opinion that defendants the Islamic Republic of Iran and the Iranian Revolutionary Guards Corp were responsible for planning and supporting the attack on the Khobar Towers, including providing operational and financial support. He stated that there was “no question about it. It wouldn’t have happened without Iranian support.” *Id.*

25. Dr. Tefft based his conclusion on publicly available sources that were not inconsistent with classified information known to him from his time at the CIA and from his security clearances since that time. He relied on the public sources described above, as well as several others, which he described as authoritative and reliable, including congressional testimony by Matthew Levitt, senior fellow and director of the Washington Institute’s Terrorism Studies Program, and articles published by the Federation of American Scientists as well as the Free Muslims Coalition. *Id.*

CONCLUSIONS OF LAW

I. Jurisdiction

In the United States, the Foreign Sovereign Immunities Act provides the sole basis for asserting jurisdiction over foreign sovereigns. *Argentine Republic v. Amerasia Shipping Corp.*, 488 U.S. 428, 434–34, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989). Normally, a party may not bring an action for money damages in U.S. courts against a foreign state. 28 U.S.C. § 1604. The “state-sponsored terrorism” exception, however, removes a foreign state’s immunity to suits for money damages brought in U.S. courts where

plaintiffs are seeking damages against the foreign state for personal injury or death caused by “an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment or agency.” 28 U.S.C. § 1605(a)(7).

In order to subject a foreign sovereign to suit under section 1605(a)(7), plaintiffs must show that: (1) the foreign sovereign was designated by the State Department as a “state sponsor of terrorism”; (2) the victim or plaintiff was a U.S. national at the time the acts took place; and (3) the foreign sovereign engaged in conduct that falls within the ambit of the statute. *Prevatt v. Islamic Republic of Iran*, 421 F.Supp.2d 152, 158 (D.D.C. Mar.28, 2006).

Each of the requirements is met in this case. First, defendant Iran has been designated a state sponsor of terrorism continuously since January 19, 1984, and was so designated at the time of the attack. See 31 C.F.R. § 596.201 (2001); *Flatow*, 999 F.Supp. at 11, ¶ 19. Second, the plaintiffs have described themselves as “the Estates and family members” of 17 of the 19 servicemen who were killed on June 25, 1996, after “Hizbollah terrorists detonated *255 a 5,000 pound truck bomb outside of Khobar Towers, a United States military complex in Dhahran, Saudi Arabia.” Second Amended Complaint, at 3. Both the plaintiffs and the victims to which they are related were United States nationals at the time the bombing occurred. Finally, defendant Iran’s support of an entity that committed an extrajudicial killing squarely falls within the ambit of the statute. Defendants MOIS and the IRGC are considered to be a division of state of Iran, and thus the same determinations apply to their conduct. *Roeder*, 333 F.3d at 234; see also *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d 105, 116 (D.D.C.2005) (Bates, J.) (analogizing the IRGC to the MOIS for purposes of liability, and concluding that both must be treated as the state of Iran itself).

Personal jurisdiction exists over a non-immune sovereign so long as service of process has been made under section 1608 of the FSIA. See *Stern v. Islamic Republic of Iran*, 271 F.Supp.2d 286, 298 (D.D.C.2003) (Lamberth, J.). In this case, service of process has been made. Accordingly, this Court has *in personam* jurisdiction over defendants Iran, MOIS, and IRGC.

II. Legal Standard for FSIA Default Judgment

Under the Foreign Sovereign Immunities Act, “[n]o judgement by default shall be entered by a court of the United States or of a state against a foreign state ... unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.” 28 U.S.C. § 1608(e); *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 232–33 (D.C.Cir.2003), cert. denied, 542 U.S. 915, 124 S.Ct. 2836, 159 L.Ed.2d 287 (2004). In default judgment cases, plaintiffs may present evidence in the form of affidavits. *Bodoff v. Islamic Republic of Iran*, 424 F.Supp.2d 74, 82 (D.D.C. Mar.29, 2006) (quoting *Campuzano v. Islamic Republic of Iran*, 281 F.Supp.2d 258, 268 (D.D.C.2003)). Upon evaluation, the court may accept plaintiffs’ uncontroverted evidence as true. *Campuzano*, 281 F.Supp.2d at 268. This Court accepts the uncontested evidence and testimony submitted by plaintiffs as true in light of the fact that the defendants in this action have not objected to it or even appeared in this action to contest it.

III. Magistrate Judge’s Report and Recommendation of Proposed Findings of Fact and Conclusions of Law

A. Standard of Review of a Magistrate Judge’s Proposed Findings and Recommendation

Under the Federal Magistrate’s Act, “a judge may ... designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition.” 28 U.S.C. § 636(b)(1)(B). Once the magistrate judge’s proposed findings and recommendation are submitted to the court and copies have been served on the parties, the parties may serve and file within ten days from receipt of service written objections to any proposed finding or recommendations made within the magistrate judge’s report and recommendation. 28 U.S.C. § 636(b). In reviewing the objections made to the magistrate judge’s report and recommendation, the district court judge shall make a *de novo* review of the portions of the report and recommendation objected to by the parties. *Id.* Upon review, “[a] judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; see also *Roell v. Withrow*, 538 U.S. 580, 585, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003) (noting that a district *256 court is “free to do as it sees fit with [a] magistrate judge’s recommendations” made under authority of 28 U.S.C. § 636(b)(1)).⁵ The district court “must not be a rubber

stamp” of the magistrate judge’s recommendations. *Reese v. Meritor Automotive, Inc.*, 113 F.Supp.2d 822, 824 (W.D.N.C.2000) (quoting 12 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2 (2006)).

B. Magistrate Judge Robinson’s Proposed Findings of Fact and Recommendation

In her Report and Recommendation, Magistrate Judge Robinson recommended that plaintiffs’ motion for default judgment be denied on the basis that plaintiffs had not presented evidence satisfactory to the Court of defendants’ liability. (Rep. and Reco. [129] 30.) The magistrate judge proposed that “Plaintiffs failed to establish a nexus between the June 25, 1996 bombing and any action or decision of any of the Defendants in these consolidated actions.” *Id.* As a result, Magistrate Judge Robinson recommended that this Court find that plaintiffs failed to “[establish] [their] claim or right to relief by evidence that is satisfactory to the Court[.]” *Id.* (quoting *Haim v. Islamic Republic of Iran*, 425 F.Supp.2d 56, 60 (D.D.C.2006)) (internal citation omitted). The magistrate judge also discussed generally, but made no specific findings or recommendations concerning, two additional issues, namely: (1) whether plaintiffs, as members of the United States Air Force operating under peacetime rules of engagement, may qualify for recovery under the FSIA; and (2) whether an apparent conflict of interest existed with respect to plaintiffs’ representation by DLA Piper Rudnick Gray Cary U.S. LLP.⁶ (Rep. and Reco. [129] 15–17, 25–26.)

Plaintiffs objected to the magistrate judge’s finding as to the insufficiency of the evidence,⁷ as well as to other portions of the report and recommendation. (See Pl.’s Obj. to Report and Recommendation [130] 4–5.) In addition to the objection as to the sufficiency of their evidence, plaintiffs objected to: (1) whether Magistrate Judge Robinson had jurisdiction to preside *257 over an evidentiary hearing or to make a report and recommendation regarding default judgment; (2) the magistrate judge’s discussion of whether plaintiffs, as members of the United States Air Force, could recover as noncombatants under peacetime rules of engagement at the time of their deaths; and (3) her discussion of an apparent conflict of interest with respect to plaintiffs’ counsel. (Pl.’s Obj. to Report and Recommendation [130] 5.)

Having reviewed *de novo* the objected-to portions of

Magistrate Judge Robinson’s report and recommendation to this Court, and for the reasons set forth in this opinion, this Court makes the following determinations. First, the Court finds that Magistrate Judge Robinson had proper jurisdiction to hear evidence and render a report and recommendation in this matter. Second, the Court finds that plaintiffs may properly recover under the FSIA as noncombatants under peacetime rules of engagement. Third, this Court finds that no conflict of interest presently exists arising out of plaintiffs’ representation by DLA Piper Rudnick Gray Cary U.S. LLP. Finally, the Court finds that plaintiffs have provided evidence satisfactory to this Court to establish their claim or right to relief. In light of the foregoing findings, judgment shall be entered in favor of the plaintiffs and against the defendants.

IV. Analysis and Review of Objections to Magistrate Judge Robinson’s Report and Recommendation

A. Plaintiff’s Objection that Magistrate Judge Robinson Lacked Jurisdiction to Hear Evidence and Render an Opinion in this Matter

Plaintiffs objected to the magistrate judge’s report and recommendation in its entirety on the grounds that she lacked jurisdiction to conduct an evidentiary hearing or issue a recommendation on plaintiffs’ motion for default judgment against the defendants. At the heart of their objections is the notion that appointment of a magistrate judge in lieu of an Article III Judge is unauthorized by the Magistrates Act and might run afoul of the parties’ due process and Article III rights under the U.S. Constitution.⁸

Plaintiffs’ objection is unfounded. As noted above,⁹ such an appointment is clearly authorized by the Magistrates Act. The plain language of 28 U.S.C. § 636(b)(1)(B) clearly states that a district court “may ... designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition.” 28 U.S.C. § 636(b)(1)(B). Additionally, the Supreme Court held that this statute “strikes the proper balance between the demands of due process and the constraints of Article III.” *Raddatz*, 447 U.S. at 683–84, 100 S.Ct. 2406. Delegation under this provision does not run afoul of Article III “so long as the ultimate decision is made by the district court.” *Raddatz*, 447 U.S. at 683, 100 S.Ct. 2406. Moreover, the parties’ due process rights are protected by the fact that “the district court judge alone

acts as the ultimate decisionmaker, [and] the statute grants the judge the broad discretion to accept, reject, or modify the magistrate's proposed findings." *Id.* at 680, 100 S.Ct. 2406. Here, Magistrate Judge Robinson heard evidence from the parties, and rendered a report and recommendation to this Court, pursuant to 28 U.S.C. § 636(b), and this *258 Court alone is responsible for rendering the ultimate decision as to the merits of this case. Accordingly, this Court finds that neither of the parties' due process or Article III rights were violated by appointing Magistrate Judge Robinson to conduct an evidentiary hearing. This Court finds that Magistrate Judge Robinson had proper jurisdiction under 28 U.S.C. § 636(b) to conduct an evidentiary hearing and submit a report and recommendation thereon.

B. Plaintiffs' Ability to Recover Under State-Sponsored Terrorism Exception to the FSIA

Magistrate Judge Robinson raised in her report and recommendation the issue of whether plaintiffs, as relatives of active servicemen on duty at the time of their deaths, were able to recover for damages arising from those servicemen's deaths. Plaintiffs argued that they are not excluded under the state-sponsored terrorism exception to the FSIA from recovering.

Previously, this Court has awarded damages to United States service members who were injured or killed as a result of state-sponsored terrorist attacks and their families.¹⁰ In *Peterson*, this Court held that a service member and his or her family may recover under the state-sponsored terrorism exception to the FSIA only if the service member was a non-combatant not engaged in military hostilities. There, the Court established a two-prong test to determine whether a military service member was a non-combatant. Under this test, a service member is deemed a non-combatant if he or she was: (1) engaged in a peacekeeping mission; and (2) operating under peacetime rules of engagement. *Peterson*, 264 F.Supp.2d at 60.

Here, plaintiffs have conclusively demonstrated that the servicemen who died at the Khobar Towers satisfy the two-prong test under *Peterson*. Colonel Douglas Cochran testified on December 2, 2003, that the service members who died at the Khobar Towers were deployed as a part of a peacekeeping mission sanctioned by United Nations Resolutions. (Dec. 12, 2003 Tr. at 12.) He also stated that the decedents were operating under standing rules of engagement,¹¹ under which the decedents did not have the right to participate directly in hostilities. *Id.* at 10–12, 15.

The decedents were not allowed to attack unless attacked or in peril of immediate attack resulting in death or serious bodily harm. *Id.* at 15. Moreover, as noted by the Reports of Casualty and personnel records for each of the decedents in this case, the cause of the service members' deaths was indisputably the result of a terrorist bombing, and not a result of combat hostilities. (Dec. 1, 2003 Tr. at 29; *see also* Dec. 2, 2003 Tr. at 35–38.) In light of the above-mentioned evidence, this Court finds that plaintiffs have satisfied the two-prong test under *Peterson*. Therefore, this Court finds that plaintiffs are not excluded from recovering under the state-sponsored terrorism exception to the FSIA.

C. Apparent Conflict of Interest

Next, in her discussion of the procedural history of the case, the magistrate *259 judge discussed an apparent conflict of interest resulting from plaintiffs' representation in this matter by DLA Piper Rudnick Gray Cary U.S. LLP (the "Firm"), and the Firm's representation of the Government of Sudan ("Sudan"), the defendant in the separate matter of *Owens v. Republic of Sudan* (Civ. Action No. 01–2244(JDB)).¹² The magistrate judge was concerned that the Firm's representation in the *Owens* matter created a conflict of interest because defendants Iran, IRGC, and MOIS were co-defendants with Sudan in *Owens*, and because the Firm's representation of Sudan would cause the Firm to make an argument in *Owens* that was directly contrary to the arguments it made on behalf of plaintiffs in this matter. Plaintiffs raise an objection and allege that no conflict of interest (apparent or otherwise) exists in this matter.

Under [District of Columbia Rules of Professional Conduct 1.7](#), unless a lawyer obtains informed consent from both clients, a lawyer shall not represent one client in a matter if the position taken by that client is adverse to the position taken by another client. D.C. Rule of Prof. Conduct 1.7. As the District of Columbia Bar Legal Ethics Committee has noted, "the lawyer may not, without informed consent of all parties, accept simultaneous representation of both clients where such representation creates a substantial risk that representation of one client will adversely effect the representation of the other." District of Columbia Bar Legal Ethics Committee Formal Op. 265 (1996).

Upon a review of the pleadings and evidence in this matter, the Court finds that no conflict of interest exists. First, the Firm's prior representation in another matter of a codefendant to the defendants in this matter does not

create a conflict of interest. Though the defendants in this matter were co-defendants along with Sudan in the *Owens* matter, the Firm has stated that it never represented Iran, MOIS, or IRGC in the *Owens* matter or any other matter. (Pl.'s Resp. to Apr. 16, 2004 Court Order 1.) Moreover, the Firm has withdrawn completely from representing Sudan in *Owens* as [Rule 1.7](#) states it must in such situations.

Next, the Court is satisfied that no apparent conflict exists that would preclude the Firm from continuing to represent plaintiffs' interests in this matter. As the Firm's pleadings to the magistrate judge plainly show, upon discovering that an apparent conflict had arisen, the Firm took immediate steps to eliminate it. The Co-Chair of the Firm's Professional Responsibility function instructed the partners representing the Government of Sudan that they were not to continue to represent Sudan in light of the fact that such representation would force the Firm to argue conflicting positions in both matters. Unbeknownst to the heads of the Firm, however, the specific attorneys responsible for representing Sudan disregarded the partners' instruction, and continued to represent Sudan, entering filings on their behalf. Still, when the Firm's management discovered the actions of events, it promptly sought withdrawal as counsel for Sudan in the *Owens* matter, notified the D.C. Bar Counsel and this Court's Committee on Grievances of the sequence of events, and wrote off fees and expenses otherwise due from Sudan as a former client. In addition, the attorneys who disregarded the Firm's instructions to cease representation *260 have left the Firm.¹³

Finally, this Court is persuaded that no conflict of interest exists by considering the manner in which the magistrate judge ultimately dealt with the issue. After the Firm issued its responses on the conflict issue to Magistrate Judge Robinson's Orders dated April 13 and April 16, 2004,¹⁴ the magistrate judge proceeded forth with the remaining portions of the trial, and never issued a ruling on whether a conflict existed as a result of the Firm's representation of plaintiffs in this matter, and their representation of Sudan in *Owens*. Moreover, in her report and recommendation to this Court, the magistrate judge included the "apparent conflict of interest" issue solely within her discussion of the case's procedural history. She neither issued nor recommended within her report and recommendation any finding that a conflict existed. Surely, were the magistrate judge of the opinion that a conflict of interest did exist, she would have taken more substantive steps to ensure that such a representation would not continue.

In light of these facts, the Court finds that no conflict of

interest exists arising from the Firm's representation of plaintiffs in this matter and Sudan in the *Owens* case.

D. Sufficiency of Liability Evidence Provided by Plaintiffs

Magistrate Judge Robinson recommended that plaintiffs' motion for default judgment be denied on the grounds that she found plaintiffs had not submitted evidence satisfactory to the Court of defendants' liability. She found Director Freeh and Mr. Watson's respective testimony to be unsatisfactory on the grounds that each witness' testimony was largely conclusory, and that each was testifying in his personal capacity and not as a representative of the FBI. She also found that the testimony given by Doctor Clawson was conclusory as to defendants' liability, and failed to provide evidence of the link between Saudi Hezbollah, Hezbollah, and Iran.

Plaintiffs objected to these findings on three grounds. They argued that the evidence submitted is legally sufficient to sustain a finding of liability against defendants. They also argue that the evidence presented is consistent with, nearly identical to and—in some instances—more direct than liability evidence found by this Court to be sufficient as a matter of law in prior cases arising under the state-sponsor of terrorism exception to the FSIA. Finally, plaintiffs argue that the Court may take judicial notice of the facts and findings in [Blais v. Islamic Republic of Iran 2006 WL 2827372 \(D.D.C. Sept.29, 2006\)](#) (Lamberth, J.), a case arising out of the same attack on the Khobar Towers. They argue that the facts from *Blais*, combined with the evidence submitted by plaintiffs in this matter, support a finding that defendants are liable in this matter.

1. Testimony of Director Louis J. Freeh and Dale L. Watson

To establish the defendant's liability for the bombing, plaintiffs offered the testimony of Louis J. Freeh, a former Director at the FBI, and Dale L. Watson, an agent and investigator at the FBI and CIA with over 20 years experience in the counterterrorism *261 and counterintelligence fields. Over the course of the approximately four year investigation into the Khobar Towers bombing, both Freeh and Watson "reviewed all reports prepared by the FBI investigators, and spoke directly with FBI agents and Saudi officials" all of which

established a link between the defendants and the bombing. All of the information conveyed to both Freeh and Watson was communicated by FBI agents who were on the scene.

Based on this knowledge of the investigation, Mr. Freeh testified at the evidentiary hearing before the magistrate judge as to the defendants' involvement in the Khobar Towers attack.¹⁵ In his testimony, Director Freeh testified that, during the course of the investigation into the explosion, it was concluded that the Khobar Towers explosion was the cause of a fertilizer-based explosive device. (Dec. 18, 2003 Tr. at 10.) It was also concluded, Director Freeh testified, that the bombing was an act of terrorism. *Id.*

According to Director Freeh, the FBI also obtained a great deal of information linking the defendants to the bombing from interviews with six individuals arrested by the Saudis shortly after the bombing. *Id.* at 11–30. These six individuals, who were members of the Saudi Hezbollah organization, admitted to the FBI their complicity in the attack on the Khobar Towers. Exh. 7 at 11, 13–14, 27. The six individuals admitted that senior officials in the Iranian government provided them with funding, planning, training, sponsorship, and travel necessary to carry out the attack on the Khobar Towers. (*Id.* at 13–14; see also Dec. 18, 2003 Tr. at 24–30.) The six individuals also indicated that the selection of the target and the authorization to proceed was done collectively by Iran, MOIS, and IRGC, though the actual preparation and carrying out of the attack was done by the IRGC. (Dec. 18, 2003 Tr. at 25.)

More specifically, Mr. Freeh testified, the FBI obtained specific information from the six about how each was recruited and trained by the Iranian government in Iran and Lebanon, and how weapons were smuggled into Saudi Arabia from Iran through Syria and Jordan. One individual described in detail a meeting about the attack at which senior Iranian officials, including members of the MOIS and IRGC, were present. (Dec. 18, 2003 Tr. at 23.) Several stated that IRGC directed, assisted, and oversaw the surveillance of the Khobar Towers site, and that these surveillance reports were sent to IRGC officials for their review. Another told the FBI that IRGC gave the six individuals a large amount of money for the specific purpose of planning and executing the Khobar Towers bombing.

Adding credence to Mr. Freeh's testimony is the reliability of the information he relied on in linking the defendants with the attack. First, Director Freeh testified that the information obtained from the six individuals was

communicated to the FBI on more than one occasion. Second, there was a great deal of cross-corroboration among the individuals' stories, even when each was interviewed by the FBI separately. *262 Third, he testified that the material portions of each of the individuals' accounts of the bombing did not contradict. Fourth, and perhaps most importantly, in many instances the FBI was able to corroborate independently the statements made by the six individuals.

As a result of this information and his direct participation in the four year investigation into the bombing, Director Freeh testified that it was his ultimate opinion that the bombing was the result of a terrorist attack by Saudi Hezbollah, organized and sponsored by the defendants in this case: Iran, MOIS, and IRGC.

Mr. Watson, who was also an active member in the investigation into the Khobar Towers bombing, testified similarly to Director Freeh. According to Mr. Watson, the bases for his opinion were the direct conversations with the six Saudi Hezbollah members, the corroborating facts discovered from their confessions, his historical knowledge and public record of the Hezbollah organization and statements proffered in an indictment filed in the Eastern District of Virginia. (Dec. 18, 2003 Tr. at 52, 63.) All of this information was information Mr. Watson gleaned as a result either of his own personal research or his involvement in the Khobar Towers bombing investigation. Most importantly, Mr. Watson reached the same conclusion as Director Freeh that the bombing was the result of a terrorist attack by Saudi Hezbollah members, organized and sponsored by the defendants.

2. Dr. Clawson's Expert Testimony as to Involvement by Iran, IRGC, and MOIS

Plaintiffs also relied upon the testimony of Dr. Patrick Clawson to establish a more complete picture as to the involvement of Iran, MOIS, and IRGC in helping carry out the attack on the Khobar Towers. At trial, Dr. Clawson testified as an expert in three areas: (1) the government of Iran; (2) Iran's sponsorship of terrorism; and (3) the Iranian economy. Dr. Clawson's expert opinion regarding the perpetrators of the Khobar Towers bombing is based on his involvement on a Commission investigating the bombing, his top-secret security clearance, his discussions with Saudi officials, as well as his academic research on the subject. Exh. 9 at 62–63.

Dr. Clawson testified that the government of Iran formed

the Saudi Hezbollah organization. *Id.* at 56. He testified that the IRGC was responsible for providing military training to Hezbollah terrorists as to how to carry out a terrorist attack. *Id.* at 28. He also testified as to the defendants' state-sponsorship of terrorism, noting that at the time of the Khobar Towers bombing, Iran spent an estimated amount of between \$50 million and \$150 million on terrorist activities. Exh. 10 at 46. In light of all these facts, Dr. Clawson stated conclusively his opinion that the government of Iran, MOIS, and IRGC were responsible for the Khobar Towers bombing, and that Saudi Hezbollah carried out the attack under their direction. Exh. 9 at 67–68.

3. Judicial Notice of Findings and Conclusions in *Blais v. Islamic Republic of Iran*¹⁶

Plaintiffs argue that the Court should take judicial notice of the facts and conclusions made by this Court in its recent consideration of the matter of *Blais v. Islamic Republic of Iran*, an action *263 brought against the same defendants for damages resulting from the same 1996 attack on the Khobar Towers. As has recently been noted in a FSIA case within this Circuit, “[a] court may take judicial notice of related proceedings and records in cases before the same court.” *Salazar v. Islamic Republic of Iran*, 370 F.Supp.2d 105, 109 n. 6 (D.D.C.2005) (Bates, J.). As Judge Bates noted in *Salazar*, under *Federal Rules of Evidence* 201(e), a “party opposing judicial notice of a given fact must be afforded an opportunity to be heard ... and may certainly make recognized objections to the admissibility of such judicially noticed facts as evidence in the case....” *Id.* (internal citations omitted). Defendants in this case have failed to make such objections, or even make an appearance at all before this Court. Accordingly, in addition to the unopposed trial submissions made by plaintiffs in this matter, this Court will take judicial notice of the findings made in *Blais* as to the defendants’ involvement in and liability for the Khobar Towers bombing.

In *Blais*, this Court found as fact that the Khobar Towers attack was carried out by individuals who referred to themselves as the group “Saudi Hezbollah.” *Blais*, 459 F.Supp.2d at 47–48. The Court found that these individuals were recruited by Brigadier General Ahmed Sharifi, a senior official of the IRGC. *Id.* Brigadier General Sharifi planned the operation, and recruited the individual members of Saudi Hezbollah at the Iranian Embassy in Damascus, Syria. *Id.* He was also responsible for providing the funds, passports, and paperwork for the individuals who carried out the attack. *Id.* In addition to acknowledging General Sharifi’s involvement in the

attack, this Court found that the attack was approved by the Ayatollah Khomeini, Iran’s Supreme Leader at the time, and was approved and supported by Ali Fallahian, the head of MOIS at the time. *Id.*¹⁷

This Court heard testimony from and accepted documentary evidence considered by Dr. Bruce Tefft.¹⁸ Dr. Tefft expressed his opinion “that defendants the Islamic Republic of Iran and the Iranian Revolutionary Guards Corp were responsible for planning and supporting the attack on the Khobar Towers, including providing operational and financial support.” *Blais*, 459 F.Supp.2d at 48–49. Dr. Tefft’s testimony and the evidence accompanying his testimony are consistent with the testimony and evidence from *Blais*, including testimony made by Mr. Freeh. In fact, Dr. Tefft not only relied upon the conclusions put forth by Messrs. Freeh and Watson in forming his own opinion in this matter, but Dr. Tefft stated that he agreed with their conclusions regarding the connection between Iran and Saudi Hezbollah in bringing about the bombing on the Khobar Towers. When asked as to the defendants’ involvement in the attack, Dr. Tefft stated that there was “ ‘no question about *264 it. It wouldn’t have happened without Iranian support.’ ” *Id.*

Finally, this Court considered written testimony from both former FBI Director Louis Freeh and former Deputy Counterterrorism Chief Dale Watson. In his written statement, Director Freeh stated that, based upon his involvement in the FBI’s five year investigation into the attack on the Khobar Towers, Iran was responsible for supporting and funding the attack. *Id.* Mr. Watson likewise stated unequivocally that, based upon information uncovered in the investigation into the attack,¹⁹ there was Iranian, MOIS, and IRGC involvement in the bombing. *Id.* As here, the Court found the conclusions of Messrs. Freeh and Watson in *Blais* to be amply reliable and probative as to the question of the defendants’ involvement in the Khobar Towers bombing.

4. Conclusion

Upon *de novo* review of the evidence, the Court is convinced that the evidence is sufficiently satisfactory to establish liability. First, contrary to the magistrate judge’s recommendation, the testimony by Freeh and Watson is not conclusory because the asserted statements made by Freeh and Watson do not lack supporting evidence. Director Freeh and Mr. Watson based their testimony upon their four year direct involvement in the investigation into the bombing, and their extensive years

of experience in the counterintelligence and counterterrorism fields. Throughout this time, Messrs. Freeh and Watson, and the FBI agents they directly supervised, uncovered and synthesized a great deal of information about the attack on Khobar Towers and its perpetrators. The facts unearthed by this investigation led them to the six captured participants in the bombing, each of whom implicated the defendants as having organized, funded, and supported the attack. Accordingly, the Court finds that the facts testified to by Freeh and Watson were supported by more than a sufficient basis for the witnesses' conclusions that Iran, MOIS, and IRGC were responsible for the Khobar Towers bombing carried out by Saudi Hezbollah.

The Court also fails to see the rationale behind Magistrate Judge Robinson's conclusion that the testimony offered by Freeh and Watson was somehow less credible because it was made in their individual capacities, and not on behalf of the FBI for whom they were no longer employed. The reliability of a witness' testimony should not and indeed does not hinge solely upon that person's employment with a particular organization. Rather, the reliability and credibility of a witness' testimony is determined by considering a myriad of factors including, *inter alia*, the witness' demeanor, the ability of the witness to observe the information about which he is testifying, whether the testimony is corroborated by other facts introduced into evidence, as well as the witness' prior experience.

Applying these factors to the testimony of Messrs. Freeh and Watson, this Court finds their testimony to be undeniably credible and reliable. Each was directly involved in the investigation into the Khobar Towers bombing, and was personally familiar with the results from that investigation. This is bolstered by the fact that Freeh and Watson occupied leadership positions in overseeing the entirety of the investigation into the bombing. Such positions would undoubtedly place Freeh and Watson in the best possible position to assess *all* the information about the attack and make a logical conclusion as to the cause and perpetrators of the attack. In *265 addition, their testimony was consistent with each other, with the testimony by Dr. Clawson, and with information available in the public record. Moreover, this Court has previously relied upon Freeh and Watson's conclusions as to the involvement of Iran, IRGC, and MOIS in the Khobar Towers attack, and sees no reason to discount the credence of their testimony as conclusive on the grounds that they are not currently employed by the FBI. See *Blais v. Islamic Republic of Iran*, 459 F.Supp.2d 40, 47–49 (D.D.C.2006) (Lamberth, J.) (finding as fact both Mr. Freeh and Mr. Watson's conclusion as to the

involvement of Iran, IRGC, and MOIS in the Khobar Towers bombing).

The fact that neither testified about the attack as agents of the FBI does not nullify the credibility of their statements. Messrs. Freeh and Watson's intricate involvement with the investigation into the Khobar Towers bombing while they were with the FBI provides more than an adequate basis for their testimony and the conclusions each drew therein as to the perpetrators of the attack.

The Court also disagrees with the magistrate judge's recommendation that Dr. Clawson's testimony, whether evaluated alone or in conjunction with the testimony by Freeh and Watson, was unsatisfactory to establish liability. To the contrary—Dr. Clawson is a renowned scholar of Middle Eastern politics, who has studied and written about Iran for years. In over 20 cases, Dr. Clawson has repeatedly provided this Court with reliable and credible testimony regarding the involvement of Iran, MOIS, and IRGC in sponsoring and organizing acts of terrorism carried out against citizens of the United States.²⁰ The Court sees no reason to deviate from the judges in prior cases who found Dr. Clawson's testimony to be satisfactorily reliable.

Accordingly, having considered the evidence and testimony admitted at trial in the present case, this Court finds that plaintiffs have met their burden under the state-sponsored terrorism exception of the FSIA by establishing their right to relief “by evidence that is satisfactory to the Court[.]” The totality of the evidence at trial, combined with the findings and conclusions entered by this Court in *Blais*, firmly establishes that “the Khobar Towers bombing was planned, funded, and sponsored by senior leadership in the government of the Islamic Republic of Iran; the IRGC had the responsibility and worked with Saudi Hizbollah to execute the plan, and the MOIS participated in the planning and funding of the attack.” Proposed Findings and Conclusions at 9, ¶ 28.

V. Liability

A. Proper Causes of Action Under the FSIA

Once a foreign state's immunity has been lifted under Section 1605 and jurisdiction is found to be proper, Section 1606 provides that “the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances.” 28 U.S.C. §

1606. Section 1606 acts as a “pass-through” to substantive causes of action against private individuals that may exist in federal, state or international law. *Dammarell v. Islamic Republic of Iran*, Civ. A. No. 01–2224, 2005 WL 756090, at *8–10, 2005 U.S. Dist. LEXIS 5343, at *27–32 (D.D.C. Mar. 29, 2005) (Bates, J.) [hereinafter *Dammarell II*].

In this case, state law provides a basis for liability. First, the law of the United States applies rather than the law of the place of the tort or any other foreign law because the United States has a “unique interest” in having its domestic law apply in cases involving terrorist attacks on United States citizens. See *Dammarell II*, 2005 WL 756090, at *20, 2005 U.S. Dist. LEXIS 5343, at *63.

B. Applicable State Law Governing Causes of Action

Having established that the laws of the United States apply in this action, the Court must determine the applicable state law to govern the action. As the forum state, District of Columbia choice of law rules apply to determine which state’s law shall apply. Under District of Columbia choice of law rules, courts employ a modified government interest analysis under which they “evaluate the governmental policies underlying the applicable laws and determine which jurisdiction’s policy would be most advanced by having its law applied to the facts of the case under review.” *Hercules & Co. v. Shama Rest. Corp.*, 566 A.2d 31, 41 (D.C.1989) (citations and internal quotations omitted). Generally, application of this governmental interest test points to the law of *each* plaintiff’s domicile at the time of the attack as having the greatest interest in providing redress to its citizens. See *Dammarell II*, 2005 WL 756090, at *20–21, 2005 U.S. Dist. LEXIS 5343, at *66–67 (citing RESTATEMENT (THIRD) FOREIGN RELATIONS LAW § 402(3) (1987)).

Plaintiffs’ claims involve consideration of the law of thirteen different states. The estates and surviving family members of persons killed in the bombing have asserted wrongful death claims and intentional infliction of emotional distress claims. In order to avoid repetition, the discussion will be organized by state, with an initial overview of each state’s law followed by a discussion of each plaintiff’s asserted claims under those laws.

C. Vicarious Liability

The basis of defendants’ liability is that they provided material support and resources to Saudi Hezbollah, which personally completed the attack. One may be liable for the acts of another under theories of vicarious liability, such as conspiracy, aiding and abetting and inducement. This Court finds that civil conspiracy provides a basis of liability for Iran, MOIS, and IRGC, and accordingly declines to reach the issue of whether they might also be liable on the basis of aiding and abetting and/or inducement.

The doctrine of civil conspiracy is recognized under the laws of each of the states each claimant has brought an action.²¹ Though each state has its own **267* particular means of describing civil conspiracy, upon inspection of each state’s laws the elements of civil conspiracy are met in each state if it can be demonstrated that: (1) there is an agreement between two or more persons or entities; (2) to do an unlawful act, or an otherwise lawful act by unlawful means; (3) there was an overt act committed in furtherance of this unlawful agreement; and (4) damages were incurred by the plaintiff as a proximate result of the actions taken pursuant to the conspiracy.²²

In this case, the elements of civil conspiracy between Iran, MOIS, the IRGC and Saudi Hezbollah have been satisfied. As this Court has previously held, “sponsorship of terrorist activities inherently involves a conspiracy to commit terrorist attacks.” *Flatow*, 999 F.Supp. at 27. It is undisputed that Saudi Hezbollah committed the attack on the Khobar Towers. It has been established by evidence satisfactory to this Court that Saudi Hezbollah and defendants Iran, MOIS and the IRGC conspired to commit the terrorist attack on the Khobar Towers.²³ The evidence elicited from the FBI’s investigation and interview of the six detained members of Saudi Hezbollah shows that senior Iranian, MOIS and IRGC officials participated in the planning of, and provided material support and resources to Saudi Hezbollah for **268* the attack on the Khobar Towers. The evidence also shows that the defendants also provided money, training and travel documents to Saudi Hezbollah members in order to facilitate the attacks. Moreover, the sheer gravity and nature of the attack demonstrate the defendants’ unlawful intent to inflict severe emotional distress upon the American servicemen as well as their close relatives. The defendants’ acts of financing, training and providing travel documents ably satisfy the overt act requirement for civil conspiracy. Finally, as will be discussed below, the plaintiffs in this action incurred damages resulting from the deaths caused by the conspiracy. Accordingly, the elements of civil conspiracy are established between Saudi Hezbollah and the defendants Iran, MOIS and the IRGC.

D. Cause of Death

Thomas R. Parsons, M.D., an associate medical examiner, was received by the Court as an expert in the field of forensic pathology. (Feb. 9, 2004 A.M. Tr. at 82–83; Ex. 232.) On June 25, 1996, Dr. Parsons was on active duty as a major in the United States Air Force. He was a medical examiner with the Armed Forces Institute of Pathology (“AFIP”). Dr. Parsons first learned of the June 25, 1996 bombing at Khobar Towers in Dhahran, Saudi Arabia on June 26, 1996. Dr. Parsons and three other medical examiners performed the autopsies of the 19 officers and airman killed in the Khobar Towers bombing at Dover AFB on June 27 and 28, 1996. *Id.* at 83–84.

Based on his performance of several of the autopsies in June of 1996, his review of the complete autopsy files and photographs from the AFIP, and his training and experience as a forensic pathologist, Dr. Parsons testified that the cause of death of each of the 17 decedents represented in the present litigation “was the explosion that occurred near their barracks [in Dhahran, Saudi Arabia].” *Id.* at 105–106. This conclusion, Dr. Parsons noted, was corroborated by the types of severe blast injuries sustained by each of the deceased plaintiffs. Dr. Parsons testified that the injuries of these 17 decedents were “very severe. As a matter of fact. This is about as bad as you can get until you get to body fragmentation.” *Id.* at 110.

Based on his performance of several of the autopsies in June of 1996, his review of the complete autopsy files and photographs from the AFIP, and his training and experience as a forensic pathologist, Dr. Parsons testified as to his opinion to a reasonable degree of certainty that 16 of the 17 individuals were rendered immediately unconscious and died immediately or shortly after the explosion. *Id.* at 110–111. According to Dr. Parsons, Airman Christopher Lester, the single plaintiff who did not die immediately after the explosion, died after a significant post-injury survival period. *Id.* at 111.

E. Damages

Before assessing the merits of the individual claims, this Court must briefly discuss damages in actions against foreign states arising under the FSIA. To obtain damages against defendants under the FSIA, the plaintiffs must

prove that the consequences of the defendants’ conduct were “‘reasonably certain’ (i.e., more likely than not) to occur, and must prove the amount of damages by a ‘reasonable estimate’ consistent with this [Circuit’s] application of the American rule on damages.” *Salazar*, 370 F.Supp.2d at 115–16 (quoting *Hill v. Republic of Iraq*, 328 F.3d 680, 681 (D.C.Cir.2003)) (internal quotations omitted).

*269 1. Compensatory Damages

As a result of the wrongful conduct of defendants Iran, MOIS, and the IRGC, plaintiffs have suffered and will continue to suffer pain and mental anguish. Under the FSIA, if a foreign state may be held liable, it “shall be liable in the same manner and to the same extent as a private individual under like circumstances.” 28 U.S.C. § 1606. Accordingly, plaintiffs are entitled to the typical bases of damages that may be awarded against tortfeasors under the laws under which each claim is brought.

In determining the appropriate amount of compensatory damages, the Court may look to prior decisions awarding damages for pain and suffering, and to those awarding damages for solatium. *Prevatt*, 421 F.Supp.2d at 160. “While intervening changes in law have ruled many cases’ reliance on federal common law improper, such findings need not disturb the accuracy of the analogy between solatium and intentional infliction of emotional distress.” *Haim*, 425 F.Supp.2d at 71.

In determining the amount of compensatory damages awards to family members of a surviving victim, this Court has held that these awards are determined by the “nature of the relationship” between the family member and victim, and “the severity of the pain suffered by the family member.” *Haim*, 425 F.Supp.2d at 75. Spouses typically receive greater damage awards than parents, who, in turn, receive greater awards than siblings. Compare, e.g., *Anderson v. Islamic Republic of Iran*, 90 F.Supp.2d 107, 113 (D.D.C.2000) (Jackson, J.) (awarding \$10 million to the wife of a hostage and torture victim); *Cicippio*, 18 F.Supp.2d at 70 (same), with *Eisenfeld*, 172 F.Supp.2d at 8 (awarding \$5 million each to the parents and \$2.5 million each to the siblings of victims of a suicide bombing on a passenger bus); see also *Flatow*, 999 F.Supp. at 31 (awarding parents each \$5 million and siblings each \$2.5 million of victim who was killed in the same passenger bus bombing in which Seth was injured). Moreover, “families of victims who have died are typically awarded greater damages than families of victims who remain alive.” *Id.* While the loss suffered by

the plaintiffs in these cases is undeniably difficult to quantify, courts typically award between \$8 million and \$12 million for pain and suffering resulting from the death of a spouse²⁴ approximately \$5 million to a parent whose child was killed²⁵ and approximately \$2.5 million to a plaintiff whose sibling was killed.²⁶

2. Pain and Suffering Damages

Dr. Dana Cable testified as an expert for the plaintiffs concerning the grief process *270 and the factors which cause it to be more extensive and intensive. (Feb. 10, 2004 Tr. at 9–28; Ex. 267.) Dr. Cable testified concerning the impact of each decedent’s death on his particular family. (Feb. 10, 2004 Tr. at 28–214.) Dr. Cable is a licensed psychologist, a certified death educator, and a certified grief therapist. (*Id.* at 5; Ex. 267.)

Dr. Cable described the grief process and the seven stages of grief: (1) shock; (2) disorganization; (3) volatile emotions; (4) guilt; (5) loss & loneliness (usually lasting 1–2 years); (6) relief (can go on with life, but experience some guilt for going on); and (7) reestablishment. (Feb. 10, 2004 Tr. at 9–11.) Dr. Cable stated that each of the surviving family members were still in the “loss and loneliness” stage of the grief process. *Id.* at 11. Dr. Cable described this stage of the grief process as “the most intense part of the grief process.” *Id.* at 10.

Though a person who loses someone to death is only in the “loss and loneliness” stage for a year or two, Dr. Cable explained that a number of issues present in this case complicate the grieving process and cause the “loss and loneliness” stage to last much longer for family members of terrorism victims. *Id.* at 11–12; 19–23. According to Dr. Cable, the grief process is made worse for the family members because none of them were present at the time the terrorist act took place at Khobar Towers. *Id.* at 26.

The Court’s review of the testimony and the demeanor of the plaintiffs, as well as the testimony accepted via affidavit, leads the Court to agree with Dr. Cable’s opinion that all of the plaintiffs are still in the “loss and loneliness” stage of the grief process, even seven and one-half years after the death of their loved ones.

In addition to seeking compensatory damages against the defendants, plaintiffs have also sought punitive damages against the defendants. Punitive damages, however, are not available against foreign states. 28 U.S.C. § 1606; *Blais*, 459 F.Supp.2d at 60–61. Accordingly, plaintiffs’ claim for punitive damages against defendant Islamic Republic of Iran cannot be maintained, and is denied.

Moreover, “punitive damages are not recognized against divisions of a foreign state that are considered to be the state itself, instead of an agent or instrumentality thereof.”²⁷ In order to determine whether the entity is sufficiently linked to the foreign state for punitive damages purposes, the court must assess the core functions of the entity. *See Roeder*, 333 F.3d at 234. Entities that are governmental are considered a part of the foreign state itself, while commercial entities are deemed agencies or instrumentalities of the foreign state, and thereby subject to punitive damages. *Id.* Plaintiff has an affirmative burden of producing evidence that the entity is commercial. *Blais*, 459 F.Supp.2d at 60–61.

Here, there is inadequate evidence for this Court to determine that either MOIS or IRGC is sufficiently commercial as to justify the imposition of punitive damages against them. Therefore, this Court lacks authority to grant plaintiffs’ request for punitive damages against MOIS and IRGC because both MOIS and IRGC are governmental entities, and parts of the state of Iran itself. Accordingly, *271 plaintiffs’ claim for punitive damages as to the remaining two defendants is denied.

VI. Specific Findings and Conclusions, By State

Plaintiffs’ claims in this action involve the consideration of the laws of eleven different states. The estates and family members of the seventeen servicemen killed in the attack on the Khobar Towers have asserted wrongful death claims and intentional infliction of emotional distress claims. The following discussion is organized by state, first providing an overview of the causes of action under that state’s law, and then discussing each plaintiff’s individual claims as applied under those laws.

A. Florida

3. Punitive Damages

1. Causes of Action

a. Wrongful Death

Under Florida law, a right of action exists for wrongful death in favor of the personal representative of the decedent's estate for the benefit of certain designated beneficiaries. *Fla. Stat. Ann. §§ 768.16–768.25 (2005)*. Under the Florida Wrongful Death Act,

When the death of a person is caused by the wrongful act ... of any person [or entity] ... and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person [or entity] ... that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.²⁸

Moreover, the Florida Wrongful Death Act allows the decedent's personal representative to bring an action for the benefit of the decedent's estate *and* the decedent's "survivors." *Fla. Stat. Ann. § 768.20–768.21*. Under the Act, "survivors" who may be entitled to recovery include the decedent's: (1) spouse, (2) children, (3) parents, and (4) blood relatives, provided these blood relatives can demonstrate they are partly or wholly dependent on the decedent for support. *Fla. Stat. Ann. § 768.18*.²⁹

If the decedent has a surviving spouse or lineal descendants or the decedent is an adult with a surviving parent but no dependents, then the decedent's personal representative may recover the present value of the "loss of the prospective net accumulations" of the decedent that might reasonably have been expected but for the wrongful death. *Fla. Stat. Ann. § 768.21(6)*.³⁰ A personal representative ***272** may recover on behalf of minor children the value of lost support and services, the loss of parental companionship, instruction and guidance, and for mental pain and suffering from the date of injury. *Fla. Stat. Ann. §§ 768.21(1), (3)*. A decedent's surviving spouse and children may recover for mental pain and suffering from the date of the injury. *Fla. Stat. Ann. 768.21(2), (3)*.³¹ A decedent's surviving parents may also recover for mental pain and suffering if the decedent is under 25 years old. *Fla. Stat. Ann. § 768.21(4)*. If the decedent is 25 years old or older, then the decedent's surviving parents may only recover for mental pain and suffering if there are no other survivors. *Fla Stat. Ann. §*

768.21(4).

b. Intentional Infliction of Emotional Distress

Florida courts have adopted Section 46 of the RESTATEMENT (SECOND) OF TORTS (1965) as the definition of the tort of intentional infliction of emotional distress. *Metropolitan Life Ins. Co. v. McCarson*, 467 So.2d 277, 278–79 (Fla.1985). Specifically, under Florida law, a defendant is liable for intentional infliction of emotional distress if the defendant's "extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another...." *Id.* (quoting RESTATEMENT (SECOND) OF TORTS § 46(1) (1965)).

In evaluating the degree of severity of the defendant's conduct, Florida courts have held that liability for intentional infliction of emotional distress is found "only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *McCarson*, 467 So.2d at 279 (quoting RESTATEMENT (SECOND) OF TORTSSSSSS § 46 cmt. d (1965)). A defendant's conduct is deemed intentional where the defendant "knows that such distress is certain, or substantially certain, to result from his conduct...." *McCarson*, 467 So.2d at 279 (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. i (1965)). Plaintiffs who are the spouse, child, sibling, or parent of a decedent have standing to recover for intentional infliction of emotional distress even though plaintiffs were not present at the scene. *Williams v. City of Minneola*, 575 So.2d 683, 690 (Fla.App.1991).

2. Plaintiffs

a. Estate and Surviving Family Members of Brent Marthaler³²

i. Estate of Brent Marthaler

Airman First-Class Brent Marthaler was born in 1976, and was raised in Minnesota. He is survived by his wife,

plaintiff Katie Lee Marthaler, his parents plaintiffs Herman C. Marthaler III and Sharon Marthaler, as well as his brothers, plaintiffs Kirk and Matthew Marthaler.

Brent graduated from high school in June of 1994 and joined the *273 U.S. Air Force. Brent graduated from boot camp in September 1994, and Katie drove to Texas with Brent's parents to attend his graduation. (Dec. 2, 2003 Tr. at 62–63.) Brent went to technical school in Texas after his graduation from basic training. After graduation, Brent was then assigned to Shepherd AFB for his advanced technical training. (Dec. 3, 2003 Tr. at 21.) After advanced training, Brent was permanently assigned to Eglin AFB in Florida. (Dec. 2, 2003 Tr. at 62–63.)

Brent was scheduled to be deployed to Saudi Arabia in April 1996. Two days prior to his deployment, however, Brent and Katie Lee Marthaler, his high school sweetheart of five years, were married to each other. According to Katie, Brent “just felt better going to Saudi Arabia and knowing that we were married and that we were taking on the world together then.” *Id.* at 73–74.

While he was away, Brent stayed in regular contact with Katie and his family, talking with Katie on the phone once a week, and writing letters to her four or five times a week. Brent clearly had high hopes for his life ahead with Katie. In one letter to Katie, Brent told her that “I think of you and all the fun that we have had and all the fun that will come in the next 50 years or so. I can truly say that you are the person that keeps a smile on my face 24–7 and for that I can never repay you, but I’m going to try my hardest.” *Id.* at 78–79. Brent was scheduled to return home from Saudi Arabia on June 27, 1996, a mere two days after the attack on the Khobar Towers.

Brent Marthaler’s estate is represented by his wife, Katie Lee Marthaler. Brent’s estate has asserted claims under Florida’s wrongful death statute because he was last domiciled in Florida. As the personal representative of Brent’s estate, Katie Lee Marthaler is the proper plaintiff to bring a wrongful death action under Florida law. See [Fla. Stat. Ann. § 768.20–768.21](#). Because Brent had no children, and no evidence was put forth at trial that his siblings were dependent upon him, any recovery under this wrongful death action is for the benefit of Brent’s wife Katie, and his parents, Herman C. Marthaler and Sharon Marthaler. See [Fla. Stat. Ann. § 768.18](#).

Based upon the pleadings and evidence presented to the Court, the estate of Brent Marthaler has made out a valid claim for wrongful death under Florida law, and the beneficiaries of this estate are entitled to recover the present value of any “loss of the prospective net

accumulations” of the decedent that might reasonably have been expected but for the wrongful death. [Fla. Stat. Ann. § 768.21\(6\)](#). Additionally, as Brent’s widow, Katie Lee Marthaler is entitled to recover personally for the loss of Brent’s companionship and protection, as well as for her mental pain and suffering she sustained as a result of her husband’s death. [Fla. Stat. Ann. § 768.21\(2\)](#). Moreover, Brent’s parents are entitled to recover for their own mental pain and suffering due to the fact that Brent was under 25 years of age. See [Fla. Stat. Ann. § 768.21\(4\)](#).

Dr. Herman Miller, an economic consultant testified as an expert that, were it not for Brent’s untimely death, he experienced a net economic loss of \$1,598,688.00. The Court should therefore award the Estate of Brent Marthaler, by Katie Lee Marthaler as personal representative, \$1,598,688.00 in economic damages for the benefit of Katie Lee Marthaler, Herman C. Marthaler, and Sharon Marthaler, to be distributed in a manner consistent with the statute governing intestate distribution of property under Florida law. As for the intangible economic damages of the wrongful death recovery, the Court will address those awards below, in an individualized discussion of the claims of *274 Katie Lee Marthaler, and Herman and Sharon Marthaler.

ii. Katie Lee Marthaler

Plaintiff Katie Lee Marthaler is the widow of Brent Marthaler. Katie is participating in this lawsuit both as the personal representative to her husband’s estate, and on her own behalf.

Ms. Marthaler is a United States citizen. She is 25 years old and was born on March 15, 1978 in Robbinsdale, Minnesota. (Dec. 2, 2003 Tr. at 52.) Her parents are Dennis and Jennifer Barthel who have been married for 30 years. She has one sister, Sarah, who is 22 years old. Katie grew up in Rogers, Minnesota. When Katie was 17, her family moved to nearby St. Michael, Minnesota. She attended elementary school in Rogers and junior and senior high school in Oak River, Minnesota. *Id.* at 53–54.

Katie met Brent Marthaler in 1991 when she was in the eighth grade and had just turned 14. Brent had just turned 16, and was in the tenth grade. Brent lived in Cambridge, Minnesota. Soon after Katie and Brent met each other, they began dating. Katie dated no one other than Brent from the time she met him when she was 14 years old until his death at Khobar Towers in June 1996. *Id.* at 55–56. Katie described Brent as a thoughtful and caring

person. Brent was also close to Katie's parents. Katie's family treated Brent as if he were part of their family for many years. *Id.* at 56–57.

Brent graduated from high school in June of 1994 and joined the U.S. Air Force. Katie kept in touch with him, but it was not easy to keep in touch during boot camp because the young airmen do not have much time to write or call. Once he was out of boot camp, they kept in regular touch. Even during boot camp Brent would write letters once or twice a week and would call Katie when he would get his "morale call." Brent graduated from boot camp in September 1994, and Katie drove to Texas with Brent's parents to attend his graduation. *Id.* at 62–63.

Upon graduation, Brent was permanently assigned to Eglin AFB in Florida. Brent and Katie spoke almost every night; some nights it was for a half hour, and other nights it was for hours. Brent came home for Katie's junior prom in May 1995. Brent came home to Minnesota in October of 1995 and asked Katie to marry him. Katie was only a junior in high school so they had much to do to convince their parents. Brent had prepared a strategic plan which he had written down. Katie remembers that her mother was crying and her father did not say a whole lot. Brent had brought home a registration form for Katie to go to college. Katie's father requested that they visit Father McLaughlin at St. Michael's Church. After they met with him, Father McLaughlin announced that Brent and Katie were the perfect couple and he did not see any reason why they should not get married, no matter what their ages were. As a result, by the end of the weekend, everyone was excited. As Katie explained, Brent's "plan worked, so he had it all figured out." *Id.* at 71–72.

Katie visited Brent in Florida during her Spring vacation, which was in the first week of April 1996. Brent was scheduled to deploy with his squadron to Saudi Arabia two days after the end of Katie's vacation. Katie had just turned 18. Two days before Katie was scheduled to leave, Brent explained that he was worried about going to Saudi Arabia. He knew that it was an unfriendly place and he wanted to make sure that they had gotten married before he went there. Katie explained that Brent "just felt better going to Saudi Arabia and knowing that we were married and that we *275 were taking on the world together then." *Id.* at 73–74.

So Brent and Katie went to the Courthouse and got married. They agreed not to tell anybody because they knew their parents would be upset. Invitations, a wedding dress, and a wedding cake for a September 1996 wedding had already been ordered. They agreed not to tell anybody until after Brent returned from Saudi Arabia. Brent did

not want Katie to have to tell everyone by herself. *Id.* at 74–75.

In the weeks after Brent was killed, Katie was very angry. She did not want to eat. Her mother would make her eat by placing a plate of food in front of her and refusing to allow her to leave the table until she ate. Katie could not sleep but she still wanted to be in bed all the time. Her family would have to drag her out of bed. *Id.* at 90–91.

In the years since Brent's death, Katie has had many bad days. After September 11, 2001, Katie relived her experience and was very angry. She could not go to work for a couple of days because she felt so badly for the families. She was scared that terrorism was occurring in our country. *Id.* at 91. Katie has a recurring dream about Brent. She dreams that she is sleeping with him, and she knows that he is behind her. She wakes up and rolls over and puts her arm around him, and he is laying in bed like he was in the coffin with his head wrapped in gauze and a plastic device in place of his chin. *Id.* at 91.

Katie still keeps mementos of Brent in her home. She displays her wedding picture and also a picture of Brent in his jet with a big smile and his arms stretched out. She has a hope chest with the gifts that Brent had given her, her wedding dress, and all the letters that he sent her. *Id.* at 91–92.

As Dr. Cable testified, Katie "is in loss and loneliness.... She has tried to rebuild her life. She has tried to go on.... She still thinks about Brent all the time, and that will never change.... When someone so close to you dies at 18, your new husband ... you worry about everybody else close to you. What if something happened to them, too? ... She has had to grow up very fast, and that's been difficult.... And there will always be those questions of: the life we should have had together; all the plans we had and all the promise. That will never fade. That will always stay present." (Feb. 10, 2004 Tr. at 69–71.)

Based on the evidence presented to the Court, it is clear that Katie Lee Marthaler has experienced and continues to experience extreme mental anguish and suffering resulting from the loss of her husband. Accordingly, the Court shall award the Estate of Brent Marthaler, by Katie Lee Marthaler as Personal Representative, \$8 million for the benefit of his surviving wife, Katie Lee Marthaler, to compensate her for the loss of Brent's companionship and protection, as well as for her mental pain and suffering she sustained as a result of her husband's death.

iii. *Herman C. Marthaler & Sharon Marthaler*

Sharon A. Marthaler, Brent Marthaler's mother and a United States citizen, was born in Ortona, Minnesota on January 11, 1946. She was raised on a dairy farm where she lived with her mother, father and two brothers. After graduating from high school, Sharon took a one year course at the University of Minnesota to train as a medical technician. She then began working as a medical technician at Riverview Memorial Hospital in West St. Paul. On February 26, 1971, she married Herm Marthaler. (Dec. 3, 2003 Tr. at 2–5.)

***276** Herman Charles Marthaler III, Brent Marthaler's father and a United States citizen, was born in St. Paul, Minnesota on January 12, 1947. He was raised on the Marthaler homestead in West St. Paul, Minnesota. Herm's parents were Donna Ann Merit and Herman Charles Marthaler, Jr. Herm's father served in the United States Air Corps as a navigator on a B–29 during World War II, flew 22 combat missions out of Guam and “was in the air with 400 planes when they dropped the atom bomb.” After his discharge from the military, Herm's father owned Marthaler Calf and Cattle where he bought and sold feeder cattle. After graduating from high school in 1965, Herm went to the University of Minnesota for one year and then he enlisted in the Air Force in the Fall of 1966. Herm served in five campaigns in Vietnam. On February 26, 1971, he married Sharon Marthaler. (Dec. 3, 2003 Tr. at 41–44.)

Sharon and Herman Marthaler initially lived in West St. Paul and then moved to Emery Grove, Minnesota where they had three sons within 30 months. The oldest, Kirk, was born in 1974. Matt was born in 1975 and Brent was born 1976. After Brent was born, the Marthaler family moved to Cambridge, Minnesota. *Id.* at 5–7.

In the first years after Brent's death, it was extremely difficult for Sharon to go to work and get through each day. She testified that as time goes on, it gets a little easier, “but it is always still there. You finally come to realize things will never be the same.” Every once in a while, Sharon has dreams about Brent, and he tells her that “things aren't as bad as you think.” *Id.* at 36–37.

Sharon has visited Eglin AFB twice since Brent's death. The first time was for a bricklaying ceremony in September of 1996. She went with Katie and Katie's mother. The second time was January of 1998. She and Herm went there to take pictures of a memorial that had been erected to honor the victims of the Khobar Towers bombing and to meet some of Brent's friends again. By that time, however, most of the young airmen that Brent had served with had left Eglin AFB. Sharon recalled

“[t]here weren't a lot of the old crew there anymore.” *Id.* at 37. Sharon and Herm visit Brent's grave two or three times a year. They usually go on Memorial Day, Columbus Day and Veteran's Day. They leave a wreath by his grave on Veteran's Day because in Minnesota, the cemetery will leave the wreath in place until March when they do their Spring cleanup. Herman and Sharon also have a flag garden and a flag in their yard where they plant flowers. *Id.* at 37.

Sharon and Herman keep numerous mementos of Brent around their house. They have two tall cabinets in his old bedroom full of notes and cards that Brent wrote to them. They have also kept his baseball and football cards. Sharon also had a flag flown over the United States Capitol for Brent and the other 18 airmen killed at the Khobar Towers. *Id.* at 38. The Marthalers put a poster on their mailbox every June 25th with a picture of Brent taken just before he left for Saudi Arabia and the words “Remember the 19.” Sharon contributes money in Brent's name to an organization called The Little Farm which is a nursery for disadvantaged children. Sharon makes the contribution in Brent's name periodically because it makes her feel good to write his name. *Id.* at 40–41.

Herman testified about the impact of Brent's death on his wife, Sharon, “[s]he'll never be the same. Absolutely never.” Herm thinks of Brent “every second of every day.” He testified “[w]hen I don't perform well enough is the day I wear [Brent's] T-shirt. When I am not going ***277** fast enough [Brent]'s right here and he says, you can do this, pop, just bend with the knees and lift harder. So it's every second of every day.... This is why Sharon and I sit down every day for two and a half hours from the moment she gets home.” The holidays are difficult for the Marthaler family. Herman testified “Christmas is tough because we know [Brent] really loved Christmas. Veteran's Day ... is the one that we get to put the wreath down and they'll leave ... it until Spring.” Herman believes that “the holidays that [Brent] liked the best is when it hurts us the most.” *Id.* at 77–80.

According to Dr. Cable, Herman “is still in loss and loneliness. Brent was a very important part of his life.... His grief will continue in the future ... [and] there will be for him a very strong void that will never be filled [t]hat will continue to cause pain and just is never going to go away.” (Feb. 10, 2004 Tr. at 72–73.) Similarly, Dr. Cable testified that Sharon “is still in loss and loneliness. She thinks of [Brent] all the time, so very much a part of her life.... She, too, has grief that will continue in the future. I see her as one who slowly will recover, but who will experience what we sometimes refer to as waves of grief; that is, where it comes back and sort of hits us again and

when we perhaps are least prepared and least expect it.... [S]he is going to be contending with that in the years ahead.” *Id.* at 75.

Based upon the evidence presented at trial, both Herman and Sharon Marthaler have experienced severe mental anguish and suffering as a result of their son’s untimely death. Therefore, this Court shall award to the estate of Brent Marthaler, by Katie Lee Marthaler as Personal Representative, \$5 million for the benefit of his father Herman Marthaler, and \$5 million for the benefit of his mother Sharon Marthaler to compensate both for the mental pain and suffering both have sustained as a result of their son’s death.

*b. Estate and Surviving Family Member of Justin Wood*³³

i. Estate of Justin Wood

Airman First-Class Justin R. Wood was killed in the Khobar Towers bombing on June 25, 1996. Pl.Ex. 2. Justin was born on July 16, 1975 and was 20 years old when he died. (Dec. 4, 2003 P.M. Tr. at 11.) Justin is survived by his father Richard Wood, his mother Kathleen Wood, and his older brother Shawn Wood.

From a very young age, Justin was always interested in sports. He particularly loved soccer and basketball. But as Justin got older, he played less soccer and devoted more and more time to basketball. “Basketball was his love.” Justin was also a trivia whiz when it came to basketball and could recite the names and statistics of college basketball players, particularly players from his favorite teams. (*Id.* at 107–108; Dec. 4, 2003 P.M. Tr. at 15.) In addition to playing basketball and soccer, Justin also took karate and participated in karate tournaments. (Dec. 4, 2003 A.M. Tr. at 107–108.)

Soon after graduating from high school, Justin joined the Air Force. Rich and Kathy were surprised by this decision. Growing up, Justin always said he would not join the military because “when you go *278 in the service you die.” Rich and Kathy do not know where Justin got this idea from, but he never wanted to join the service. Then one day, after Justin graduated from high school, he came home and told his parents that he had enlisted in the Air Force along with his friend Travis Hudson. (*Id.* at 113–114; Dec. 4, 2003 P.M. Tr. at 19.)

One of the reasons Justin joined the service was because he wanted to attend college. Justin knew that Rich and Kathy could not afford to send him to college and he knew that he could get that college money by joining the Air Force. He told Kathy that in the Air Force, “ ‘I can build up a college fund, save money for college, and I can take college classes while I’m there.’ ” (Dec. 4, 2003 A.M. Tr. at 113; Dec. 4, 2003 P.M. Tr. at 20.)

After joining the Air Force, Justin attended basic training at Lackland AFB, then went to Albuquerque, New Mexico for specialized training. He ultimately became a loadmaster with a search and rescue squad that was based at Patrick AFB in Florida. Justin was the first airman to go straight from boot camp to a loadmaster position with search and rescue. (Dec. 4, 2003 A.M. Tr. at 114.) Justin loved his job, particularly the crew of guys he was working with in the search and rescue squad. *Id.* at 117.

Justin Wood’s estate is represented by his father, plaintiff Richard Wood. Justin’s estate has asserted claims under Florida’s wrongful death statute because he was last domiciled in Florida. As the personal representative of Justin’s estate, Richard Wood is the proper plaintiff to bring a wrongful death action under Florida law. See [Fla. Stat. Ann. § 768.20–768.21](#). In light of the fact that Justin had no spouse, or children, and that no evidence was submitted demonstrating that his brother Shawn was financially dependent upon Justin, any recovery under this wrongful death action is for the benefit of Justin’s parents, Richard and Kathleen Wood. See [Fla. Stat. Ann. § 768.18](#).

Based upon the pleadings and evidence presented to the Court, the estate of Justin Wood has made out a valid claim for wrongful death under Florida law. The beneficiaries of this estate, however, are not entitled to recover the present value of any “loss of the prospective net accumulations” of the decedent that might reasonably have been expected but for the wrongful death because Justin was under 25 years old when he died, and did not have either a surviving spouse or any surviving lineal descendants. [Fla. Stat. Ann. § 768.21\(6\)\(a\)\(1\)](#). Still, Justin’s parents are entitled to recover for their own mental pain and suffering arising out of this wrongful death action due to the fact that Justin was under 25 years of age when he died. See [Fla. Stat. Ann. § 768.21\(4\)](#). A discussion of these intangible economic damages of the wrongful death recovery will be addressed below in an individualized discussion of the claims of Richard and Kathleen Wood.

ii. Richard Wood & Kathleen Wood

Richard (“Rich”) Wood is the father of Justin Wood. He was born in Hillsboro, Wisconsin on November 12, 1945. He is an American citizen. (Dec. 4, 2003 A.M. Tr. at 99.) Kathy Wood is the mother of Justin Wood. She was born in Los Banos, California on October 7, 1949. She is an American citizen. (Dec. 4, 2003 P.M. Tr. at 2.)

When Rich moved to Modesto to work at the Gallo’s warehouse, he met his wife, Kathy Wood. Rich worked at Ernest and Julio Gallo’s winery in Modesto, California for 34 years before retiring. (Dec. 4, 2003 A.M. Tr. at 103, 135.) After Rich and *279 Kathy married, they had two children: Shawn, who was born in March of 1971, and Justin, who was born in July of 1975. (Dec. 4, 2003 P.M. Tr. at 11.)

Rich does not remember what he and Kathy did after they learned about their son’s death, other than hold each other and cry. He felt numb. (Dec. 4, 2003 A.M. Tr. at 122–24.) Kathy was in shock. “All I could do is just sit and pray for it not to be true.” (Dec. 4, 2003 P.M. Tr. at 31.)

The day Kathy learned of Justin’s death, her doctor prescribed Xanax to help her deal with everything. She did not want the drug, but she did take it and it helped her sleep. Days after Justin’s death, Rich, Kathy, and Shawn attended a memorial service at Patrick AFB. Upon arriving at Patrick AFB, they were met by Justin’s flight squad, who whisked them away and took care of them for the next few days. “They did not want us to be anxious about anything. They went overboard to make sure that we were comfortable and well taken care of.” The squad took Rich and Kathy to the hotel, to the base, to their squad room, and to a squad member’s home, where they had a huge gathering and met the squad members’ families. (*Id.* at 36; Dec. 4, 2003 A.M. Tr. at 125–26.)

Since the Modesto ceremony and the burial service, Rich and Kathy have attended numerous Khobar Towers memorials and dedications. They attended the opening of the Khobar Towers display at Heritage Hall, which is the museum for enlisted men in Montgomery, Alabama. (Dec. 4, 2003 A.M. Tr. at 118–19, 130.) They attended the dedication ceremony for the monument to the victims of Khobar Towers at Patrick AFB. They also attended the FBI briefing held in Quantico, Virginia, where certain family members were briefed about the status of the Khobar Towers criminal investigation. *Id.* at 130.

After Justin’s death, Rich “just shut down.” He shut himself up in a room in his house and spent time on the computer and away from everyone else. “I couldn’t talk to my wife because if I talked to my wife, she’d cry or if she

talked to me I’d cry. I just had a real difficult time.” Rich became reclusive and did not want to have anything to do with anyone. *Id.* at 130–31. Rich even began showing physical manifestations of his problems and began breaking out in welts. (Dec. 4, 2003 P.M. Tr. at 41.)

Rich began seeing a psychiatrist two to three times a week after Justin died and continued seeing her throughout the year following Justin’s death. (Dec. 4, 2003 A.M. Tr. at 130, 132.) The psychiatrist prescribed Rich a medication that helped with his emotional suffering. Rich stayed on this medication for three to four years. After Rich started taking the drug, he began to feel better and thought he could stop taking the drug. But shortly after he went off the medication, Rich “went bananas” and shut down again. The psychiatrist was so concerned that she placed him in a medical facility called Crossroads, where he stayed for a week. *Id.* at 132–33.

It has been difficult for Rich to get rid of any of Justin’s possessions since he died and Rich’s home is now full of them. He has Justin’s Persian rug, aquarium, lamps, furniture, and all of his military uniforms. Moreover, Rich has encountered a hard time coping with life since Justin died. Rich finds it difficult to make decisions, he gets confused, and gets lost. He also cries at the drop of a hat. It is difficult for him to watch the news and see soldiers being killed because he knows what the parents are going through. September 11, 2001 was particularly difficult. Rich’s relationship with his family has also been dramatically altered since Justin was killed. Today, *280 Rich cannot talk about things with his family the way he used to. *Id.* at 140. Holidays are no longer enjoyable for Rich. *Id.* at 138.

Rich and Kathy have created a number of lasting memorials in Justin’s honor. “I have his flag box on his coffee table. I have eagles all over the place. I put up a flag pole out in the front [of the house]. Together with the PTA at Rose Avenue School where he went to grade school, we put in a rose garden.... And then we have a plaque and planted a tree at the high school he attended.” *Id.* at 141.

Today, Rich still has moments where he just falls apart. *Id.* at 131–132. The biggest problem is that the hurt never goes away. *Id.* at 136. “I think about Justin every single day. There’s no particular thing that sets it off. It’s just always there.” *Id.* at 139.

According to Dr. Cable, Rich

is in extreme loss and loneliness.
He is also having volatile emotions.
I think the real difficulty for him, in

terms of his loss and loneliness, he doesn't want to get better.... He is very lonely. He is very bitter. He is withdrawn from all of those people who could support him, all of those people who love him.... [His prognosis is] really very poor.... His grief will last a lifetime. He doesn't want to forget. He doesn't want to let go of the pain, and I fear will permanently damage any family relationships.³⁴

After Justin's death, Kathy was coping with her own profound grief but also was dealing with her husband, who "was very angry, very upset, very distraught." Rich's reaction to Justin's death caused a great deal of friction between Kathy and Rich, resulting in nearly constant arguments between Kathy and Rich. *Id.* at 39–40. To help Kathy forced herself to go back to work and this was helpful, because there was a support system in place for her there. "If someone's having problems, we do what we can to make them feel good and strengthen them up as well, and I needed my friends." Going back to work prevented Kathy from going into a deeper depression. *Id.* at 41–42. But Kathy felt bad about going back to work because Rich could not bring himself to do the same thing and because she began shutting him out more, in the hope that doing so would prevent further anxiety for him. *Id.* at 41.

As a result of the rift between Kathy and Rich, Kathy began doing more things by herself. She regularly attends church-related events and has girls' night out with her friends. She still does not go out with Rich like she used to before Justin died. *Id.* at 45. To this day, Kathy and Rich's relationship has not returned to normal. *Id.* at 40. Kathy and Rich's physical relationship has also not returned to normal.

Kathy still thinks about Justin all of the time and likes to keeps things around that remind her of him. She put together a scrapbook of pictures from Justin's childhood that she carries with her often.

As to her emotional state, Dr. Cable testified that Kathy is in loss and loneliness. "She has tried to move on and I think really wants to, but there is a lot of personal grief still present. Then, of course, it's complicated by how her husband has dealt with all of this and then the anger and intense grief he has got.... [H]er grief will continue for a long period of time. I believe her marriage will suffer ... may full break down." (Feb. 10, 2004 Tr. at 207.)

***281** Based upon the evidence presented at trial, both Richard and Kathleen Wood have experienced severe mental anguish and suffering as a result of their son's untimely death. Therefore, this Court shall award to the estate of Justin Wood, by Richard Wood as Personal Representative, \$5 million for the benefit of his father Richard Wood, and \$5 million for the benefit of his mother Kathleen Wood to compensate both for the mental pain and suffering both have sustained as a result of their son's death.

c. Estate and Surviving Family Members of Michael Heiser

i. Estate of Michael Heiser

Michael ("Mike") Heiser was killed in the Khobar Towers bombing on June 25, 1996. (Dec. 5, 2003 A.M. Tr. at 29; Ex. 2.) Mike was born on September 20, 1960 and was 35 years old when he died. (*Id.* at 5, Ex. 67.) Mike was unmarried and had no siblings. Mike is survived by his parents, Francis ("Fran") and Gary Heiser. Though Gary is not Mike's biological father, he legally adopted Mike. *Id.* at 8, 53–54. Mike had a special and rewarding childhood in Germany. On weekends and holidays, he would travel with Fran and Gary to see the German countryside and became involved in collecting antiques and other items. Mike was a natural businessman and even at a young age, helped Fran and Gary purchase antiques, refurbish them, and sell them for a profit. *Id.* at 7.

As a child, Mike was smart, funny, and considerate. He also had a passion for learning. Reading many books and participating in school activities. Through his travels, he had many friends all over the world. Mike was also a hard worker, both during his years as a student and after he joined the military. *Id.* at 8–11.

Mike enlisted in the Air Force on June 25, 1979. Because Gary had served in the Army for 22 years, Mike initially talked to a recruiter about joining the Army. Gary testified that he knew the benefits of being in the Air Force and persuaded Mike look at the Air Force. Mike ultimately decided that the Air Force was a better career choice, so he enlisted soon after graduating from high school. *Id.* at 14, 55.

After attending boot camp and advanced training, Mike developed a specialty in the communications field and

was sent to Mildenhall AFB in England. After spending three years at Mildenhall, Mike was promoted and reassigned to Ramstein AFB in Germany, where he was responsible for communications operations on the Air Force's fleet of Gulfstream planes. During Mike's three years at Ramstein, he took part in several exciting missions. For example, he was assigned to the first airplane escorted into the new, free Russia; he was assigned to General Schwarzkopf's personal plane during the Gulf War; and he was assigned to coordinate communications when President Clinton visited Ramstein. Mike loved working and flying on the Gulfstreams. After spending three years in England and three years in Germany, Mike transferred back to the United States and was assigned to Patrick AFB in Florida, and was later assigned to Saudi Arabia.

Michael Heiser's estate is represented by his parents, Fran and Gary Heiser. Michael's estate has asserted claims under Florida's wrongful death statute because he was last domiciled in Florida. As the personal representatives of Michael's estate, Fran and Gary Heiser are the proper plaintiffs to bring a wrongful death action under Florida law. See *Fla. Stat. Ann. § 768.20–768.21*. In light of the fact that Michael had no spouse or dependents, any recovery under this wrongful death action is for the benefit of Michael's parents, *282 Fran and Gary Heiser. See *Fla. Stat. Ann. § 768.18*.

Based upon the pleadings and evidence presented to the Court, the estate of Michael Heiser has made out a valid claim for wrongful death under Florida law. Accordingly, the beneficiaries of this estate are entitled to recover the present value of any "loss of the prospective net accumulations" of the decedent that might reasonably have been expected but for the wrongful death. See *Fla. Stat. Ann. § 768.21(6)*. Additionally, though Michael was over 25 years of age at the time of his death, Michael's parents are nonetheless entitled to recover for their own mental pain and suffering arising out of this wrongful death action due to the fact that Michael died without any other survivors. See *Fla. Stat. Ann. § 768.21(4)*.

Dr. Herman Miller, an economic consultant testified as an expert that, due to Michael's untimely death, he experienced a net economic loss of \$3,720,019.00. The Court should therefore award the Estate of Michael Heiser, by Fran and Gary Heiser as personal representatives, \$3,720,019.00 in economic damages for the benefit of Michael's parents, Fran and Gary Heiser. As for the intangible economic damages of the wrongful death recovery, the Court will address those awards below, in an individualized discussion of the claims of Fran and Gary Heiser.

ii. Francis and Gary Heiser

Francis ("Fran") and Gary Heiser were Mike's parents. Fran was born in New Jersey on December 23, 1941 and was 54 years old when Mike was killed. (Dec. 5, 2003 A.M. Tr. at 4.) Gary was born in Pennsylvania on March 22, 1937 and was 59 years old when Mike was killed. *Id.* at 52. Gary was Mike's adoptive father. *Id.* at 53–54.

Shortly after graduating from high school, Fran married and gave birth to Mike who was her only child. After six years of marriage, Fran and her husband divorced. Fran's ex-husband, who was Mike's biological father, did not play a role in Mike's life after the divorce. In Fran's words, her ex-husband "divorced both of us." *Id.* at 5–6, 8. Later, Fran met Gary, and they were eventually married on February 14, 1970. *Id.* at 6, 53.

When Fran and Gary married, Mike was only nine years old. *Id.* at 6, 53. Gary could see that Mike needed a male influence in his life, and Gary filled that role. In addition to raising Mike as his own son, Gary formally adopted Mike. *Id.* at 8, 53–54, Ex. 67.

Since burying Mike, Fran and Gary have dedicated themselves to attending numerous memorials all around the country. "[W]e've been to any that we know about." Fran and Gary have also kept scrapbooks memorializing these events and have created a book called "The Story of a Lifetime," to preserve Mike's memory. By posting it on a website, they have shared this book with other victims of terrorism, including the other families of the victims of the Khobar Towers bombing. *Id.* at 33, 43, 68.

Fran has been deeply affected by the loss of her only child. After Mike's death, she did not want to see or speak with anyone. *Id.* at 34. It has been particularly difficult for her to see other people's children and grandchildren without becoming emotional. Mike's death dramatically impacted Fran's family life. She is upset how her already small family broke-down even further when Mike was killed. *Id.* at 36, 38. Fran does not even like holidays anymore.

Fran has experienced severe sleep problems ever since Mike died. This still occurs today. After Mike's death, Fran and *283 Gary decided to sell the family business. There was no longer a reason to keep the business. The business had been growing fast, Gary was considering retiring, and with Mike gone, there was nobody to take over the business. So after Fran and Gary received an

offer, they sold the company. *Id.* at 37.

Fran attended counseling for a short period of time after Mike died, but did not find it helpful. She then attended a support group meeting for the Tragedy Assistance Program for Survivors (“TAPS”) in Washington, D.C., which was a support group for family members of deceased servicemen. Fran found several of the TAPS support groups helpful, and has made TAPS a beneficiary of her will. Fran also involved herself with an organization called Alive Alone, an organization for parents whose children have died at a young age. *Id.* at 34–35.

Since Mike’s death, Fran has dedicated much of her life to being an advocate for victims of terrorism. She has contacted congressmen about terrorism issues, has attempted to change the laws to protect United States servicemembers, and has tried to place terrorism on the agendas of politicians. She has also spent a great deal of time reading and educating herself about terrorism. Some people think Fran is obsessed with it. *Id.* at 39–40.

To this day, much of Fran and Gary’s home is decorated with mementos from Mike’s life. Fran and Gary have also set up the Michael G. Heiser Foundation, in remembrance of all victims of terrorism. Money donated to the Foundation is used for ROTC scholarships and to assist victims of terrorism, through TAPS, Alive Alone, and another support organization called No Greater Love. *Id.* at 41–42.

As Dr. Cable stated, Fran

is very much in loss and loneliness, and that’s complicated or enhanced by the lack of family for her future. So it’s not just present loneliness, but it’s future loneliness as well; the family that can never be there.... She will continue in grief the rest of her life, because there is nothing besides her husband to put herself into. There is no one to love. There is an emptiness there that’s not going to go away for her. There will never be grandchildren. So that real emptiness is long term.

(Feb. 10, 2004 Tr. at 139.)

Gary’s entire life has been affected by the death of his son. He and Fran always had a small family, but now they are left without their only child, and their lives have been shattered. “[O]ur future goes only to the point when I go and my wife goes. That’s it. The family ceases to exist.” This has caused great emotional pain for Gary. It forced Gary and Fran to sell their family business, which they had planned on passing down to their son. (Dec. 5, 2003 A.M. Tr. at 69–71.)

Like Fran, Gary does not celebrate holidays anymore. Until Mike died, Gary enjoyed Christmas. But he cannot enjoy the holiday anymore. Additionally, birthdays and other holidays are equally tough for Gary to handle. As Dr. Cable testified, Gary

is in loss and loneliness. As with his wife, there is no future. There was a very strong relationship because of the adoptive choice that was made between [Gary and Mike].... His grief will continue for a great deal of time. Again, the future is gone. He will move on with his life, but the grief will always be there. Part of that will always be also seeing the pain his wife is going through.

(Feb. 10, 2004 Tr. at 141–42.)

Based upon the evidence presented at trial, both Fran and Gary Heiser *284 have experienced severe mental anguish and suffering as a result of their son’s untimely death. Therefore, this Court shall award to the estate of Michael Heiser, by Fran and Gary Heiser as Personal Representatives, \$5 million for the benefit of his mother Fran Heiser, and \$5 million for the benefit of his father Gary Heiser to compensate both for the mental pain and suffering both have sustained as a result of their son’s death.

*d. Estate and Surviving Family Members of Earl Cartrette, Jr.*³⁵

i. Estate of Earl Cartrette, Jr.

Senior Airman Earl Cartrette, Jr. (“J.R.”) was born March 2, 1974, and was the eldest of three sons; J.R.’s two younger brothers are Lewis, born on November 1, 1976; and Anthony (“Tony”), born on March 15, 1978. He was killed on June 25, 1996 while stationed at Khobar Towers. (Dec. 5, 2003 P.M. Tr. at 2–3; Ex. 9.) J.R. attended grade and middle school at St. Anthony’s Catholic School in Sellersburg, Indiana, where his grandmother worked. His grandmother was in charge of the school cafeteria. After St. Anthony’s, J.R. attended Providence High School, a catholic high school in Clarksville, Indiana. J.R. played football from the third grade through his junior year in high school. He also ran track all through grade school, middle school and his junior year of high school. When he was younger he played soccer and basketball and wrestled. *Id.* at 7–8.

J.R. decided to join the U.S. Air Force after high school. J.R. underwent basic training at Lackland AFB and advanced technical school at Shepherd AFB, both in Texas. He was then assigned to Eglin AFB in Florida. *Id.* at 20–21. He was deployed with the 58th Fighter Squadron to Saudi Arabia in March 1996, and was scheduled to return on June 27, 1996, two days after the bombing.

J.R.’s estate is represented by his mother, Denise Eichstaedt. J.R.’s estate has asserted claims under Florida’s wrongful death statute because he was last domiciled in Florida. As the personal representative of J.R.’s estate, Denise Eichstaedt is the proper plaintiff to bring a wrongful death action under Florida law. See [Fla. Stat. Ann. § 768.20–768.21](#). In light of the fact that J.R. had no spouse or lineal descendants, and because no evidence was presented as to his siblings’ financial dependence upon J.R., any recovery under this wrongful death action is for the benefit of J.R.’s mother, Denise Eichstaedt. See [Fla. Stat. Ann. § 768.18](#).

Based upon the pleadings and evidence presented to the Court, the estate of Earl Cartrette, Jr. has made out a valid claim for wrongful death under Florida law. The beneficiaries of this estate, however, are not entitled to recover the present value of any “loss of the prospective net accumulations” of the decedent that might reasonably have been expected but for the wrongful death because J.R. was under 25 years old when he died, and did not have either a surviving spouse or any surviving lineal descendants. [Fla. Stat. Ann. § 768.21\(6\)\(a\)\(1\)](#). Still, J.R.’s mother is entitled to recover for her own mental pain and suffering arising out of this wrongful death action due to the fact that J.R. left ***285** no other survivors. See [Fla. Stat. Ann. § 768.21\(4\)](#).³⁶ A discussion of these intangible economic damages of the wrongful death recovery, will

be addressed below in an individualized discussion of the claim of Denise Eichstaedt.

ii. Denise Eichstaedt

Denise Eichstaedt, a United States citizen, was Senior Airman Earl Cartrette, Jr.’s mother. Denise was born on March 8, 1953 in Jeffersonville, Indiana. She had three brothers and a sister and grew up in the Jeffersonville area. Denise is married to James Eichstaedt. She is a nurse. Her first husband was Earl Cartrette, Sr. who died on February 18, 1992, the year that J.R. graduated from high school. Denise had three sons with Earl Cartrette, Sr.: J.R. who was born March 2, 1974; Lewis who was born on November 1, 1976; and Anthony (“Tony”) who was born on March 15, 1978. Denise raised the three boys in Sellersburg, Indiana, a small town approximately 6 miles north of Jeffersonville where Denise’s parents still live. *Id.* at 4–5.

Denise did not attempt to return to work for two and one-half months after J.R. was killed. When she did return to work, she was unable to perform her duties because she worked on a floor with terminally ill patients, where it was difficult to work without crying. As a result, the hospital gave her more time off, and she stayed home for six months. At that point, however, she decided that it was in everyone’s best interest for her to resign because she felt as though she could not do that type of work anymore. In mid-February 1997, she went to work in a pediatrician’s office. In the days and weeks following J.R.’s death, Denise did not want to sleep. That period of time is essentially “a blur” for her. *Id.* at 36–37.

Denise has attempted to obtain professional counseling over the years. She went to see a civilian psychiatrist and did not continue because he wanted to put her on medication for depression. Denise explained that she did not want to take drugs. Denise believes that she is better off sitting at home contemplating in her own mind, talking to herself, rather than taking medication. Denise also attempted to go to a couple of meetings of an organization called Compassionate Friends which includes the parents of children who have been killed. She concluded, however, that she did not fit in because they did not understand what happens to a parent when her child is killed by a terrorist. *Id.* at 36–38. When Denise looks at a picture of J.R., she begins to cry. Sometimes she cries for a short period of time and sometimes she cries off and on for a couple of days.

As Dr. Cable testified, Denise

is still certainly in the loss and loneliness [stage]. She is still having a very difficult time. The things that keep her going are her work and her faith.... [S]he has still got a room almost as a museum [which] shows that she is frozen in time at a point back where this happened.... Her pain will continue for quite a period of time. She is trying to *286 do better. She works at it. She makes her own effort, but she is still have a difficult time and will.

(Feb. 10, 2004 Tr. at 121–22.)

Based upon the evidence presented at trial, Denise Eichstaedt has experienced severe mental anguish and suffering as a result of her son's untimely death. Therefore, this Court shall award to the estate of Earl Cartrette, Jr., by Denise Eichstaedt as Personal Representative, \$5 million for the benefit of his mother Denise Eichstaedt to compensate her for the mental pain and suffering she sustained as a result of her son's death.

iii. Anthony Cartrette

Anthony W. Cartrette ("Tony") is a United States citizen, and is one of the two brothers of Earl Cartrette, Jr. Ex. 280 ¶¶ 1–3. J.R. and Tony lived together in the same home for 14 years while both were growing up, and still in school. J.R. was a very supportive big brother to Tony, and always took care of him. Tony was always able to confide in J.R. and ask for his guidance. "J.R. was the glue that held everyone together." Ex. 280, ¶ 6.

After the memorial services, Tony had a "melt down." He was unable to sleep for days and did not eat very much. Tony was only 17 years old when J.R. died. It is very difficult for Tony to accept that J.R. is gone. Tony has not been able to talk to anyone else about J.R.'s death. Ex. 280, ¶ 13.

Tony misses J.R. the most when he goes home to visit their family and realizes that J.R. will not be joining them. Birthdays and holidays are also difficult for Tony. There are still times when Tony is alone that he wants to pick up the phone and call J.R. and realizes that Tony can't. J.R. is on Tony's mind every second of every day and Tony

misses him more each day. J.R.'s death was a shock. There is no closure because Tony didn't get to say good-bye. Ex. 280, ¶¶ 14–16.

According to Dr. Cable, Tony

is in loss and loneliness certainly.... [H]e also has some unresolved issues with his brother, kind of unfinished business issues that probably evoke some earlier stages of grief as well. It's very intense grief and problems.... He will have continuing difficulties for quite a period of time.... He need to be able to talk about all of his feeling, including guilt feelings, unfinished business, and all. So it's a long road ahead for him.

(Feb. 10, 2004 Tr. at 125–26.)

As the brother of Earl Cartrette, Jr., Anthony Cartrette has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based on the evidence presented to the Court, Anthony Cartrette has satisfied the elements to establish a valid claim for intentional infliction of emotional distress under Florida law. First, defendants Iran, MOIS, and the IRGC provided material support to Saudi Hezbollah with the intent that Saudi Hezbollah would carry out attacks that would cause severe emotional distress. Second, the tragic bombing of the Khobar Towers by means of material support and civil conspiracy is an act that is nothing short of extreme, outrageous, and beyond all bounds of civil decency. As is the nature of terrorism, terrorists seek to perform acts that are deliberately outrageous and bring about extreme suffering in order to achieve political ends. Third, defendants' actions in facilitating and supporting the Khobar Towers bombing proximately caused Tony's emotional distress because the material support and direction given to Saudi Hezbollah ensured the event would occur. Finally, the evidence shows that Tony suffered *287 emotional distress, and that his emotional distress was severe. Accordingly, the Court finds that Anthony Cartrette is entitled to recover from defendants \$2.5 million in compensatory damages for the mental anguish and suffering associated with the loss of his brother.

*e. Estate and Surviving Family Members of Patrick Fennig*³⁷

i. Estate of Patrick Fennig

Patrick Fennig (“Pat”) is a United States citizen, who was born on April 17, 1962 in Wisconsin. Pat had two older brothers, Mark who was born on March 24, 1959, and Paul who was born on January 17, 1961. As a child, Pat loved airlines and reading. Cassie testified that Pat “liked being a little boy. He was a fun child, always busy.” Pat had a very good relationship with his two brothers. They played together and like each other. Ted testified that as a child Pat “enjoyed doing everything.” (Dec. 9, 2003 Tr. at 8–9, 48–50.)

Ted testified that “[w]hen Pat was about six or seven years old, somehow—well, his interest in airplanes kind of came together. And he said, ‘Dad, when I graduate from high school, I’m going to join the Air Force.’ ... And he graduated from high school and he lived up to his convictions and joined the Air Force.” *Id.* at 50. Pat attended basic training at Lackland AFB and corresponded with his parents during this period of time. Pat had a great interest in maintaining jets in the Air Force, developed a high level of professional acuity and was selected maintenance maintainer of the year. Pat’s first permanent assignment was Malmstrom AFB in Montana. Pat’s second permanent duty assignment was Ramstein AFB in Germany. Pat received the Airman of the Year Award from the Air Force in 1990. Pat was “very proud that he won it, and happy that he came to that point in his life; that he did something that he was proud of.” After completing his assignment in Germany, Pat came home on leave for three weeks around Christmas. (Dec. 9, 2003 Tr. at 18–21, 52.)

Next, Pat was assigned to Hill AFB in Utah, and then reassigned to England. Pat was later deployed to Kunsan AFB in Korea. While stationed in Korea, Pat was selected with a few other mechanics and officers to retrieve and fix a plane that was forced to make an emergency landing on an island. Pat’s next permanent assignment was Edwards AFB in California. Ted testified that while he was stationed at Edwards AFB, Pat was recruited to work in the private sector by aircraft manufacturing companies. Pat loved the Air Force and decided to wait to seek employment in the private sector until after he retired from the Air Force. (Dec. 9, 2003 Tr. at 21–24, 53–54.) In July of 1993, Pat was reassigned to Eglin AFB in Florida.

Id. at 24–27. From Florida, Pat was assigned to Saudi Arabia. Pat was scheduled to return from Saudi Arabia on June 27, 1996. *Id.* at 30–31.

Pat’s estate is represented by his parents, Thaddeus C. Fennig and Catherine Fennig. Pat’s estate has asserted claims under Florida’s wrongful death statute because he was last domiciled in Florida. As ***288** the personal representatives of Pat’s estate, Thaddeus C. Fennig and Catherine Fennig are the proper plaintiffs to bring a wrongful death action under Florida law. See [Fla. Stat. Ann. § 768.20–768.21](#). In light of the fact that Pat had no spouse or other survivors as defined by [Fla. Stat. Ann. § 768.18](#), any recovery under this wrongful death action is for the benefit of Pat’s parents, Thaddeus and Catherine Fennig. See [Fla. Stat. Ann. § 768.18](#).

Based upon the pleadings and evidence presented to the Court, the estate of Patrick Fennig has made out a valid claim for wrongful death under Florida law. The beneficiaries of this estate are entitled to recover the present value of any “loss of the prospective net accumulations” of the decedent that might reasonably have been expected but for the wrongful death because Pat was over 25 years old when he died, and died with surviving parents, but without other dependents. See [Fla. Stat. Ann. § 768.21\(6\)\(2\)](#). Additionally, although Pat was over 25 years of age at the time of his death, Pat’s parents are nonetheless entitled to recover for their own mental pain and suffering arising out of this wrongful death action due to the fact that Pat died without any other survivors. See [Fla. Stat. Ann. § 768.21\(4\)](#).

Dr. Herman Miller, an economic consultant testified as an expert that, as a result of Pat’s untimely death, he experienced a net economic loss of \$1,120,304.00. The Court should therefore award the Estate of Patrick Fennig, by Thaddeus C. Fennig and Catherine Fennig as personal representatives, \$1,120,304.00 in economic damages for the benefit of Pat’s parents, Thaddeus C. Fennig and Catherine Fennig. As for the intangible economic damages of the wrongful death recovery, the Court will address those awards below, in an individualized discussion of the claims of Thaddeus C. Fennig and Catherine Fennig.

ii. Thaddeus C. Fennig & Catherine Fennig

Catherine Fennig (“Cassie”) and Thaddeus C. Fennig (“Ted”) are United States citizens and the parents of Patrick Fennig (“Pat”). (Dec. 9, 2003 Tr. at 3, 44.) Cassie was born in Marshfield, Wisconsin on May 13, 1933. *Id.*

at 3. Ted was born on October 14, 1931 in Milwaukee, Wisconsin to Charles and Marie Fennig. *Id.* at 44. For the first nine years of their marriage the Fennigs lived in West Alice, Wisconsin and then moved to Greendale, Wisconsin, a southwest suburb of Milwaukee, in August of 1965. *Id.* at 6.

Cassie described the effect of Pat's death on her as follows:

I was devastated. You finally get to sleep; it takes days. You wake up in the morning and it's the first thing you thought of. When you went to bed at night, it's the last thing you thought of.... And it was hard. I had many thank yous to write and it took me a couple of weeks, but I tried to do some each day. Music was no longer important to me. I always had music on in the home. It was hard to pick up a book and read. It took quite a while before I could get things together and—but it's always there. There's a pain in your chest that never goes away.

Id. at 42–43.

Ted testified that it was difficult to sleep following Pat's death. Ted thinks of Pat often. He has regular dreams about Pat. *Id.* at 63–64.

According to Dr. Cable, Cassie is

in loss and loneliness. She, too, has done reasonably well. But she still expresses and demonstrates a strong sense of loss and that she is not through the real loneliness yet. She has found *289 things that fill her time, but there is nothing that replaces Pat for her.... Her grief will continue. She will experience it.... [S]he will recover, but it will be waves of grief that will come back from time to time; special events, family affairs, holidays, and the like.

(Feb. 10, 2004 Tr. at 130.) Additionally, Dr. Cable testified that Ted, too,

is in loss and loneliness. He has done reasonably well. He is the caretaker for the rest of the family, and he has certainly carried through on his sense of responsibility in that. But he still misses his son very much.... He will continue in his grief ... [and later] be hit by waves of grief that may come back from time to time.

Id. at 127–28.

Based upon the evidence presented at trial, both Thaddeus and Catherine Fennig have experienced severe mental anguish and suffering as a result of their son's untimely death. Therefore, this Court shall award to the estate of Patrick Fennig, by Thaddeus and Catherine Fennig as Personal Representatives, \$5 million for the benefit of his mother Catherine Fennig and \$5 million for the benefit of his father Thaddeus C. Fennig to compensate both for the mental pain and suffering both have sustained as a result of their son's death.

*f. Estate and Surviving Family Members of Christopher Adams*³⁸

i. Estate of Christopher Adams

Christopher Adams, a Captain in the Air Force, was born on April 18, 1966. (Dec. 10, 2003 A.M. Tr. at 10.) There were eight children in the Adams family, six boys and two girls. Christopher Adams was the oldest of the boys. He is the son of Catherine and John Adams. On June 24, 1976, at the age of 36, John Adams died of [kidney failure](#) and a massive [heart attack](#), having been on dialysis for six to eight hours every day during the eight months before he died. He died in a car while most the family was traveling to a Bar Mitzvah of good friends. Christopher was 10 years old when his father died. *Id.* at 111, 113.

Ever since he was a little boy, Christopher wanted to become a pilot. (Dec. 10, 2003 A.M. Tr. at 114.) Even when he was in high school, he would go in airplanes

with a certified pilot. *Id.* at 3. Christopher attended Daniel Webster College in New Hampshire because of its ROTC program in which he could learn to be a pilot. *Id.* at 28. After his 20 years in the Air Force, Christopher intended to become a commercial airline pilot. (Dec. 10, 2003 A.M. Tr. at 45; Dec. 10, 2003 P.M. Tr. at 60.) He knew that being a pilot of such a large plane would help in his subsequent career. (Dec. 10, 2003 A.M. Tr. at 6.)

Christopher obtained his flight training in Texas around 1989 or 1990 and was commissioned as a First Lieutenant at Lubbock. Mrs. Adams attended the ceremony, along with two of the other children, her brother, and Christopher's best friend. *Id.* at 31. Christopher mainly flew a C-130, a huge transport plane for troops, ***290** cargo, trucks, and other large items. *Id.* at 31. He was involved in many covert operations in foreign countries. *Id.* at 32, 34. Christopher was responsible for airlifting over 1,000 passengers and over 250 tons of cargo to resupply U.S. Forces in Operation Desert Storm in 1991. He was also chosen to fly a sensitive mission filming the oil fires of Kuwait and supported Operation Promise, a humanitarian airlift into Bosnia where he flew 16 missions under combat conditions delivering over 336 tons of food, equipment, and urgently needed medical supplies. *Id.* at 54.

Sadly, Christopher had not originally been scheduled to be in Saudi Arabia in June 1996. The wife of one of his buddies was expecting a baby, and Christopher told his buddy to stay home and that he, Christopher, would take the tour of duty. (Dec. 10, 2003 A.M. Tr. at 44.)

Christopher's estate is represented by his mother, Catherine Adams. Christopher's estate has asserted claims under Florida's wrongful death statute because he was last domiciled in Florida. As the personal representatives of Christopher's estate, Catherine Adams is the proper plaintiff to bring a wrongful death action under Florida law. See [Fla. Stat. Ann. § 768.20–768.21](#). In light of the fact that Christopher had no spouse or other survivors as defined by [Fla. Stat. Ann. § 768.18](#), any recovery under this wrongful death action is for the benefit of Christopher's mother, Catherine Adams. See [Fla. Stat. Ann. § 768.18](#).

Based upon the pleadings and evidence presented to the Court, the estate of Christopher Adams has made out a valid claim for wrongful death under Florida law. The beneficiaries of this estate are entitled to recover the present value of any "loss of the prospective net accumulations" of the decedent that might reasonably have been expected but for the wrongful death because, at the time of his death, Christopher was over 25 years old,

with surviving parents, but without other dependents. See [Fla. Stat. Ann. § 768.21\(6\)](#). Additionally, although Christopher was over 25 years of age at the time of his death, his mother is nonetheless entitled to recover for her own mental pain and suffering arising out of this wrongful death action due to the fact that Christopher died without any other survivors. See [Fla. Stat. Ann. § 768.21\(4\)](#).

Dr. Herman Miller, an economic consultant testified as an expert that, as a result of Pat's untimely death, he experienced a net economic loss of \$3,153,953.00. The Court should therefore award the Estate of Christopher Adams, by Catherine Adams as personal representative, \$3,153,953.00 in economic damages for the benefit of Christopher's mother, Catherine Adams. As for the intangible economic damages of the wrongful death recovery, the Court will address those awards below, in an individualized discussion of the claims Catherine Adams.

ii. Catherine Adams

Catherine Adams is the mother of Christopher Adams. (Dec. 10, 2003 A.M. Tr. at 8.) Catherine Adams was raised in Brooklyn, and went to public schools in Brooklyn, but did not go to college. *Id.* at 8. Between high school and marriage, she worked in the credit and collection department of International Paper Company. She married her husband, John, when she was 20 years old. Her husband was an only child, born in Brooklyn in 1939. The first of the eight children was born when Mrs. Adams was 21 and the last was born when she was 31. *Id.* at 9–10.

While her husband was alive, Catherine Adams stayed at home taking care of the growing family. Just a few months before ***291** he died, she went to work for Eastern Airlines in its security department, beginning each day at 2:00 A.M. *Id.* at 17. When he died, his mother moved in to help with the eight children, but she only lived for four more years. *Id.* at 17–18. After her husband died, Catherine Adams had to work two jobs, both for United Artists, beginning at 9:00 A.M. and going until after midnight, working usually 14–16 hours a day. *Id.* at 19. For the last 23 years, Catherine Adams has been a secretary at Hofstra University. *Id.* at 20.

During the first year after Christopher died, Catherine Adams went to the cemetery every week, and after that at least once a month. She still goes to visit once every other month. *Id.* at 65. Catherine Adams and many members of

her family have attended virtually every memorial service held in Florida, Virginia, and Washington after 1996. *Id.* at 71–72. There are many memorials in Long Island for him, and the family itself set up a scholarship at Christopher’s college. *Id.* at 73.

Catherine Adams was not able to return to work until the late summer 1996. Even then, it was very hard for her. *Id.* at 74–75. She thinks about Christopher every day. During the last years, September 11, the bombing of the USS Cole, and other terrorist attacks are difficult for her. They bring back all of her terrible memories and make her relive Christopher’s death. *Id.* at 84.

According to her son, John, Catherine Adams figuratively died on the day Christopher died. John, who has been a mental health counselor, has never seen anyone so sad. John has worked with a lot of hurt people, but Christopher’s death changed his mother in a terrible way. “She kept everybody together and Chris’ death changed her. She’s different, she’s not the same”. (Dec. 10, 2003 P.M. Tr. at 68.)

According to Dr. Cable, Catherine Adams

is still in the stage of loss and loneliness. She still continues to miss [her son], to miss the support he gave. The daydreaming is significant ... because he is continuing to age in her mind. One of the things that implies is the grief is a changing kind of grief.... So that makes it very intense with the grief. Difficult for her to realize now he will never be married, there never will be grandchildren.... Her grief will continue ... her pain will ease with time, but it’s never going to go away. She will experience ongoing bouts of grief in the future.

(Feb. 10, 2004 Tr. at 98–99.)

Based upon the evidence presented at trial, Catherine Adams has experienced severe mental anguish and suffering as a result of her son’s untimely death. Therefore, this Court shall award to the estate of Christopher Adams, by Catherine Adams as Personal Representative, \$5 million for the benefit of his mother Catherine Adams to compensate her for the mental pain

and suffering she sustained as a result of her son’s death.

g. Estate and Surviving Family Members of Thanh (Gus) Nguyen

i. Estate of Thanh (Gus) Nguyen

Thanh (“Gus”) Nguyen was born in South Vietnam in 1959. He had 14 brothers and sisters. (Dec. 11, 2003 A.M. Tr. at 9.) Gus came to the United States when he was approximately 14 years old. He had a sister, Maria, who was already in the United States, and had married an American serviceman. *Id.* at 10–11. When he first arrived, he went to Illinois with a host family, with whom he lived for about a year. He then moved to Panama City, Florida, where his sister Maria and her *292 husband were living. *Id.* at 11. Eventually, he became an American citizen. He lived in Panama City until he went into the military in 1979. *Id.* at 12–13.

In the Air Force, Gus became a jet engine mechanic. He did his boot camp training in Texas and his technical training in Illinois. *Id.* at 15. In 1983, Gus married his wife, Teresa. He and Teresa had one child, Christopher, who was born in 1984. Eventually, Gus and Teresa were divorced in 1988. *Id.* at 8.

After the divorce, Christopher lived with his father for about eight months of the year and with his mother for approximately four months of the year. *Id.* at 21–22. Gus’ life revolved around Christopher. His career was harmed by spending all of his time with Christopher when he would be home. Even though he was a jet engine mechanic on the F15’s, there were many engines that he just didn’t have time to study because he wanted to spend all of his spare time with his son. *Id.* at 25. Teresa testified that Gus was “father of the year material.” *Id.* at 42.

Gus was deployed to Saudi Arabia in April 1996. At that time, Christopher went to Ohio with his mother for Gus’ three-month tour of duty. Gus was supposed to return to America on the morning after the bombing. (Dec. 11, 2003 P.M. Tr. at 24, 65.) Gus had planned to spend three more years in the Air Force after 1996, and then he was going to obtain a college degree. He ultimately wanted to build and develop better airplanes. *Id.* at 17.

Gus’ estate is represented by his son, Christopher. Gus’ estate has asserted claims under Florida’s wrongful death

statute because he was last domiciled in Florida. As the personal representative of Christopher's estate, Christopher Nguyen is the proper plaintiff to bring a wrongful death action under Florida law. See [Fla. Stat. Ann. § 768.20–768.21](#). In light of the fact that Gus is only survived by his son, any recovery under this wrongful death action is for the benefit of his son Christopher. See [Fla. Stat. Ann. § 768.18](#); 768.21.

Based upon the pleadings and evidence presented to the Court, the estate of Thanh “Gus” Nguyen has made out a valid claim for wrongful death under Florida law. The beneficiaries of this estate are entitled to recover the present value of any “loss of the prospective net accumulations” of the decedent that might reasonably have been expected but for the wrongful death because, at the time of his death, Christopher was survived by a lineal descendant: his son Christopher. See [Fla. Stat. Ann. § 768.21\(6\)](#). Additionally, as Gus’ child, Christopher is entitled to recover for “lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury” arising out of this wrongful death action. See [Fla. Stat. Ann. § 768.21\(3\)](#).

Dr. Herman Miller, an economic consultant testified as an expert that, as a result of Pat’s untimely death, he experienced a net economic loss of \$596,905.00. The Court should therefore award the Estate of Thanh “Gus” Nguyen, by Christopher Nguyen as personal representative, \$596,905.00 in economic damages for the benefit of Gus’ son, Christopher Nguyen. As for the intangible economic damages of the wrongful death recovery, the Court will address those awards below, in an individualized discussion of the claims Christopher Nguyen.

ii. Christopher Nguyen

Christopher knows in reality that his father is dead but his heart doesn’t accept it. He gets a “blissful look in his eyes when he looks at his dad.” *Id.* at 30. He *293 cried a lot after returning to Ohio, but eventually he stopped crying in front of other people. He would just go into his bedroom, lock the door, and cry by himself. *Id.* at 36–37.

When he moved back to Ohio, his grades went down because he lacked the motivation. He would often get angry, and break things. Christopher also began to withdraw socially. He became much more shy, and has stayed that way ever since. *Id.* at 61–64. He is much more reserved, and has a harder time making friends and trusting people. *Id.* at 42.

Shortly after Gus died, Teresa tried to get Christopher to see a psychologist, but Christopher refused to talk to the psychologist about his father. Nothing worked in terms of counseling because Christopher wouldn’t open up. *Id.* at 40. He thinks about his father all the time. Each year, June 25 is understandably a very sad day for Christopher.

According to Dr. Cable, Christopher

is in loss and loneliness. He has been forced to grow up very quickly. He lost not only his father, but his best friend and his real support system. So there is a deep sense of loss and loneliness for him.... He will continue in grief. Those significant markers down the road are going to be real trial times for him. Just as he indicated “Dad wasn’t there for my high school graduation,” [his Dad] won’t be there for college or when Chris gets married or any of those kind of things. So once again you get those waves of grief that come back because the person is missing from those significant events in life that should be shared.

(Feb. 10, 2004 Tr. at 182–83.)

Based upon the evidence presented at trial, Christopher Nguyen has experienced severe mental anguish and suffering as a result of his father’s untimely death. Therefore, this Court shall award to the Estate of Thanh “Gus” Nguyen, by Christopher Nguyen as personal representative, \$5 million for the benefit of Christopher Nguyen to compensate him for the mental pain and suffering he sustained as a result of his father’s untimely death.

h. Estate and Surviving Family Members of Brian McVeigh

i. Estate of Brian McVeigh

In June 1996, Brian McVeigh, was a twenty-one-year-old Assistant-Crew-Chief in the Air Force. Ex. 16. Although regularly stationed at Eglin AFB, in June 1996, Brian was on assignment in Dhahran, Saudi Arabia, where he resided at the Khobar Towers Complex. *Id.* On June 25, 1996, Brian was killed at Khobar Towers. Ex. 9.

Brian McVeigh was born in Sanford, Florida on March 27, 1975. Ex. 168 at 7–8; Depo. Ex. 1. When Brian was three years old, his parents divorced. Ex. 168 at 8. Sandra

had custody of Brian, whose father took no interest or part in rearing Brian. *Id.* In fact, Mr. McVeigh only saw Brian three times after the divorce (in 1978) and never after Brian turned ten. *Id.* As a result, Sandra, a single parent, was both mother and father to Brian for most of his life. *Id.* at 27.

Brian grew up in Debary, Florida. *Id.* at 9. Brian was the quintessential American boy. He attended middle school in Deltona, Florida. *Id.* at 11. Brian participated in scouting for most of his childhood. He was a tiger cub, a cub scout, and a boy scout. *Id.* According to Sandra, Brian was a good boy who never caused any trouble. *Id.* at 13.

Brian attended his freshman year of high school at Deltona High School, Deltona, Florida. *Id.* at 15. He attended his *294 sophomore year at a private Christian school, which was also located in Deltona. *Id.* Brian returned to Deltona High School for his junior and senior years in order to be on the wrestling and weightlifting teams. *Id.* Brian excelled at wrestling and weightlifting. *Id.* He graduated from Deltona High School in August 1994. *Id.*; Depo. Ex. 8. Unlike many high school teenagers, Brian was unaffected by peer pressure. *Id.* at 17. He did not drink alcohol or smoke cigarettes. *Id.* He was also very respectful of others. *Id.* at 18. After consulting with his parents, Brian decided to join the Air Force to get some life training. *Id.* at 19; Ex. 170 at 16. After completing his military service in the Air Force, Brian planned on earning a college degree. Ex. 168 at 17.

Brian's estate is represented by his mother and stepfather, Sandra M. Wetmore and James V. Wetmore. Brian's estate has asserted claims under Florida's wrongful death statute because he was last domiciled in Florida. As a personal representative of Brian's estate, Sandra M. Wetmore is a proper plaintiff to bring a wrongful death action under Florida law. See Fla. Stat. Ann. § 768.20–768.21.³⁹ In light of the fact that Brian had no spouse or lineal descendants, any recovery under this wrongful death action is for the benefit of Brian's mother, Sandra M. Wetmore. See Fla. Stat. Ann. § 768.18; *supra* note 39.

Based upon the pleadings and evidence presented to the Court, the estate of Brian McVeigh has made out a valid claim for wrongful death under Florida law. The beneficiaries of this estate, however, are not entitled to recover the present value of any "loss of the prospective net accumulations" of the decedent that might reasonably have been expected but for the wrongful death because Brian was under 25 years old when he died, and did not have either a surviving spouse or any surviving lineal descendants. Fla. Stat. Ann. § 768.21(6)(a)(1). Still,

Brian's mother is entitled to recover for her own mental pain and suffering arising out of this wrongful death action due to the fact that Brian left no other survivors. See Fla. Stat. Ann. § 768.21(4). A discussion of these intangible economic damages of the wrongful death recovery, will be addressed below in an individualized discussion of the claim of Sandra M. Wetmore.

ii. Sandra M. Wetmore

In addition, Sandra became clinically depressed following Brian's death. She saw *295 a psychiatrist and took medications to control her depression for six years. *Id.* at 39–40. For about two years, Sandra lost herself in television and refused to entertain guests at her house. To help his wife rediscover life, James got Sandra involved in horse back riding, something she had enjoyed as a child. *Id.* at 41. Sandra blames her failing health on Brian's death. Two years after Brian's death, she was diagnosed with fibromyalgia. *Id.* at 39. In 2000, she was diagnosed with diabetes. Finally, Sandra was diagnosed with cancer in 2003. *Id.* at 40.

Sandra finds it hard to see parents with their children, especially when the parents are complaining about their children. She testified: "I wish mine was here to misbehave, that would be all right." Although the pain of Brian's death has not gone away, Sandra tries to have a "positive attitude" because Brian would want her to embrace the way he lived and not the way he died. *Id.* at 42. It is hard to be positive, however, because Sandra is forced to remember the tragedy with each new terrorist act, especially since the September 11th attacks on the United States. *Id.* at 35.

As Dr. Cable stated, Sandra

is in loss and loneliness. It's complicated or compounded by her own health issues now. The loss and loneliness is very deep because of the extreme closeness of the relationship she had with her son. They were a team for a lot of years in there, and that makes it very difficult.... Her grief will continue for the foreseeable future. I don't think she will ever fully recover.

(Feb. 10, 2004 Tr. at 167.)

Based upon the evidence presented at trial, Sandra Wetmore has experienced severe mental anguish and suffering as a result of her son's untimely death. Therefore, this Court shall award to the Estate of Brian McVeigh, by Sandra M. Wetmore as personal representative, \$5 million for the benefit of Sandra M. Wetmore to compensate her for the mental pain and suffering she sustained as a result of her son's untimely death.

i. Estate and Surviving Family Members of Joseph Rimkus

i. Estate of Joseph Rimkus

In June 1996, Joseph Edward Rimkus was twenty-two years old. Ex. 19. Although regularly stationed at Eglin AFB in Florida, in June 1996, Joseph was on assignment in Dhahran, Saudi Arabia where he resided at the Khobar Towers Complex. *Id.* On June 25, 1996, Joseph was killed in the terrorist bombing at Khobar Towers. Ex. 9.

Mrs. Brooks married Joseph John Rimkus ("Mr. Rimkus") in October 1973. Mr. Rimkus was in the military when they married. Ex. 19, at 7. Mrs. Brooks and Mr. Rimkus had three children: Joseph Rimkus, born April 13, 1974, James Rimkus, born September 12, 1975, and Anne Rimkus, born December 28, 1976. *Id.* at 4–5, 44, 71; Ex. 183. Joseph was born at Keesler AFB in Mississippi. Ex. 183. James and Anne were born at Scott AFB in Illinois. (Feb. 5, 2004 Tr. at 44, 71.)

With the exception of a brief stay at Scott AFB, Illinois and two years in Turkey, Joseph and his siblings were raised in the family home in Crestview, Florida. All three children attended grammar school in Crestview. Mrs. Brooks was a stay-at-home mother who would work occasionally and only when the children were in school. Accordingly, she spent a great deal of time with all of her children. Ex. 19, at 8–9.

Mrs. Brooks described Joseph as a "wonderful" and "responsible" boy with a passion for learning. Mrs. Brooks testified *296 that she had a special "connection" with Joseph because he almost died at birth. Joseph's importance within the family unit changed significantly when Mr. Rimkus deployed to Korea when Joseph was a freshman in high school. *Id.* at 11. When the family

dropped Mr. Rimkus off at the airport to deploy to Korea, Mr. Rimkus told Joseph that he was the man of the house and charged him with taking care of his mother and siblings. *Id.* at 74. Mr. Rimkus never communicated with his family since the time of his deployment. *Id.* at 11–12. From that point on, Joseph took charge of the family. Mrs. Brooks testified how Joseph would do the laundry, watch after James and Anne, plan the menu and do the grocery shopping, and keep a family budget. James explained how Joseph delegated and did chores and made "sure that there wasn't anything going on behind my parents back." *Id.* at 12. Mrs. Brooks later divorced Mr. Rimkus in 1991. *Id.* at 4.

Anne testified that Joseph was a parental figure to her, advising her not to drink alcohol, to respect herself, and taught her how to play chess and change the oil in her car. *Id.* at 73–74. Indeed, even at such a young age, Joseph took up his responsibilities with ease and without complaint. Joseph's attitude and assistance was invaluable to Mrs. Brooks, who was working full time and taking college courses in the evening. *Id.* at 11–12.

In addition to running the Rimkus home, Joseph worked several part-time jobs in high school. He worked at a local gym and fish restaurant. Joseph, along with James, even found time to volunteer at a camp for disabled children. Mrs. Brooks testified that Joseph was a "good saver" and was "generous" with his money, giving money to his siblings and his paternal grandmother regularly. *Id.* at 13.

Joseph graduated from Crestview High School in June 1992. Ex. 185. In addition to wanting to serve his country, Joseph joined the military to earn money to pay for college. (Feb. 5, 2004 Tr. at 11.) Joseph's entry into the Air Force did not diminish the closeness of the Rimkus family. Joseph regularly wrote, sent care packages, and/or telephoned to Mrs. Brooks, James, and Anne while he was in the Air Force. *Id.* at 23, 52, 80. Joseph left for Saudi Arabia on his twenty-second birthday. *Id.* at 22.

Joseph's estate is represented by his mother, Bridget Brooks. Joseph's estate has asserted claims under Florida's wrongful death statute because he was last domiciled in Florida. As a personal representative of Joseph's estate, Bridget Brooks is a proper plaintiff to bring a wrongful death action under Florida law. See [Fla. Stat. Ann. § 768.20–768.21](#). In light of the fact that Joseph had no spouse or lineal descendants, any recovery under this wrongful death action is for the benefit of his mother, Bridget Brooks. See [Fla. Stat. Ann. § 768.18](#).

Based upon the pleadings and evidence presented to the Court, the estate of Joseph Rimkus has made out a valid

claim for wrongful death under Florida law. The beneficiaries of this estate, however, are not entitled to recover the present value of any “loss of the prospective net accumulations” of the decedent that might reasonably have been expected but for the wrongful death because Joseph was under 25 years old when he died, and did not have either a surviving spouse or any surviving lineal descendants. Fla. Stat. Ann. § 768.21(6)(a)(1). Still, Joseph’s mother is entitled to recover for her own mental pain and suffering arising out of this wrongful death action due to the fact that Joseph left no other survivors. See Fla. Stat. Ann. § 768.21(4). A discussion of these *297 intangible economic damages of the wrongful death recovery, will be addressed below in an individualized discussion of the claim of Bridget Brooks.

ii. Bridget Brooks

Mrs. Brooks resides at 432 Barbados Way, Niceville, Florida. (Feb. 5, 2004 Tr. at 3.) She was born on December 6, 1955 in St. Charles, Missouri. Mrs. Brooks is a United States citizen. She is an operations analyst for the United States Air Force at Eglin AFB, where she was worked for 17 years. *Id.* at 3, 26. Mrs. Brooks is married to Donald Brooks, whom she married after divorcing her first husband, Joseph John Rimkus in 1991. *Id.* at 3–4. Mrs. Brooks married Joseph John Rimkus (“Mr. Rimkus”) in October 1973. Mr. Rimkus was in the military when they married. *Id.* at 7.

Joseph’s death dramatically affected Mrs. Brooks. Mrs. Brooks visits Joseph’s grave, which is an hour away from her house, regularly and on special anniversary dates. Mrs. Brooks also visits Joshua Woody’s grave on Joshua’s birthday. (Feb. 5, 2004 Tr. at 35.) Mrs. Brooks sought help to cope with Joseph’s death. She relied heavily on her faith and has consulted with several priests about her grief. She also participated in a grief support group named “Under Pressure,” which is comprised of several women who lost loved ones in the Khobar Towers bombing. *Id.* at 37–39. Mrs. Brooks involvement with Under Pressure helped her immensely with Joseph’s death. *Id.* at 37.

Even today, Mrs. Brooks misses Joseph terribly around the holidays. *Id.* at 42. She still hangs Joseph’s Christmas stocking in his honor. *Id.* at 68. Mrs. Brooks becomes particularly depressed on the anniversary of the bombing. She experiences additional grief each and every time she learns of another terrorist act committed in the United States or abroad. *Id.* at 42.

According to Dr. Cable:

[Mrs. Brooks] is in loss and loneliness. Her son was her real strength. Her emotions are still very raw. It’s still hard for her to talk about what happened. Quite a bit of pain there.... I believe her grief will continue for a long time into the future. She will go on with life, but the grief will keep coming back if she thinks about what should be or what should have been now. So it’s not going away.⁴⁰

Based upon the evidence presented at trial, Bridget Brooks has experienced severe mental anguish and suffering as a result of her son’s untimely death. Therefore, this Court shall award to the Estate of Joseph Rimkus, by Bridget Brooks as personal representative, \$5 million for the benefit of Bridget Brooks to compensate her for the mental pain and suffering she sustained as a result of her son’s untimely death.

iii. James Rimkus

James Rimkus lives in Crestview, Florida. He was born on September 12, 1975, in Illinois and is United States citizen. James is married to Christina Renee Rimkus, with whom he has a daughter and a stepson. (Feb. 5, 2004 Tr. at 44.)

James Rimkus was completely devastated by his brother’s death. Joseph was James’ best friend. *Id.* at 47. James looked up to Joseph and considered him a role model and father figure. *Id.* at 48–49. Indeed, Joseph was the first person James wrote to when he was at boot camp. *Id.* at 52. James testified how Joseph and he were like twins.

*298 James’ grief was intensified because he was in the Navy and was not allowed to remain with his family following Joseph’s death. He had to return to his ship and deploy to the Mediterranean. The Navy also did not offer James any counseling. *Id.* at 63.

James testified that he began drinking more and more after his brother’s death and became a severe alcoholic. *Id.* at 64. James did take Advan, an anti-depressant, for a few months to help him cope with Joseph’s death. The prescription did not work because of his drinking. Apparently, James was self-medicating with alcohol. James entered into a Christian rehabilitation clinic after

leaving the Navy and has been sober for more than four years. *Id.* at 65.

James has only visited his brother's grave once. It is just too painful for him to visit Joseph's grave. Even today, James is terribly saddened because his children and Anne's future children will never know their uncle Joseph. *Id.* at 67. Although James has had good dreams about Joseph since his death, James tries not to dream about Joseph because it causes him too much grief afterwards. He testified that he misses Joseph especially around the holidays, and on Joseph's birthday.

As Dr. Cable testified, James

is in loss and loneliness. He has had to grow up very quickly in a very difficult way. He is, I think, much older than his years. He sounds it; he acts it. It's really aged him. Very emotional, very haunted by his brother's death.... Grief will always be with him. Family is his strength. That's the thing that will get him through. But the grief process is still very present.

(Feb. 10, 2004 Tr. at 188–89.)

Because plaintiffs offered no evidence that James Rimkus was financially dependent upon Joseph Rimkus prior to his death, and because damages are only available to siblings under Florida's wrongful death statute when there is evidence that the sibling was wholly or partly dependent upon the decedent, James Rimkus cannot recover for his loss under that statute. See [Fla. Stat. Ann. § 768.18\(1\)](#). Instead, James Rimkus is proceeding under an intentional infliction of emotional distress claim. Because James Rimkus was domiciled in Florida on the date of his brother's death in the bombing, Florida law will govern his intentional infliction of emotional distress claim.

As the brother of Joseph Rimkus, James Rimkus has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of James Rimkus' intentional infliction of emotional distress claim are met. The defendants conduct in facilitating, financing, and providing material support to bring about this attack was

intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to James Rimkus. Finally, it is clear that James Rimkus has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to James Rimkus \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

iv. Anne Rimkus

Anne Rimkus lives in Gainesville, Florida. She was born on December 28, 1976 in *299 Illinois and is a United States citizen. (Feb. 5, 2004 Tr. at 71.) Anne, like Mrs. Brooks and James, is still grieving over Joseph.

Anne was particularly close to Joseph. She testified how grateful she is for Joseph stepping in when her father left for Korea and never returned to the family unit. *Id.* at 74–75. As an adult, she now realizes just how much Joseph did for her growing up. *Id.* at 75.

Anne noted that Joseph was the emotional rock that mediated the family relationships. *Id.* Anne misses Joseph's great sense of humor and "uplifting spirit." *Id.* at 75, 79. Anne testified that she has only just now begun to cope with Joseph's death. *Id.* at 86. To deal with these wounds, Anne has recently started to see a counselor at the University of Florida, where she studies sociology. *Id.* at 72, 87.

Anne testified that Joseph's death caused James to close off and distance himself from her. *Id.* at 89. In contrast, Joseph's death caused Mr. Rimkus to reach out to both Anne and James. *Id.* at 88. As Dr. Cable stated, Anne

is still in loss and loneliness, but complicated by guilt issues that have not been resolved.... She has a lot of regrets, a lot of unfinished business ... She will continue in grief.... There is not a really good support system for her, and so she is sort of dealing with everything on her own, and I think that's going to be difficult for her in the years ahead.

(Feb. 10, 2004 Tr. at 190–91.)

Because plaintiffs offered no evidence that Anne Rimkus was financially dependent upon Joseph Rimkus prior to his death, and because damages are only available to siblings under Florida’s wrongful death statute when there is evidence that the sibling was wholly or partly dependent upon the decedent, Anne Rimkus cannot recover for her loss under that statute. See [Fla. Stat. Ann. § 768.18\(1\)](#). Instead, Anne Rimkus is proceeding under an intentional infliction of emotional distress claim. Because Anne Rimkus was domiciled in Florida on the date of her brother’s death in the bombing, Florida law will govern her intentional infliction of emotional distress claim.

As the sister of Joseph Rimkus, Anne Rimkus has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of her brother. Based upon the evidence presented to the Court, the elements of Anne Rimkus’ intentional infliction of emotional distress claim are met. The defendants conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants’ planning and assistance brought immediate emotional distress to Anne Rimkus. Finally, it is clear that Anne Rimkus has continued to experience emotional distress since that time due to the fact that her brother was taken away from her in such a tragic and horrific manner. Therefore, this Court shall award to Anne Rimkus \$2.5 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her brother’s untimely death.

*j. Estate and Surviving Family Members of Kendall Kitson*⁴¹

i. Estate of Kendall Kitson, Jr.

In June 1996, Kendall Kitson (“Kenny”), deceased, was a 39 year old mechanic for *300 F15s and F16s in the United States Air Force. Ex. 292, at 13. Although regularly stationed in Florida, in June 1996, Kenny was on assignment in Dhahran, Saudi Arabia where he resided at the Khobar Towers Complex. *Id.* On June 25, 1996, Kenny was killed at Khobar Towers. Plaintiffs Kendall Kitson, Sr., Nancy R. Kitson, Nancy A. Kitson, and Steve Kitson are Kenny’s father, mother, sister, and brother

respectively (collectively, the “Kitson family”). The Kitson family, through counsel, offered affidavits of their testimony in this matter, and their affidavits were admitted into evidence by the Court on February 9, 2004. (Feb. 9, 2004 Tr. at 67–68.) Kenny was born in 1956 in Virginia. Ex. 292, at 4. The Kitson children, like their parents, are all United States citizens. *Id.* at 1.

When Kenny was in high school, he went to a vocational and technical school where he learned about aircraft. Ex. 291 at 8. After high school, Kenny went to college for two years, but did not enjoy college, and wanted to use his hands. After two years in college, Mr. Kitson remembers Kenny coming home from school one day and holding up a T-shirt that read “United States Air Force.” Mr. Kitson was surprised to learn that Kenny had joined the military, but he knew how interested he was in aviation since taking the classes in high school. *Id.* Kenny’s sister, Nancy, was not surprised when Kenny joined the military and felt that he wanted to follow in their father’s footsteps. Ex. 292, at 13.

Kenny wanted to be a pilot when he joined the Air Force, but could not work as a pilot because he did not have perfect vision. Instead, Kenny worked as a mechanic for F15s and F16s. On military operations, Kenny would be one of the first people to arrive and one of the last people to leave. Kenny enjoyed the Air Force, and kept reenlisting, and was promoted to Technical Sergeant. He was a flight line expeditor, flight chief, and production superintendent. *Id.*

Kenny had been in the Air Force for 17 years when he was killed. He was only three years away from being able to fully retire. Kenny volunteered to stay in Saudi Arabia during his last tour to help one of his friends who was married and had two daughters, one of whom was ill. *Id.* at 10.

Kenny’s estate is represented by his parents, Kendall Kitson, Sr., and Nancy R. Kitson. Kenny’s estate has asserted claims under Florida’s wrongful death statute because he was last domiciled in Florida. As the personal representatives of Kenny’s estate, Kendall Kitson, Sr., and Nancy R. Kitson are the proper plaintiffs to bring a wrongful death action under Florida law. See [Fla. Stat. Ann. § 768.20–768.21](#). In light of the fact that Kenny had no spouse or other survivors as defined by [Fla. Stat. Ann. § 768.18](#), any recovery under this wrongful death action is for the benefit of his parents, Kendall Kitson, Sr., and Nancy R. Kitson. See [Fla. Stat. Ann. § 768.18](#).

Based upon the pleadings and evidence presented to the Court, the estate of Kendall Kitson, Jr., has made out a

valid claim for wrongful death under Florida law. The beneficiaries of this estate are entitled to recover the present value of any “loss of the prospective net accumulations” of the ***301** decedent that might reasonably have been expected but for the wrongful death because Kenny was over 25 years old when he died, and died with surviving parents, but without other dependents. See Fla. Stat. Ann. § 768.21(6)(2). Additionally, although Kenny was over 25 years of age at the time of his death, Kenny’s parents are nonetheless entitled to recover for their own mental pain and suffering arising out of this wrongful death action due to the fact that Kenny died without any other survivors. See Fla. Stat. Ann. § 768.21(4).

Dr. Herman Miller, an economic consultant testified as an expert that, as a result of Kenny’s untimely death, he experienced a net economic loss of \$2,183,460.00. The Court should therefore award the Estate of Kendall Kitson, Jr., by Kendall Kitson, Sr., and Nancy R. Kitson as personal representatives, \$2,183,460.00 in economic damages for the benefit of Kenny’s parents, Kendall Kitson, Sr., and Nancy R. Kitson. As for the intangible economic damages of the wrongful death recovery, the Court will address those awards below, in an individualized discussion of the claims of Kendall Kitson, Sr., and Nancy R. Kitson.

ii. Kendall Kitson Sr. & Nancy R. Kitson

Kendall Kitson, Sr., met and married his wife, Nancy R. Kitson, in the late 1930s. He then joined the Navy and served his country in the Navy for approximately 22 ½ years. Ex. 291, at 3. The Kitsons now reside in Yukon, Oklahoma and Ft. Walton Beach, Florida. *Id.*

Kenny’s death has dramatically affected Kendall and Nancy R. Kitson and their lives together. As Mr. Kitson testified in his affidavit:

Kenny’s death has ruined my entire family.... My life has changed dramatically since Kenny’s death. If Kenny were alive, he wouldn’t let me sit around like I do. He never let me sit down.... We miss Kenny all the time, every day. Some days are harder than others. We miss him terribly on his birthday and on certain days

because he loved his mother’s potato salad.... I miss just seeing Kenny and talking to him. He always used to drive by the house. It’s hard to laugh now or have any fun. It’s difficult when my wife and I run into his classmates on the street or in a store. We hardly eat or sleep. I used to be a lot more outgoing. My wife and I used to be more social before Kenny’s death. Now, we don’t do anything.

Ex. 291 at 12, 17–19.

Since Kenny’s death, Mr. Kitson sometimes flies into rages about Kenny’s death and the news on our country’s fight against terrorism. Nancy feels as though her parents now hate the world. Ex. 292, at 26. Mr. and Mrs. Kitson do not like to go out or visit with anyone since Kenny’s death. In fact, Mr. Kitson will not visit his daughter Nancy’s home because she has so many of Kenny’s things on display. *Id.* at 30.

Mrs. Kitson is terminally ill with [cancer](#). Mr. Kitson, as well as his children, are convinced that her declining health is related to their loss of Kenny. Exs. 291, at 23; 292, at 31; 293, at 26. Mrs. Kitson used to visit Kenny’s grave all the time and put fresh flowers on it.

As Dr. Cable testified, Mrs. Kitson

is in loss and loneliness. That, of course, is complicated by her own physical condition at this point. She misses her son terribly. Her life was gone with his death, and now literally her life is going.... She will never recover. She will die still very much enmeshed in the grief that she is in right now.

(Feb. 10, 2004 Tr. at 144.)

Additionally, Dr. Cable stated that Kendall Kitson, Sr.,

***302** is in intense loss and loneliness. He is also in volatile

emotions with a tremendous amount of anger over what happened. He is still experiencing a lot of rage over that. He cannot seem to move on with his grief.... [H]e is one of these individuals for whom the grief will never end. I don't think he will ever be able to put things forward in his life. With his wife's death, I think he is one of these individuals who probably will see very little reason for even fighting for himself after that.

Id. at 146–147.

Based upon the evidence presented at trial, both Kendall Kitson, Sr., and Nancy R. Kitson have experienced severe mental anguish and suffering as a result of their son's untimely death. Therefore, this Court shall award to the estate of Kendall Kitson, Jr., by Kendall Kitson, Sr., and Nancy R. Kitson as Personal Representatives, \$5 million for the benefit of his mother Nancy R. Kitson, and \$5 million for the benefit of his father Kendall Kitson, Sr., to compensate both for the mental pain and suffering both have sustained as a result of their son's untimely death.

*k. Estate and Surviving Family Members of Jeremy Taylor*⁴²

i. Estate of Jeremy Taylor

In June 1996, Jeremy Taylor, deceased, was a 23 year old Senior Airman in the United States Air Force. Although regularly stationed in Florida, in June 1996, Jeremy was on assignment in Dhahran, Saudi Arabia where he resided at the Khobar Towers Complex. Ex. 20. On June 25, 1996, Jeremy was killed at Khobar Towers. Ex. 9.

Plaintiffs Lawrence Taylor, Vickie Taylor, and Starlina Taylor are Jeremy's father, mother, and sister, respectively (collectively, the "Taylor family"). The Taylor family, through counsel, offered affidavits of their testimony in this matter, and their affidavits were admitted into evidence by the Court on February 9, 2004. (Feb. 9, 2004 Tr. at 66–67.)

Jeremy was born in 1973 in Tennessee. Jeremy is

remembered by his parents as a "fun person; the class clown who had friends from all different social sections of school. He was very athletic and played soccer almost his entire life.... Jeremy was also very creative. Everyone who met Jeremy loved him; he was very talkative and open." Ex. 289, at 10, 15–16.

Jeremy's estate is represented by his parents, Lawrence and Vickie Taylor. Jeremy's estate has asserted claims under Florida's wrongful death statute because he was last domiciled in Florida. As a personal representative of Jeremy's estate, Lawrence and Vickie Taylor are proper plaintiffs to bring a wrongful death action under Florida law. See [Fla. Stat. Ann. § 768.20–768.21](#). In light of the fact that Jeremy had no spouse or lineal descendants, any recovery under this wrongful death action is for the benefit of his parents, Lawrence and Vickie Taylor. See [Fla. Stat. Ann. § 768.18](#).

Based upon the pleadings and evidence presented to the Court, the estate of Jeremy Taylor has made out a valid claim for wrongful death under Florida law. The beneficiaries of this estate, however, are *303 not entitled to recover the present value of any "loss of the prospective net accumulations" of the decedent that might reasonably have been expected but for the wrongful death because Jeremy was under 25 years old when he died, and did not have either a surviving spouse or any surviving lineal descendants. [Fla. Stat. Ann. § 768.21\(6\)\(a\)\(1\)](#). Still, Jeremy's parents are entitled to recover for their own mental pain and suffering arising out of this wrongful death action due to the fact that Jeremy left no other survivors. See [Fla. Stat. Ann. § 768.21\(4\)](#). A discussion of these intangible economic damages of the wrongful death recovery, will be addressed below in an individualized discussion of the claims of Lawrence and Vickie Taylor.

ii. Lawrence and Vickie Taylor

Mr. and Mrs. Taylor were born in 1950 and 1951, respectively, in Tennessee, and are United States' citizens. Exs. 288, at 3; 289, at 3. When they met, the Taylors were still in high school, but, as Mrs. Taylor describes, "it was love at first sight." The Taylors finished high school and married in 1969. Ex. 289, 3. Soon after they married, Mr. Taylor joined the United States Air Force, and served his country as an aircraft mechanic for 20 years.

A couple of years after the Taylors married, Mrs. Taylor gave birth to their daughter, Starlina, in 1971. *Id.* at 9. Twenty-one months later, in 1973, the Taylors' son

Jeremy was born. Jeremy was born prematurely and Mrs. Taylor had several complications during her pregnancy. Ex. 289, at 10.

Jeremy's death has dramatically affected Lawrence and Vickie Taylor and their lives together. As Mr. Taylor testified in his affidavit:

I feel like my life has not been worth anything since Jeremy's death. It doesn't matter what you do or how much money you have, there's just a big chunk missing. A part of my life is gone. Jeremy is gone. Half of our world is gone. I'll never see him again, I'll never see his kids, I'll never know who his wife was, nothing. It stopped. But I can't move on, I'm just there. I drive by his grave every morning going to work and I drive by on my way home. Even though we try to go on with our lives and be there for our grandson, until I die, I just feel like it's another day.... I realize that my life could be worse and I have much to be grateful for, like my material possessions, but it doesn't matter if I lived in the White House or if I lived in a trailer in Alabama, my son is gone. This pain is going to be with me forever, regardless.

Ex. 288, at 25, 30.

Mrs. Taylor drives by her son's grave everyday. The Taylor family decorates Jeremy's grave for the holidays such as Christmas, Valentine's Day, Memorial Day, and Halloween, and they plant flowers nearby. On Jeremy's birthday, the family goes to the cemetery and releases balloons in his memory. Ex. 289, 27. Since Jeremy's death, holidays are especially difficult for the Taylor family. Mr. Taylor does not celebrate holidays anymore. Jeremy's death has totally changed Mrs. Taylor's way of thinking. Ex. 289, 29, 36.

Jeremy's death also had a negative impact on the Taylors' health. For example, Mr. Taylor now takes a pill every night to help him sleep, and another pill twice a day to

calm his heart. Exs. 288, at 29; 289, at 33. Mrs. Taylor health has suffered greatly since Jeremy's death. She has gained weight and has had to have knee replacement surgery. Mrs. Taylor is now living in constant pain because she has [fibromyalgia](#), and she doesn't sleep *304 unless she takes sleeping pills. Mrs. Taylor also takes an antidepressant and has [arthritis](#). Ex. 288, at 30.

The Taylors visited a counselor for a year or so after Jeremy's death. They also did individual counseling and parents of murdered children and compassionate friends. Both Mr. and Mrs. Taylor have given up on counseling. Jeremy's death has also been very hard on the Taylors' marriage. Mrs. Taylor feels that her husband is much more distant since Jeremy's death, while also being more affectionate at times than he used to be. Many times he goes to his workshop and stays there in his own little world. Exs. 288, at 28; 289, at 34.

According to Dr. Cable, Lawrence

is in loss and loneliness, but he is also back in the guilt, and also volatile emotions [stages]. There is a lot of anger and such there. So he has got a very complicated kind of grief going on right now. Very bitter, a lot of self blame as well as anger toward others.... [H]e is one of these who will never really recover from his grief, because he doesn't see anything that can make it better. The only thing that would be better is if his son would come back. Since that's not going to happen, nothing will ever in his mind make it better.

(Feb. 10, 2004 Tr. at 195–96.)

Similarly, Dr. Cable testified that Vickie

is in loss and loneliness, and that's complicated by the fact that she really has a minimal support system because of her husband's difficulties. He is not able to be a support to her, and he is not willing to get support for himself. So her loss and loneliness is very difficult.

Then she is bothered by the premonition, and that complicates it, too. ... She will continue in her grief for a long period of time. I don't know that she can ever really come out of it.

Id. at 197–98.

Based upon the evidence presented at trial, both Lawrence and Vickie Taylor have experienced severe mental anguish and suffering as a result of their son's untimely death. Therefore, this Court shall award to the estate of Jeremy Taylor, by Lawrence and Vickie Taylor as Personal Representatives, \$5 million for the benefit of his mother Vickie Taylor, and \$5 million for the benefit of his father Lawrence Taylor to compensate both for the mental pain and suffering both have sustained as a result of their son's untimely death.

B. California

1. Causes of Action

a. Wrongful Death

Under California law, a wrongful death cause of action arises “for the death of a person caused by the wrongful act or neglect of another.” [Cal Civ. Proc.Code § 377.60\(a\)](#). Such a cause of action may be asserted by a number of individuals, including the decedent's surviving spouse, children, personal representative, and, when the decedent has no surviving spouse or children, the decedent's parents. *Id.*; [Nelson v. County of Los Angeles](#), 113 Cal.App.4th 783, 6 Cal.Rptr.3d 650, 654–56 (2003).

A plaintiff asserting a wrongful death claim is entitled to such damages that, under the circumstances of the case, may be just. [Cal Civ. Proc.Code § 377.61](#). In California, “just” damages that a wrongful death plaintiff may recover include “lost present and future economic support as well as the pecuniary (as opposed to sentimental) value of such factors as lost comfort, society, companionship, *305 care and protection.”⁴³ The amount of available damages in claims brought by a decedent's personal representative are limited, however, and do not include damages for pain, suffering or disfigurement.⁴⁴

b. Intentional Infliction of Emotional Distress

In California, the elements of the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intent to cause, or with reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffering severe or extreme emotional distress; and (3) the defendant's conduct is the actual and proximate cause of the plaintiff's emotional distress. [Davidson v. City of Westminster](#), 32 Cal.3d 197, 185 Cal.Rptr. 252, 649 P.2d 894, 901 (1982). Under California law, in order for a plaintiff to have standing to recover for an intentional infliction of emotional distress claim, there is a requirement that the conduct either is directed at a plaintiff or occur within the plaintiff's presence. See [Christensen v. Superior Court](#), 54 Cal.3d 868, 2 Cal.Rptr.2d 79, 820 P.2d 181, 203–204 (1992). The plaintiff's presence is not, however, always required, and is deemed unnecessary in situations where the defendant is aware of the high probability that the defendant's acts will cause a plaintiff severe emotional distress. *Id.*

As has been noted by this Court and courts of other jurisdictions, “a terrorist attack-by its nature-is directed not only at the victims but also at the victims' families.” [Salazar](#), 370 F.Supp.2d at 115 n. 12 (citing [Burnett v. Al Baraka Inv. and Dev. Corp.](#), 274 F.Supp.2d 86, 107 (D.D.C.2003)). In this case, the evidence demonstrates that the defendants' motives in planning the attack on the Khobar Towers, and indeed their motives in carrying out a systematic plan of funding and organizing terrorist attacks, were intended to harm both the victims of the attack, and to instill terror in their loved ones and others in the United States. Accordingly, in the case of a terrorist attack as this, the Court finds that the presence element does not need to be proven in order to successfully bring a cause of action for intentional infliction of emotional distress under California law.

In its discussion of the tort of intentional infliction of emotional distress, comment 1 to Section 46 of the RESTATEMENT (SECOND) OF TORTS notes that recovery for third-parties has typically been granted to members of the victim's “near relatives.” [RESTATEMENT \(SECOND\) OF TORTS § 46](#), cmt. 1. The Court finds this approach to be a logical one. Accordingly, under California law, a victim's near relatives, as defined by California's probate code, who were not present may nonetheless have standing to seek redress under a claim of intentional infliction of emotional distress.

***306** 2. Plaintiffs

a. Estate and Surviving Family Members of Joshua Woody

i. Estate of Joshua Woody

Josh was killed at Khobar Towers in Dharhan, Saudi Arabia, on June 25, 1996. (Feb. 6, 2004 Tr. at 3, 27; Ex. 9.) Josh was a happy child. Josh loved the outdoors and would go hunting and fishing with his father. Josh also loved motorcycles. *Id.* at 7.

During high school, Josh was a good student who made the honor roll. To stay in shape, Josh ran, swam, and lifted weights. Josh wrestled, played football and worked two jobs during high school, at McDonald's and Beekman Electric. Josh graduated in 1994. *Id.* at 10–11, 32–33.

According to his stepfather, Josh was a “very conscientious, very thorough and very proud of everything he did.” He was mechanically talented, and could read a manual once and then rebuild an engine or weld a diamond plate in the bed of a truck. *Id.* at 34–35.

As soon as he turned 16, Josh got his driver's license and started working at McDonald's as a cook. Once the owner of McDonald's learned that Josh was handy mechanically Josh was promoted to the maintenance manager for that store and later for three stores. *Id.* at 37.

After high school, Josh decided to join the United State Air Force. Josh wanted to go to college and he knew that his cousin Joseph had gone into the Army to obtain money for college. Josh had the same plan. Josh enlisted in the Air Force in August 1995 and attended basic training at Lackland AFB in Texas. Josh wrote letters to Bernie from Texas. Josh was next assigned to Sheppard AFB for advanced training to load armaments onto F–16 fighter jets. *Id.* at 11–13, 38.

While Josh was stationed at Sheppard he and a friend took a weekend trip to Oklahoma. During this trip, Josh met Dawn. Josh next received his permanent assignment to the 58th Fighter Squadron at Eglin AFB in Florida. Eventually, Josh and Dawn moved to Florida together and on February 22, 1996, Josh and Dawn were married in Oklahoma. Bernie and George attended the wedding. The day after the wedding, Josh and Dawn and Bernie and George spent the day together looking through antique

stores. This was the last time that either George or Bernie saw Josh alive. *Id.* at 13–14, 38–40; Ex. 204 at 109–111, 116.

Josh was deployed to Saudi Arabia on April 3, 1996 and was scheduled to return to Eglin at the end of June 1996. Josh was in very good health. He worked out and used to run on the beach. Josh was a weapons loader on F–15s in the 58th Fighter Squadron. After completing his six years in the Air Force, Josh had plans to go to college and to work for American Airlines. (Feb. 6, 2004 Tr. at 63–64.) Josh was buried next to his best friend Joseph Rimkus on July 5, 1996. Josh and Joe were roommates at Khobar Towers.

Josh's estate is represented by his wife, Dawn Woody. Josh's estate has asserted claims under California's wrongful death statute because he was last domiciled in California. As the personal representative of Josh's estate, Dawn Woody is the proper plaintiff to bring a wrongful death action under California law. See [Cal Civ. Proc.Code § 377.60\(a\)](#). Because Josh was married at the time of his death, any recovery under this wrongful death action is for the benefit of his wife Dawn Woody. See [Cal Civ. Proc.Code § 377.60\(a\)](#).

Based upon the pleadings and evidence presented to the Court, the estate of Joshua Woody has made out a valid claim for wrongful death under California law, and ***307** the beneficiaries of this estate are entitled to recover the present value of any lost present and future economic support of the decedent that might reasonably have been expected but for the wrongful death. See *supra* note 43 and accompanying text. Though, as Josh's widow, Dawn Woody is entitled to recover personally for the loss of Josh's companionship and protection, the California wrongful death statute does not allow for recovery of damages for any mental pain and suffering Dawn Woody sustained as a result of her husband's death. See *supra* note 44. Accordingly, this Court will limit its analysis presently to a discussion of lost present and future economic earnings of Joshua Woody. A discussion of the intangible economic damages resulting from Dawn Woody's mental anguish shall be dealt with in a discussion of Dawn Woody's individual intentional infliction of emotional distress claim, below.

Dr. Herman Miller, an economic consultant testified as an expert that, were it not for Josh's untimely death, he experienced a net economic loss of \$1,981,521.00. The Court therefore awards the Estate of Joshua Woody, by Dawn Woody as personal representative, \$1,981,521.00 in economic damages for the benefit of Dawn Woody.

ii. Dawn Woody

Dawn Woody, a United States citizen, is the widow of Joshua Woody. Josh was murdered on June 25, 1996 at Khobar Towers in Saudi Arabia. (Feb. 6, 2004 Tr. at 54.) Dawn was born on May 18, 1972 in Dubuque, Iowa. Dawn met Josh at a party in Miami, Oklahoma during the summer of 1995. Josh was stationed at Sheppard AFB at the time and he and a friend had taken a weekend trip to Oklahoma. *Id.* at 56.

Josh received his orders to transfer to Eglin AFB in Florida. Josh and Dawn “decided [they] didn’t want to be apart.” Josh and Dawn moved to Ft. Walton Beach, Florida and got an apartment. They were young and broke but they were happy. *Id.* at 58, Ex. 207. Josh proposed to Dawn in the Fall of 1995 while they were in their car driving home after he picked her up from work. Dawn’s family was very happy for Dawn and Josh. Josh and Dawn were married in Claremore, Oklahoma on February 21, 1996.

After the attack on the Khobar Towers, Dawn didn’t eat or drink for two days. On Friday, June 28, 1996 the military personnel returned to tell Dawn that Josh was dead and his body had been identified. For a long time, Dawn visited Josh’s grave every weekend. *Id.* at 73, Ex. 212.

Dawn testified regarding the effect of Josh’s death on her life:

I don’t have the self-confidence I used to have. I’m not married. I don’t have children.... It’s difficult and it’s just hard. There are certain things I can’t do.... I don’t want people in my home. I used to be social.... [I’m] just a lot more closed off than I used to be. I’m not the same person that I was.

(Feb. 6, 2004 Tr. at 77.)

Dawn tried to go back to work a couple months after Josh’s death but was unable to cope. It took Dawn about two years to return to work. Dawn eventually decided to return to graduate school to work on her master’s degree. The first year was about attending the various memorial

services which made it very difficult to function. Dawn was proud of Josh, wanted him to be remembered and believed he deserved all the recognition he received but it was hard for Josh’s family. Dawn too was in a lot of pain. *Id.* at 78.

After the attack, Dawn did not initially seek professional help. She joined a support group with the other widows and Bridget Brooks. These women bonded together *308 and became friends. In the past year, at the encouragement of her family, Dawn began seeing a therapist. The therapist told Dawn that Dawn hadn’t yet dealt with Josh’s death. The therapist recommended that Dawn write a letter to Josh to tell him goodbye. Dawn stopped seeing that therapist because she didn’t want to do that and she didn’t want to be medicated. *Id.* at 79.

Dawn doesn’t like the holidays anymore. Josh’s birthday, their wedding anniversary, and the anniversary of Josh’s death are especially difficult for Dawn. Dawn sometimes dreams about Josh and wakes up crying. *Id.* at 80. Dawn thinks about Josh every day. *Id.* at 82.

As Dr. Cable testified, Dawn

is still in loss and loneliness.... She has put her life back together to a degree with her work and so on, but she still has a lot of sense of missing him, a lot of sense of emptiness, and a lot of the “What ifs?” for her life.... She will continue in loss and loneliness for the period ahead; slowly, ... move on to where the grief will re-occur from time to time, but be able to reshape a life.

(Feb. 10, 2004 Tr. at 83–84.)

As the wife of Joshua Woody, Dawn Woody has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of her husband. Based upon the evidence presented to the Court, the elements of Dawn Woody’s intentional infliction of emotional distress claim are met. The defendants conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants’ planning and assistance brought immediate emotional

distress to Dawn Woody. Finally, it is clear that Dawn Woody has continued to experience emotional distress since that time due to the fact that her husband was taken away from her in such a tragic and horrific manner. Therefore, this Court shall award to Dawn Woody \$8 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her husband's untimely death.

iii. Bernadine Beekman

Bernadine Rose Beekman ("Bernie"), a United States citizen, is the mother of Airman First-Class Joshua E. Woody ("Josh"). (Feb. 6, 2004 Tr. at 2–3.) In 1989, Bernie met George Beekman who was born in Los Angeles, California on December 29, 1939, at the anniversary party of a mutual friend. George was an aerospace engineer who retired in December 1989 before he turned 50. On August 22, 1971, Bernie married John Edward Woody. Bernie and John had four children: Tracy in August 1971; Jonica in April 1974; Josh in October 1975; and Timothy in March 1978. Bernie and Edward were divorced in April 1989. *Id.* at 4.

Bernie testified that even though she has other children, she will never get over losing her son, Josh. Bernie had trouble sleeping in the days and weeks after Josh's death. Sometimes Bernie dreams of Josh. Bernie thinks about Josh every day. Additionally, other terrorist attacks like September 11, 2001 devastate her emotional state.

Bernie has been given some assistance through attending [grief counseling](#) sessions. *Id.* at 23–24. Still, as Dr. Cable testified, Bernie "is in loss and loneliness. She was very close to her son and is obviously in a lot of pain right now. That's not about to subside.... I would see a good many years yet of continued pain, *309 loss and loneliness, and a need for some real counseling." (Feb. 10, 2004 Tr. at 85.)

As the mother of Joshua Woody, Bernadine Beekman has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of her son. Based upon the evidence presented to the Court, the elements of Bernadine Beekman's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Bernadine Beekman. Finally, it is

clear that Bernadine Beekman has continued to experience emotional distress since that time due to the fact that her son was taken away from her in such a tragic and horrific manner. Therefore, this Court shall award to Bernadine Beekman \$5 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her son's untimely death.

iv. George Beekman

In 1989, Bernie met George Beekman who was born in Los Angeles, California on December 29, 1939, at the anniversary party of a mutual friend. George was an aerospace engineer who retired in December 1989 before he turned 50. Bernie and George were married in Carson City, Nevada in April 1990, and they bought a house together in Corning, California. (Feb. 6, 2004 Tr. at 9–10.) Josh was 15 years old. During the remainder of high school, Josh lived with George and Bernie. George was active in Josh's life, attending his football games and other sports activities. *Id.* at 36.

As Josh's stepfather, George Beekman has brought an intentional infliction of emotional distress against the defendants.⁴⁵ Based on the evidence presented to the Court, however, Mr. Beekman is not entitled to recover under an intentional infliction of emotional distress claim due to the fact that, as a stepparent, Mr. Beekman lacks sufficient standing to recover for Josh's death.

Under California law, standing to bring a claim against a defendant resulting from the death of an individual is conferred on those who are entitled to inherit property of the deceased under the provisions of the California Probate Code. *See* [Cal.Civ.Proc.Code § 377.60](#); [Cal. Prob.Code § 6402](#). Inheritance is reserved to near relatives of the deceased. [Cal. Prob.Code § 6402](#). Accordingly, in order for Mr. Beekman to have standing to bring an intentional infliction of emotional distress claim arising from the death of his stepson, Mr. Beekman must qualify as a near relative of Joshua Woody as defined by California's Probate Code.

Under California's Probate Code, parents of the deceased are deemed near relatives for the purposes of inheritance. [Cal. Ann. Prob.Code § 6402](#). In California, however, a parent-child relationship only exists in certain circumstances: (1) between a child and the child's natural parents; and (2) in the case of an adoption, the parent-child relationship exists between the child and the child's adoptive parents. *See* [Cal. Ann. Prob.Code § 6450\(a\), \(b\)](#). Indeed, as the California *310 Supreme

Court has held, “a stepchild ... does not automatically become the ‘child’ of the stepparent ... for purposes of inheritance.” *Estate of Joseph*, 17 Cal.4th 203, 70 Cal.Rptr.2d 619, 949 P.2d 472, 479 (1998) (quoting *Estate of Cleveland*, 17 Cal.App.4th 1700, 22 Cal.Rptr.2d 590, 599 (1993)). It stands to reason, then, that a person cannot automatically establish a legally binding parent-child relationship for purposes of inheritance merely by becoming a stepparent.

Instead, California courts have determined that stepparents are deemed parents for purposes of inheritance in one of two situations. First, a stepparent is deemed a parent if the stepparent legally adopts the child as his or her own.⁴⁶ Second, if the stepparent has not legally adopted the child, California law will nonetheless deem a stepparent a parent if the stepparent can show the stepparent-stepchild relationship was created during the stepchild’s minority, and show by clear and convincing evidence that the stepparent would have adopted the stepchild but for a legal barrier. Cal. Ann. Prob.Code § 6454.

In this case, notwithstanding the relationship Mr. Beekman and Josh had while Josh was alive, there is no evidence presented by plaintiffs that Mr. Beekman legally adopted Josh. Moreover, though the relationship between Mr. Beekman and Josh began while Josh was still a minor, there is no evidence presented before this Court that Mr. Beekman would have adopted Josh, but for a legal impediment. As a result, Mr. Beekman cannot be considered a parent under California law, and is therefore precluded from recovering for damages resulting from his stepson’s death. Accordingly, Mr. Beekman’s claim for intentional infliction of emotional distress fails for lack of standing, and must therefore be denied.

v. Tracy Smith

Tracy M. Smith, a United States citizen, was born on August 27, 1971 in San Jose, California. Ex. 283 at 1. Tracy is married to Todd Smith and has two children: Joshua, born on April 15, 1998, and Nicholas, born on July 30, 1999. Id. at 3. Tracy is a sister of Joshua Edward Woody (“Josh”), who died as a result of a terrorist bombing at the Khobar Towers in Dhahran, Saudi Arabia, on June 25, 1996. Tracy graduated from Los Gatos High School in Los Gatos, California, in June 1989, and is presently employed as a deli clerk for Publix in Kennesaw, Georgia. Id. at 4–5.

Josh’s death affected Tracy in many ways. Immediately

after Josh’s death, Tracy experienced trouble sleeping. Even when she did fall sleep, Tracy would wake herself crying. To this day, Tracy constantly thinks of Josh. Each time she does think about him, her heart sinks. Tracy is particularly emotional on Josh’s birthday and on the anniversary of his death. Id. at 22. Moreover, celebrating the holidays has also become less fun for Tracy since Josh’s death. Even though Tracy now has her own family, she cannot overcome the emptiness caused by Josh’s death. Tracy is saddened that Josh is not alive to celebrate the holidays with her and her sons.

According to Dr. Cable, Tracy is “in loss and loneliness. Like her stepfather, a lot of her grief energies have really gone into worrying about her mother. So there are issues in her own grief that she has not yet been able to deal with.... Her grief will *311 continue for a considerable period of time.” (Feb. 10, 2004 Tr. at 88.)

As the sister of Joshua Woody, Tracy Smith has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of her brother. Based upon the evidence presented to the Court, the elements of Tracy Smith’s intentional infliction of emotional distress claim are met. The defendants’ conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants’ planning and assistance brought immediate emotional distress to Tracy Smith. Finally, it is clear that Tracy Smith has continued to experience emotional distress since that time due to the fact that her brother was taken away from her in such a tragic and horrific manner. Therefore, this Court shall award to Tracy Smith \$2.5 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her brother’s untimely death.

vi. Jonica Woody

Jonica Woody, a United States citizen, was born on April 28, 1974 in San Jose, California. Jonica is a mother of a five-year old son named Brendan, who was born on December 5, 1998. (Dec. 19, 2003 Tr. at 47–48.) Jonica is the sister of Joshua Woody. She is eighteen months older than Josh. Id. at 48, 57.

Since Josh’s death, Jonica has had quite a few dreams about Joshua continuously throughout each passing year. Id. at 59. Jonica testified that Josh’s death has affected her in dramatic ways. She lost her emotional rock, close

friend and brother in Josh.

Jonica has not received any counseling to help her deal with Josh's death. *Id.* at 59–60. Josh's birthday, October 6th, Christmas, and other holidays when the family gathers together, are still difficult for Jonica. *Id.* at 60. Jonica testified that Joshua's death spoiled their future plans. She thinks of Josh "[d]aily, more than once a day, all the time." *Id.* at 61. As Dr. Cable testified, Jonica

is still very much in loss and loneliness. It is helped by the fact that she has a son, and that has been something to occupy her.... Her grief will continue for quite a period of time. She is one who really significantly needs grief therapy. When someone is talking about their grief, everything being as it was seven years ago, there is a lot of unresolved grief there to deal with.

(Feb. 10, 2004 Tr. at 90.)

As the sister of Joshua Woody, Jonica Woody has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of her brother. Based upon the evidence presented to the Court, the elements of Jonica Woody's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Jonica Woody. Finally, it is clear that Jonica Woody has continued to experience emotional distress since that time due to the fact that her brother was taken away from her in such a tragic and horrific manner. Therefore, this Court shall award to Jonica Woody \$2.5 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her brother's untimely death.

***312 vii. Timothy Woody**

Timothy Allen Woody ("Tim"), a United States citizen, was born on March 28, 1978 in California. Ex. 278, at 1.

Tim is the younger brother of Josh Woody, who died as a result of a terrorist bombing at the Khobar Towers in Dhahran, Saudi Arabia, on June 25, 1996. *Id.* at 3. In June 1996, Tim entered the United States Navy after graduating from Corning Union High School. He spent four years in the Navy. Tim is currently employed as a stock-person at Wal-Mart in Geneva, New York. *Id.* at 4.

Growing up, Tim remembers always looking up to Josh. Josh was his role model. In his childhood years, Tim would always follow Josh around the house and try to involve himself in whatever Josh was doing. Tim was the typical little brother, and Josh was the typical big brother. *Id.* at 5. Tim lived with his father for several years before starting high school, while Josh lived with their mother. Nevertheless, they remained close, and saw each other regularly. Josh and Tim attended the same high school and they saw each other every day. *Id.* at 6.

After learning about Josh's death, Tim needed to be alone in order to control his emotions. Tim had just graduated from high school and was waiting to enter the Navy. Josh's death was a severe blow to Tim's outlook on life. His big brother, his role model, was gone. Tim was also saddened by the fact that he did not get to say goodbye to Josh. The last time Tim saw Josh was before he left for basic training at Lackland AFB, Texas, around August 1995. *Id.* at 13.

Tim thinks about Josh all the time. Tim keeps pictures of Josh in his wallet as well as mementos of his brother. Tim has often dreamed about Josh since his death. Although he thinks about Josh often in a week, there are certain times of the year when Tim's grief is greater. For example, he becomes particularly moody and sad on Josh's birthday and on the anniversary of his death. On the anniversary of his death, Tim always lights a candle for Josh in his house. *Id.* at 16.

Josh's death changed everything in Tim's life. He no longer has a brother. The holidays and special family events are less joyous. There is a marked emptiness at family events and Josh's absence is overwhelming. Because Tim cannot replace his brother, he fears that he will not recover from the sense of emptiness he feels. Josh's death was devastating to Tim and his entire family. *Id.* at 19–20. As Dr. Cable testified, Tim is

still in loss and loneliness.... There was a lot of pent up emotion still inside.... He had a very difficult time expressing his feelings [H]e will continue in grief for a

long time to come. He would benefit greatly from some grief therapy, and that would be advised for him.

(Feb. 10, 2004 Tr. at 92–93.)

As the brother of Joshua Woody, Timothy Woody has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Timothy Woody's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Timothy Woody. Finally, it is clear that Timothy Woody has continued to experience emotional distress since that time due to the fact that his brother was *313 taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Timothy Woody \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

b. Estate and Family Members of Leland ("Tim") Haun

i. Estate of Leland ("Tim") Haun

Leland T. ("Tim") Haun was killed in the Khobar Towers bombing on June 25, 1996. (Dec. 19, 2003 Tr. at 33; Ex. 2.) Tim was born on April 25, 1963 and was 33 years old when he died. Ex. 4. Tim left behind his wife Ibis ("Jenny") Haun and two step-children: Senator Haun and Milagritos ("Milly") Perez–Dallis.

Tim's estate is represented by his wife, Ibis "Jenny" Haun. Tim's estate has asserted claims under California's wrongful death statute because he was last domiciled in California. As the personal representative of Tim's estate, Jenny Haun is the proper plaintiff to bring a wrongful death action under California law. See [Cal Civ. Proc.Code § 377.60\(a\)](#). Because Tim was married and had children at the time of his death, any recovery under this wrongful death action is for the benefit of his wife, Jenny Haun,

and his two stepchildren Senator Haun and Milly Perez–Dallis. See [Cal Civ. Proc.Code § 377.60\(a\)](#).⁴⁷

Based upon the pleadings and evidence presented to the Court, the estate of Leland "Tim" Haun has made out a valid claim for wrongful death under California law, and the beneficiaries of this estate are entitled to recover the present value of any lost present and future economic support of the decedent that might reasonably have been expected but for the wrongful death.⁴⁸ Though, as Tim's widow, Jenny Haun is entitled to recover personally for the loss of Tim's companionship and protection, the California wrongful death statute does not allow for recovery of damages for any mental pain and suffering Jenny Haun sustained as a result of her husband's death. See *supra* note 44. Accordingly, this Court will limit its analysis presently to a discussion of lost present and future economic earnings of Tim Haun. A discussion of the intangible economic damages resulting from Jenny Haun's mental anguish shall be dealt with in a discussion of her individual intentional infliction of emotional distress claim, below.

Dr. Herman Miller, an economic consultant testified as an expert that, were it not for Tim's untimely death, he experienced a net economic loss of \$2,822,796.00. *314 The Court therefore awards the Estate of Leland "Tim" Haun, by Jenny Haun as personal representative, \$2,822,796.00 in economic damages for the benefit of Jenny Haun, Senator Haun, and Milly Perez–Dallis, to be distributed in accordance with the method of intestate distribution under California law. As for the intangible economic damages of the wrongful death recovery, the Court will address those awards below, in an individualized discussion of the claim of Ibis "Jenny" Haun.

ii. Ibis ("Jenny") Haun

Jenny Haun is the wife of CPT Tim Haun. She was born in Lima, Peru on July 9, 1959. She is an American citizen. (Dec. 19, 2003 Tr. at 3.) Jenny was raised in Peru by her extended family, including her mother, father, grandparents, uncles, and cousins. Jenny's childhood was a happy one. She attended the best of schools in Peru and participated in activities like gymnastics, drama, and acting. At 14 years of age, Jenny left Peru for the United States to live with her aunt and uncle in New York. Soon after moving in with her aunt and uncle, though, Jenny decided to get a job and live on her own. *Id.* at 3–4, 7.

When Jenny was 15 years old, she married and had her

first child, whom she named Jose Perez. Years later, he changed his name to Senator Haun. At age 16, Jenny had a second child, who she named Milagritos (“Milly”) Perez. Jenny’s husband had a drug problem, which wreaked havoc on her young family. “Every time he came home, he stole things from me and took my money and my paycheck....” Even though she was only 16 years old, Jenny worked hard to support her children, while also dealing with a husband who tried to steal the money she brought home. *Id.* at 5–6.

At age 19, Jenny divorced her husband, obtained custody of her two children, and moved to Chicago, where there was better pay and more opportunities for her kids. The biological father of Jenny’s children never had contact with them again. “The kids don’t know their father. My kids call him the sperm donor.” *Id.* at 5, 7.

Upon arriving in Chicago, Jenny began working a job and attending school at the Central YMCA Community College. It was difficult for Jenny to make money, attend classes, and raise her children, so she decided to quit school to spend more time with her children. After living in Chicago for five years, Jenny and her children moved to Tucson, Arizona. It was here that Jenny met Tim Haun. *Id.* at 8. Jenny met Tim in April 1990 at a nightclub in Tucson. They married on October 6, 1990. *Id.* at 13.

Jenny was crushed by Tim’s untimely death. Jenny also suffered by seeing how Tim’s death affected her children. Milly was so unstable after Tim’s death that she was put in a mental institution for a short period of time.

Since Tim died, Jenny’s entire family has fallen apart. “We don’t have any family after Tim’s death.” *Id.* at 38. Holidays are difficult and the family does not even get together for Christmas anymore. “This [year] is the first time we’re going to be together.” Other holidays are difficult for Jenny as well—Father’s Day, Mother’s Day, Easter, Halloween, Thanksgiving, the children’s birthdays, and her wedding anniversary. *Id.* at 42–43.

The pain of Tim’s death has not subsided for Jenny in the six and a half years since the bombing. She “feel[s] a lot of pain ... [her] heart never stops hurting.” *Id.* at 41. As Dr. Cable testified, Jenny

is in loss and loneliness. Her loss and loneliness includes this issue of future plans, particularly this having a child *315 together, which creates a real sense of emptiness that they were not able to do that

and that that can never be fulfilled. And also loss and loneliness not just for herself, but the impact this has had on her children, because it’s had a dramatic impact on them. So she has her own pain for her loss, but her pain for her children as well.... She will ... also experience significant grief into the future. She has not been able to move off of this “What if?” and the issue of having a child.

(Feb. 10, 2004 Tr. at 40–41.)

Based upon the evidence presented to the Court, the elements of Jenny Haun’s intentional infliction of emotional distress claim are met. The defendants’ conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants’ planning and assistance brought immediate emotional distress to Jenny. Finally, it is clear that Jenny has continued to experience emotional distress since that time due to the fact that her husband was taken away from her in such a tragic and horrific manner. Therefore, this Court shall award to Ibis “Jenny” Haun \$8 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her husband’s untimely death.

iii. Senator Haun

Senator Haun is the step-son of Leland “Tim” Haun. He was born in Newark, New Jersey on June 1, 1975. He is an American citizen. Ex. 286 at 1, 3. Senator spent part of his childhood in New Jersey and Chicago, but when Senator was eight years old, he moved with his mother and sister to Tucson, Arizona. Senator spent the remainder of his childhood in Arizona. *Id.* at 4. Senator’s birth father has never been a part of his life. He has only seen his birth father in pictures. *Id.* at 3.

After Jenny and Tim married, the whole family moved into a house on base with Tim. Senator’s life quickly changed for the better. The family began eating dinner together, had special family brunches, and took family vacations. Senator developed a close relationship with Tim and began calling him “Dad.” (*Id.* at 13–17; Dec. 19, 2003 Tr. at 20.) Senator had a great affection for Tim. Ex.

286 at 14, 20. Tim treated Senator as if he was Tim's own son. (Dec. 19, 2003 Tr. at 22.) In fact, Tim wanted to adopt Senator, but was unable to because nobody could locate Senator's birth father. Senator ended up changing his last name to "Haun" when he was old enough to do so. *Id.* at 21.

After Tim's funeral, Senator had a difficult time accepting that he was gone. Senator never saw his Dad's body and part of Senator still wonders whether Tim really died or whether the military had it all wrong. Senator began feeling depressed and lonely. These feelings were compounded by the fact that it was difficult for Senator to talk to his mother because talking with her and hearing the sadness in her voice made him feel worse. Ex. 286 at 29–30.

Months after Tim died, Senator's wife Clavel left him. Senator's relationship with his wife Clavel began to deteriorate soon after Tim died. They began arguing often and as the relationship regressed, the marriage began falling apart. Clavel left Senator in February of 1997, filed for divorce, and moved to Tucson with their son, Tim, Jr. Senator has not seen his son since 1998. Tim junior is now seven years old and Senator does not even know where Clavel and Tim junior live. *Id.* at 31–32.

Soon after Clavel left Senator, his depression and feelings of loneliness worsened. *316 Senator began drinking and smoking marijuana in the hopes that this would take away the pain he was feeling. Senator's condition continued to decline, however, and in 1999, Senator began hearing voices in his head. He had never heard voices before. Senator began thinking that people were planning something against him. When someone spoke to him, Senator would hear what they were saying, but would also hear other voices. On one occasion, Senator smashed his arm into a glass window at an apartment complex because he heard voices telling him to do it. During this period, Senator felt like the whole world was against him. *Id.* at 33–34.

Throughout 2000 and 2001, Senator's problems continued. He lost his job, then lost his apartment and became homeless. Senator felt depressed and lonely and was still hearing voices in his head. *Id.* at 36. In 2001, Senator eventually sought help and was diagnosed with paranoia and [schizophrenia](#). Over the last two years, Senator has worked with doctors at COPE to address his psychological problems and eliminate the voices in his head. Senator has been seeing a psychiatrist regularly and has also been prescribed different combinations of medication in an attempt to eliminate the voices he hears. Senator currently takes, or has recently taken, multiple

medications, including [Haldol](#), [Cogentin](#), Abifill, and [Ativan](#). Today, Senator no longer hears voices in his head. *Id.* at 37.

According to Dr. Cable, Senator Haun

"is still clearly in the loss and loneliness [stage].... [H]e even still is back to some degree in the volatile emotions [stage]. There is still an awful lot of anger and sadness.... His father's death has had a tremendous impact on him and has really changed him forever.... [H]e very definitely needs professional grief therapy because the impact on him has been so severe.... [H]is prognosis is guarded ... I would be concerned that without good psychological help, he could have major problems in the future."

(Feb. 10, 2004 Tr. at 44–45.)

As a recognized survivor to Leland "Tim" Haun, Senator Haun has brought a claim of intentional infliction of emotional distress against the defendants. Based upon the evidence presented to the Court, the elements of Senator Haun's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Senator. Finally, it is clear that Senator has continued to experience emotional distress since that time due to the fact that his father was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Senator Haun \$5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his father's untimely death.

iv. Milly Perez–Dallis

Milly Perez–Dallis is the step-daughter of CPT Tim Haun. She was born in Livingston, New Jersey on December 26, 1977. She is an American citizen. Ex. 287, 1, 3. Milly

spent portions of her childhood in New Jersey and Chicago. But when she was five or six years old, Milly moved to Tucson, Arizona with her mother and brother. Milly never knew or spoke to her birth father. She has never even seen him in person. Milly's birth father never provided her, her brother, or her mother with money or support of any kind. *Id.* at 3, 5. *317 Milly was 12 or 13 years old when her mother Jenny began dating Tim. *Id.* at 7.

Dealing with Tim's death was especially difficult for Milly because she had only recently moved to Florida and did not have any close friends there to support her or anyone to talk to. *Id.* at 30. Milly started feeling depressed soon after Tim's death. These feelings of depression intensified when Milly's marriage began falling apart. She was overwhelmed trying to handle things with the military for Jenny, taking care of her children, and at the same time coping with the loss of her Dad and the break-up of her marriage. *Id.* at 34.

After Milly's psychological problems got worse, she was placed in a state mental institution. Nearly two months after Tim's death, Milly's husband sought a divorce and petitioned the court for custody of the children. In his petition for divorce, Milly's husband stated that Tim's death had a great impact on Milly and that as a result of Tim's death, Milly had been placed in a state mental institution, was unstable, and was unable to raise her children. *Id.* at 37–38.

Milly fell apart after this incident. She swallowed a bottle of pills, started drinking heavily, and felt like committing suicide. Milly had never felt this way before. In a short period of time, she went from being perfectly fine to being entirely unstable. *Id.* at 39.

As a result of her declining mental and psychological state, Milly was again institutionalized. When she was released, Milly returned home to find her husband packing up the house. Milly asked what he was doing and he showed her temporary custody papers that a court had just issued. He informed Milly that he was taking the children and leaving town. Milly ultimately moved back to Tucson, Arizona to be close to her children. Milly was ordered that she could not see her children without supervision. To this day, Milly must still be supervised when she spends time with her kids. *Id.* at 40–43. Beginning in 1999, Milly began receiving psychological help from an agency in Arizona that provided her with a psychiatrist to visit every month. This psychiatrist listened to Milly and diagnosed her with [major depression](#), an anxiety disorder, and a compulsive disorder. *Id.* at 44.

Since Tim's death, Milly has experienced difficulties keeping a job. She gets nervous around people and sometimes struggles with doing normal things that she would never have thought twice about before Tim died. *Id.* at 46. Father's Day, Christmas, and the anniversary of Tim's death are particularly difficult days for Milly. *Id.* at 47. September 11, 2001 was also a difficult day for Milly. *Id.* at 49.

According to Dr. Cable, Milly

is still looking to recapture the past, which she can't get, but she wants to be the way it was before. Her life has simply not been the same since Tim's death. She wants everything to be the way it was. So very much loss and loneliness.... I believe her grief is going to continue for a long time into the future. She, too, ... really needs some intensive grief therapy to help her get through this. She is going to have a difficult time moving on in life, regaining her balance, really being able to get back to a normal kind of life.

(Feb. 10, 2004 Tr. at 48–49.)

As a recognized survivor to Leland "Tim" Haun, Milly Perez–Dallis has brought a claim of intentional infliction of emotional distress against the defendants. Based upon the evidence presented to the Court, the elements of Milly Perez–Dallis' intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material *318 support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Milly. Finally, it is clear that Milly has continued to experience emotional distress since that time due to the fact that her father was taken away from her in such a tragic and horrific manner.

Though the Court typically awards children of terrorist attack victims \$5 million to compensate them for the severe emotional distress associated with losing a parent, the Court does have discretion to adjust the amount of the award in cases where the victim's emotional distress is significantly more extreme. Based upon the evidence presented to this Court, Milly's emotional distress is of

such an extreme nature as to warrant an increase in the award for her emotional distress. Therefore, this Court shall award to Milly Perez–Dallis \$7 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her father’s untimely death.

c. Shawn Wood

Shawn Michael Wood is an older brother of Justin Wood. He was born in Modesto, California on March 27, 1971. He is an American citizen. (Dec. 4, 2003 P.M. Tr. at 50.) Shawn was raised in Modesto, where he attended and graduated from public school. After graduating from high school, Shawn attended junior college for a short period of time, then left junior college to pursue a career in music. During the day, Shawn worked at a local restaurant and during the evenings, he practiced guitar, wrote songs, and played in bands with his friends. After playing in bands for a short period of time, Shawn decided that he wanted to further pursue a career in the music industry and he enrolled in the Art Institute in Seattle, Washington to study audio production. *Id.* at 51–52.

The days following Justin’s death are a blur to Shawn. He remembers being with his family and his girlfriend’s family, seeing people he had not seen in a long time, and receiving many flowers and cards. *Id.* at 61. He could not stay focused on school after Justin’s death, so he took a semester off from the Art Institute. When Shawn returned to school, his grades suffered. *Id.* at 65.

Justin’s death deeply affected Shawn’s relationships with his family, especially his father. It was difficult for Shawn to interact with his father because they did not communicate well and because they dealt with Justin’s death differently. *Id.* at 72–73.

Shawn has created a web site in Justin’s honor and he talks to people through email who have lost loved ones in terrorist attacks. He talks to people who cannot sleep at night, who cannot close their eyes. *Id.* at 77–78. Today, Shawn still thinks of Justin every day. Shawn still keeps some of Justin’s possessions on display in his home. Shawn still feels hate and rage as a result of Justin’s death. *Id.* at 74. As Dr. Cable testified, Shawn

is in loss and loneliness. It’s
tempered by his wife and children,

which really are a help to him, but it’s compounded by his parents’ issues, particularly the father in the sense of not only losing his brother, but he doesn’t count in his father’s life any more either. His loss and loneliness is not just for his brother, but he is very much devoted to all of those who died and honoring all of them.... His grief will continue. There will always be reminders, things that make it difficult for him.

(Feb. 10, 2004 Tr. at 211–12.)

As Justin Wood’s brother, Shawn Wood has brought a claim of intentional *319 infliction of emotional distress against the defendants. Based upon the evidence presented to the Court, the elements of Shawn Wood’s intentional infliction of emotional distress claim are met. The defendants’ conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants’ planning and assistance brought immediate emotional distress to Shawn. Finally, it is clear that Shawn has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Shawn Wood \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother’s untimely death.

C. Louisiana

1. Causes of Action

a. Wrongful Death

In Louisiana, the decedent’s survivors⁴⁹ may bring a wrongful death action when the decedent dies “due to the fault of another.” [La. Civ.Code Ann. Art. 2315.2\(A\)](#). Such a cause of action is intended to “compensate the victim’s beneficiaries for their compensable injuries following the victim’s moment of death.” [Mathieu v. Louisiana Dep’t of Transp. & Dev.](#), 598 So.2d 676, 681 (La.Ct.App.1992). Potential beneficiaries entitled to recovery include the surviving spouse, children, parents, siblings, and grandparents of the deceased, but do not

include children who were not legally adopted at the time of the decedent's death. [La. Civ.Code Ann. Art. 2315.2\(A\)](#). Recoverable damages for a wrongful death claim include lost wages, "loss of love and affection, loss of services, loss of support, medical expenses, and funeral expenses." *Id.* But see [La. Civ.Code Ann. Art. 2315.2\(B\)](#) (stating that damages do not include costs for future medical treatment). Surviving relatives under [Article 2315.2](#) may also recover for their own individual pain and suffering sustained as a result of the wrongful death to the decedent. [Robertson v. Town of Jennings](#), 128 La. 795, 55 So. 375, 379–80 (1911).

b. Intentional Infliction of Emotional Distress

Louisiana courts follow Section 46 of the RESTATEMENT (SECOND) OF TORTS in recognizing the tort of intentional infliction of emotional distress. See [White v. Monsanto Co.](#), 585 So.2d 1205, 1208–1210 (La.1991). The elements of the tort of intentional infliction of emotional distress in Louisiana are that: (1) the defendant's conduct was extreme and outrageous; (2) the plaintiff suffered severe emotional distress; and (3) the "defendant desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from his conduct." *Id.* at 1209. Under Louisiana law, however, there is a requirement that, in order for a plaintiff to recover for a damages caused by injury to another, that plaintiff must have either viewed or immediately come upon the scene of the injury. See [La. Civ.Code Ann. Art. 2315.6](#). Louisiana courts have interpreted the term "view" to require the plaintiff's actual presence at the event causing the injury. See *320 [Daigrepoint v. State Racing Com'n](#), 663 So.2d 840, 841 (La.App.1995) (finding that plaintiffs were entitled to no recovery if "viewing" of injury was only by videotape). Moreover, the Louisiana Supreme Court has left little room for interpretation of this provision, stating that such a law is clear and unambiguous, and therefore no further interpretation of the provision may be made with regard to the legislature's intent in enacting it. *Id.* Accordingly, to the extent that any plaintiffs may not recover under the wrongful death statute, they may not recover under Louisiana law if they were not actually present at the site of the attack.

2. Plaintiffs

a. Estate and Surviving Family Members of Kevin Johnson, Sr.

i. Estate of Kevin Johnson, Sr.

Kevin Jerome Johnson, Sr., was killed in the Khobar Towers bombing on June 25, 1996. (Dec. 4, 2003 A.M. Tr. at 64–65; Ex. 2.) Kevin was born on January 25, 1960. He was 35 years old when he died. Ex. 284, ¶ 4; Ex. A. Kevin is survived by his wife, Shyrl, his biological sons, Kevin Johnson, Jr. and Nicholas Johnson, and his stepson, Che Colson. He is also survived by his mother, Laura Johnson, and his brother, Bruce Johnson.

When he was growing up, Kevin was a very good student. In high school, he was always on the Dean's List and he was accepted to attend Grambling State University. *Id.* at ¶ 14. Kevin was also a hard-worker. He got his first job when he was 15 or 16 years old, helping a local man raise worms, which were then sold to fishermen.

After Kevin finished college at Grambling, he entered into the Air Force. He was eventually assigned to Little Rock Air Force Base in Arkansas upon finishing his military training. Kevin planned on making the military his career and wanted to make sure his three little boys and wife were taken care of. *Id.* at ¶ 23.

Kevin's estate is represented by his wife, Shyrl Johnson. Kevin's estate has asserted claims under Louisiana's wrongful death statute because he was last domiciled in Louisiana. As the surviving spouse and children of Kevin's estate, Shyrl Johnson, Kevin Johnson, Jr., and Nicholas Johnson are the proper plaintiffs to bring a wrongful death action under Louisiana law. See [La. Civ.Code Ann. Art. 2315.2\(A\)](#). Any recovery under this wrongful death action is for the benefit of Shyrl Johnson, Kevin Johnson, Jr., and Nicholas Johnson as the surviving children and spouse. See [La. Civ.Code Ann. Art. 2315.2\(A\)](#).⁵⁰

Based upon the pleadings and evidence presented to the Court, the estate of Kevin Johnson, Sr., has made out a valid claim for wrongful death under Louisiana law, and the beneficiaries of this estate are entitled to recover the present value of any lost present and future economic support of the decedent that might reasonably have been expected but for the wrongful death. Dr. Herman Miller, an economic consultant testified as an expert that, due to Kevin's untimely death, he experienced *321 a net economic loss of \$1,171,477.00. The Court therefore awards the Estate of Kevin Johnson, Sr., by his surviving spouse and children, \$1,171,477.00 in economic damages for the benefit of Shyrl Johnson, Kevin Johnson, Jr., and Nicholas Johnson, to be distributed in accordance with the method of intestate distribution under Louisiana law. A

discussion of intangible economic damages of the wrongful death recovery, will be addressed below in an individualized discussion of the claims of Shyrl Johnson, Kevin Johnson, Jr., and Nicholas Johnson.

ii. Shyrl Johnson

Shyrl Johnson is the wife of Kevin Johnson, Sr. She was born in Shreveport, Louisiana on October 22, 1958. She is an American citizen. (Dec. 4, 2003 A.M. Tr. at 4.) Shyrl was raised in Shreveport, Louisiana by her mother, who was a nurse, and her stepfather, who was an electrician. She attended public school and after graduating from high school, attended college at Northwestern State University. *Id.* at 4–5. During Shyrl’s first year at college, she met Greg Colson, whom she later married. Ironically, Kevin Johnson, Sr., was the piano player for Shyrl and Greg’s wedding ceremony.

In 1982, Shyrl and Greg had a son, who they named Che. *Id.* at 5–7. Soon after Shyrl had Che’s birth, her marriage with Greg fell apart due to Greg’s drug addiction. Greg had a severe drug problem and Shyrl did not want her young son being around drugs or people caught up in the drug community. Shyrl and Greg were divorced in 1984. *Id.* at 7, 43–44. After Shyrl and Greg divorced, Greg’s relationship with Che continued to be a distant one. Greg would come see Che once in a while on the weekends, but did not visit him on a regular basis. Greg and Che never shared a traditional father-son relationship. *Id.* at 7.

Shyrl has always worked since she graduated from college. When Shyrl was married to Greg, she worked at the Southwestern Electric Power Company as a stenographer. She then transferred to the Shreveport Area School District, where she worked for the school superintendent as a stenographer and secretary. At one point, Shyrl joined the Air Force Reserves as a second job, which she worked on the weekends. *Id.* at 7–8.

Shyrl and Kevin did not meet again until 1986, when Shyrl was going through the confirmation process in the Catholic church. Kevin’s mother, Laura Johnson was Shyrl’s sponsor through the confirmation process. Shyrl, who had recently divorced her husband Greg, was pleased to become reacquainted with Kevin, whom she remembered from her wedding ceremony, and they quickly became friends. *Id.* at 10.

In the weeks and months following their reacquaintance, Shyrl and Kevin talked on the telephone often. Kevin was stationed at Little Rock AFB at the time and Shyrl was

still living in Shreveport, so the two could not see each other often, but they frequently talked to each other on the telephone over the course of three or four months before they began dating. During this period, Kevin went on rotation to Mildenhall AFB in England, but even when he was travelling, Kevin kept in touch with Shyrl. Their phone bills were quite high during these three to four months. *Id.* at 12–13. Kevin and Shyrl also kept in touch through letters. *Id.* at 13.

About six months after becoming reacquainted, Shyrl and Kevin began dating. Shyrl was taken with Kevin’s smile, his honesty, and his easygoing nature. Shyrl and Kevin dated for four years and were married in 1990. *Id.* at 15; Ex. 51. After *322 Shyrl and Kevin married, Kevin transferred to Patrick AFB in Florida. Kevin wanted to spend more time with the children and the Air Force told him that he would not have to travel as much. Kevin and Shyrl were also told that Kevin would not have to travel to Saudi Arabia, which they both viewed as another benefit of transferring. *Id.* at 48–49.

Kevin was a wonderful husband. Kevin would cook, would clean, would fold clothes. He always listened and would help Shyrl make important decisions in her life. Kevin also encouraged Shyrl to do things that she always wanted to do, like go back to school to become a teacher. (Dec. 4, 2003 A.M. Tr. at 36–37, 39.)

Kevin was also a great father. “He treated Che just like he was his biological father.” Kevin played sports with Che, took him to church, and was the father figure that Che never had. *Id.* at 20–23, 38. Kevin and Shyrl also had two children of their own: Kevin and Nicholas. Kevin was a great father with these boys as well. Kevin spent a lot of time with all of the children and enjoyed being a father. He arranged family trips that the kids would enjoy to places like Disney World, St. Louis, and Mud Island, Tennessee and spent his free time with the kids. *Id.* at 46–48.

Shyrl and Kevin had great plans for the future. In the days before Kevin died, he and Shyrl were talking about transferring to Mildenhall AFB in England, which they thought would be great for the children. Shyrl had actually gone to pick up information about Mildenhall on the day she learned about the Khobar Towers bombing. Kevin planned on staying in the military for at least 25 years, then eventually going to work for a commercial airline. *Id.* at 50–53.

Shyrl broke down emotionally immediately after finding out that Kevin had been killed. *Id.* at 66. After the funeral, Shyrl held herself together for about six months, before

she just “fell apart.” Shyrl has experienced breakdowns since this initial episode, but they have not been quite as bad. She especially misses Kevin “[w]hen things start piling up ... because he was always there to balance me out and I miss that. I can talk to him but he’s not answering back.” *Id.* at 77–79.

Certain days are particularly difficult for Shyrl. September 11, 2001 was one of those days. Shyrl’s reaction to the September 11 attack was so severe that she had to leave the classroom she was teaching in and have another teacher take over the class. She left work early that day to pick up her children, so they wouldn’t be afraid. “I tried to shelter them as much as I could in not seeing so much of it. But [little] Kevin said, ‘it’s just like Khobar Towers, mommy. They’re just never going to catch them.’ ” (Dec. 4, 2003 A.M. Tr. at 87–89.)

As Dr. Cable stated, Shyrl

is also in loss and loneliness. She is a widow who sees herself under a great deal of pressure with her job, her children.... She has really held herself together as best she could, more for the children than for anything else.... She will ... continue to grieve in the future.... [A]s her children get older, she will be more open to letting her grief come out more. A lot of it is still kept behind closed doors, so to speak.... [T]here is going to be a lot of recurrence of grief when the children reach milestones. When they graduate from college, when a child marries, that will tend to bring back a lot of grief for her, because those are times that Kevin should be there to support and be a part of all of that.

(Feb. 10, 2004 Tr. at 53–55.)

As Kevin Johnson’s wife, Shyrl Johnson has brought a wrongful death ***323** claim arising from the death of her husband, Kevin Johnson, Sr. Based on the evidence presented to the Court, Shyrl Johnson has experienced severe mental anguish and suffering as a result of her husband’s untimely death. Therefore, this Court shall award to the estate of Kevin Johnson, Sr., by Shyrl

Johnson as Personal Representative, \$8 million for the benefit of his wife Shyrl Johnson to compensate her for the mental pain and suffering she sustained as a result of her husband’s untimely death.

iii. Kevin Johnson, Jr.

Kevin Johnson, Jr., (“Kevin Jr.”) is the son and namesake of Kevin Johnson, Sr. Kevin, Jr., was born in July 1991 and was only four years old when his father was killed. *Id.* at 46.

For a while after Kevin died, Kevin Jr. thought that his dad might just be hurt and lost somewhere in Saudi Arabia. Shyrl believes that Kevin’s death hit Kevin Jr. the hardest because he was so young. Kevin Jr. would have nightmares, and often thought he saw ghosts. *Id.* at 61.

To this day, Kevin still has issues related to his father’s death. Shyrl enrolled him in Big Brothers, Big Sisters with the hope that he could have a male figure in his life. Six months after enrolling, however, Kevin’s big brother was transferred to a different military base, and Kevin lost another male role model. *Id.* at 70–71.

Kevin has issues that Shyrl believes are related to the loss of his father. For example, Kevin is overweight, has low self-esteem, and has other physical issues. As Dr. Cable testified, Kevin is in the loss and loneliness stage but still

[shows] behaviors that go back into some of the earlier stages [of emotional grieving.] There is still a lot of emotional reaction there, so the volatile emotions [stage]. Probably even some of the disorganization; just not being able to kind of get things in focus.... He will continue in significant grief reactions in the foreseeable future.... [He is] at risk for developing other kinds of problems as a result of the grief experience.

(Feb. 10, 2004 Tr. at 57–58.)

As Kevin Johnson’s son, Kevin Johnson, Jr., has brought intentional infliction of emotional distress and wrongful death claims arising from the death of his father, Kevin

Johnson, Sr. As the evidence shows, Kevin Johnson, Jr., was not physically present to witness the harm done to his father. In light of this fact, and the strict construction Louisiana courts place on the presence requirement in intentional infliction of emotional distress claims, Kevin Johnson, Jr., may not recover under an intentional infliction of emotional distress claim relating to his father's death. Accordingly, to the extent that Kevin Johnson, Jr., may recover, he must make a valid claim under Louisiana's wrongful death statute.

Based on the evidence presented to the Court, Kevin Johnson, Jr., has experienced severe mental anguish and suffering as a result of his father's untimely death. Therefore, this Court shall award to the estate of Kevin Johnson, Sr., by Shyrl Johnson as Personal Representative, \$5 million for the benefit of his son Kevin Johnson, Jr., to compensate him for the mental pain and suffering he sustained as a result of his father's untimely death.

iv. Nicholas Johnson

Nicholas Johnson is the son of Kevin Johnson, Sr. Nicholas was born in April 1996, and was only two months old when his father was killed. (Dec. 4, 2003 A.M. Tr. at 46.) Nicholas never knew his father, but he has learned about him from *324 Shyrl and from Che Colson. *Id.* at 71. As Nicholas has gotten older, Shyrl has given him more information about his father. Nicholas is "proud of his father and who he is even though he didn't know him." *Id.* at 96.

Even though Nicholas never knew his father, his life has been impacted dramatically by Kevin's death. As Shyrl stated,

[T]he thing that broke my heart just this year, we were coming back from school and I think they had this thing where the fathers come in and my poor baby said, we were driving back home, "I wish I had a daddy, too, just like the other kids." That really just broke my heart. What do you say to a seven-year-old that misses something that he didn't even have but for a short period of time? When you go to functions and there's the mother and the father, that's when he gets kind of like he wishes he had both.

Id. at 71.

According to Dr. Cable, Nicholas

is really just beginning the grief process.... He was so young when all of this happened, that it's a blur to him, obviously. As future events unfold in his life, then he is going to have more of a sense of loss, just like now with the school events and no father present.... [H]e is at a real loss in that sense of not having personal memories as part of his life.... He will have good support from his mother and from his brothers, but he will have significant grief along the way.... So there is a long-term impact here for him.

(Feb. 10, 2004 Tr. at 59–60.)

As Kevin Johnson's son, Nicholas Johnson has brought intentional infliction of emotional distress and wrongful death claims arising from the death of his father, Kevin Johnson, Sr. As the evidence shows, Nicholas Johnson was not physically present to witness the harm done to his father. In light of this fact, and the strict construction Louisiana courts place on the presence requirement in intentional infliction of emotional distress claims, Nicholas Johnson may not recover under an intentional infliction of emotional distress claim relating to his father's death. Accordingly, to the extent that Nicholas Johnson may recover, he must make a valid claim under Louisiana's wrongful death statute.

Based on the evidence presented to the Court, Nicholas Johnson has experienced severe mental anguish and suffering as a result of his father's untimely death due to the fact that he will never know his father. Therefore, this Court shall award to the estate of Kevin Johnson, Sr., by Shyrl Johnson as Personal Representative, \$5 million for the benefit of his son Nicholas Johnson to compensate him for the mental pain and suffering he sustained as a result of his father's untimely death.

v. Laura Johnson

Laura Elizabeth Johnson is the mother of Kevin Johnson. Mrs. Johnson was born in Shreveport, Louisiana in 1933 and was 63 years old when Kevin was killed. She is an American citizen. Ex. 284, ¶¶ 1–2. Mrs. Johnson was raised and attended school in Shreveport, Louisiana. After

graduating from high school, she attended a year-long nursing school program and graduated from the program on May 24, 1954. She has been a nurse for 49 years and still practices on a part-time basis. She has lived in Shreveport her entire life. *Id.* at ¶ 3.

When Mrs. Johnson heard that Kevin had died in the attack, she was devastated. She left work immediately and headed home, and prayed that Kevin was still alive. *Id.* at ¶ 29. Mrs. Johnson did not work for a few months after Kevin's funeral. *325 She returned to work in September. It was difficult for Mrs. Johnson to return to work, "but I knew I had to." *Id.* at 32.

Since Kevin died, Mrs. Johnson has hung a picture of him in the house so she could see him when she walked in the door. Mrs. Johnson is still grieving over Kevin's death, but she can function in a normal life now. *Id.* at 35. Mrs. Johnson has relied on her faith in coping with Kevin's death. *Id.* at 36. Before Kevin died, Mrs. Johnson relied on him to take care of things in case she ever became ill or could not take care of herself. Kevin was responsible, so Mrs. Johnson added his name to her bank account and other important accounts. When Kevin died, Mrs. Johnson realized she was on her own. (*Id.* at 37; Dec. 4, 2003 A.M. Tr. at 12.)

According to Dr. Cable, Mrs. Johnson "is still in loss and loneliness. Nothing will ever replace Kevin in her life.... She will continue to grieve for some time to come.... [S]he will manage to go on, but [may not] ever fully recover the loss of her son." (Feb. 10, 2004 Tr. at 62.)

As Kevin Johnson's mother, Laura Johnson has brought intentional infliction of emotional distress and wrongful death claims arising from the death of her son, Kevin Johnson, Sr. As the evidence shows, Laura Johnson was not physically present to witness the harm done to her son. In light of this fact, and the strict construction Louisiana courts place on the presence requirement in intentional infliction of emotional distress claims, Laura Johnson may not recover under an intentional infliction of emotional distress claim relating to her son's death. Accordingly, to the extent that Laura Johnson may recover, she must make a valid claim under Louisiana's wrongful death statute.

Laura Johnson, however, may not maintain a valid wrongful death claim due to the fact that her son Kevin Johnson, Sr., died with a surviving spouse and surviving children. Under Louisiana's wrongful death code, surviving parents may not recover for wrongful death if there is a surviving spouse or surviving children. See [La. Civ.Code Ann. Art. 2315.2\(A\)\(2\)](#). Accordingly, Laura

Johnson's wrongful death claim must also be denied.

vi. Bruce Johnson

Bruce Johnson is the brother of Kevin Johnson. Bruce was born in Shreveport, Louisiana in 1961 and was 35 years-old when Kevin was killed. He is an American citizen. Ex. 285, ¶¶ 1, 3. Bruce attended the Blessed Sacrament Elementary School until sixth grade, then went to Lake Shore Middle School and Washington High School. He graduated from high school in 1978. After high school, he attended and graduated from Louisiana Technical School, where he studied automotive education and automotive technologies. *Id.* at ¶ 3.

Bruce currently works as a paraprofessional for Southern University, where he supervises a unit that oversees special education children and helps them prepare for becoming independent. Bruce is married and has a wife named Connie and two children: Bruce Jr., who is 16, and Broderick, who is 14. Bruce also has a step-daughter named Chavondria. *Id.* at ¶ 4.

Growing up, Bruce and Kevin were close brothers. From an early age, Kevin was very protective of Bruce. He would make sure Bruce did not do anything he wasn't supposed to do. This protective relationship continued until the day Kevin died. Bruce would talk to Kevin about work, personal, or even family issues. Kevin would always listen and always give him helpful guidance. *Id.* at ¶ 7.

Soon after Kevin joined the Air Force, he sat down with Bruce and had a talk *326 about plans for the future. Kevin planned on spending 20 years in the service, then going to work for a commercial airline. *Id.* at ¶ 11. The last time Bruce spoke with Kevin, he asked about Bruce's boys' shoe sizes. Kevin wanted to bring the boys some sneakers from Saudi Arabia when he returned to the United States. *Id.* at ¶ 12.

When Kevin died, Bruce took care of making all the funeral arrangements and contacting people from the military and the local police department. Bruce arranged to have the funeral at St. John's Cathedral, which is where Kevin and Bruce were first baptized and where they had their First Communion. Because Bruce was making all of the arrangements, he could not attend the memorial service at Patrick AFB. Bruce did, however, attend the dedication of the memorial at Patrick AFB a few years after the bombing.

Today, Bruce still visits Kevin's grave often. *Id.* at ¶ 17. After Bruce learned of Kevin's death, everything "just went black for about two straight years. I felt lost because I didn't have Kevin to give me direction in life." *Id.* at ¶ 18. After Kevin died, Bruce began drinking every day. This led to some trouble with the law and Bruce received two DUIs in a short period of time. Bruce received the first one on December 22, 1996, and the second that following July. Bruce also got into some financial difficulties. *Id.* at ¶ 19. Bruce stayed home from work for about three or four weeks after Kevin's death. But after returning to work, he had to take a day or two off every week because going back was just something he was not ready for. Bruce continued to take a day or two off a week for about six months. *Id.* at ¶ 20.

Today, Christmas and Thanksgiving are particularly difficult days for Bruce. Kevin's birthday and the days leading up to Kevin's birthday are also tough. In Dr. Cable's expert opinion, Bruce

is in loss and loneliness. He still thinks of Kevin all the time; never far from his mind. Kevin was his role model, his support system, and that's gone and is not going to be recovered.... He will continue to be impacted by the death in the future ... but that ten-day period [each year when Kevin and Bruce were the same numerical age] is going to be a significant marker the rest of his life. Even if he is able to move on in general, he is going to have a down time every year where the grief is going to be pretty overwhelming for a while.

(Feb. 10, 2004 Tr. at 64–65.)

As Kevin Johnson's brother, Bruce Johnson has brought intentional infliction of emotional distress and wrongful death claims arising from the death of his brother, Kevin Johnson, Sr. As the evidence shows, Bruce Johnson was not physically present to witness the harm done to his brother. In light of this fact, and the strict construction Louisiana courts place on the presence requirement in intentional infliction of emotional distress claims, Bruce Johnson may not recover under an intentional infliction of emotional distress claim relating to his brother's death. Accordingly, to the extent that Bruce Johnson may

recover, he must make a valid claim under Louisiana's wrongful death statute.

Bruce Johnson, however, may not maintain a valid wrongful death claim due to the fact that his brother Kevin Johnson, Sr., died with a surviving spouse and surviving children. Under Louisiana's wrongful death code, surviving siblings may not recover for wrongful death if there is a surviving spouse or surviving children. See [La. Civ.Code Ann. Art. 2315.2\(A\)\(3\)](#). Accordingly, Bruce Johnson's wrongful death claim must also be denied.

***327 vii. Che Colson**

Che Colson is the step-son of Kevin Johnson, Sr. Che was born in 1982 and was only 13 years old when Kevin was killed. (Dec. 4, 2003 A.M. Tr. at 7.) Che's birth parents are Shyrl Johnson and Greg Colson. Shyrl and Greg divorced in 1984, when Che was two years old, and Che never had a close relationship with his birth father. Greg developed drug problems and was not around to take care of Che when he was a child, so Shyrl was the only parent in his day-to-day life. *Id.* at 6–7. Che was three and a half or four years old when Shyrl began dating Kevin. *Id.* at 12.

Kevin treated Che like he was his biological father. Che and Kevin maintained their close relationship until the day Kevin died. *Id.* at 38, 46. After Shyrl and Kevin married, Kevin was financially responsible for Che. *Id.* at 46.

The year after Kevin died was very difficult for Che and he "kind of shut down that year, where he wasn't talking to anybody." Shyrl noticed that Che "wasn't showing any emotion to anybody and I couldn't read him. But I do know that his grades suffered. I think it's because he missed that male role model that he had in Kevin. [Kevin] brought stability [from] the male perspective, I would say, for Che." *Id.* at 38–39. As Dr. Cable has stated, Che "feels abandoned ... and is in loss and loneliness.... He will continue in grief for the foreseeable future.... [H]e still has got a number of years ahead of him of trying to come to grips with everything that has happened." (Feb. 10, 2004 Tr. at 55–56.)

As Kevin Johnson's stepson, Che Colson has brought intentional infliction of emotional distress and wrongful death claims arising from the death of his stepfather, Kevin Johnson. As the evidence shows, Mr. Colson was not physically present to witness the harm done to his

stepfather. In light of this fact, and the strict construction Louisiana courts place on the presence requirement in intentional infliction of emotional distress claims, Mr. Colson may not recover under an intentional infliction of emotional distress claim relating to his stepfather's death. Accordingly, to the extent that Mr. Colson may recover, he must make a valid claim under Louisiana's wrongful death statute.

Based on the evidence presented to the Court, however, Mr. Colson is not entitled to recover under an intentional infliction of emotional distress claim due to the fact that, as a non-adopted stepson, Mr. Colson lacks sufficient standing to recover for damages relating to Kevin Johnson's death. Under Louisiana law, a decedent's child may properly recover for wrongful death. *La. Civ.Code Ann. Art. 2315.2(A)(1)*. Nevertheless, Louisiana's code specifically states that a "child" is limited to biological children and children by adoption. *La. Civ.Code Ann. Art. 2315.2(A)(4)(D)*. Moreover, this Court is hampered from any flexibility in interpreting this provision due to the fact that "the right of action created by *Article 2315* may be extended *only to the statutorily designated beneficiaries enumerated in the article and these classes of beneficiaries must be strictly construed.*" *Craig v. Scandia, Inc.*, 634 So.2d 944, 945 (La.Ct.App.1994) (emphasis added). Accordingly, because Mr. Colson does not fall within the statutorily prescribed classes of individuals who may properly recover under a wrongful death action, Mr. Colson's claim must be denied.

D. Claims Under New Hampshire Law

1. Causes of Action

a. Wrongful Death

Under New Hampshire's wrongful death statute, the administrator of the *328 decedent's estate may bring a cause of action when the decedent's death is "caused by the injury complained of in the action." *N.H.Rev.Stat. Ann. § 556:12*. The damages wrongful death plaintiffs may seek include "the mental and physical pain suffered by the decedent in consequence of the injury, the reasonable expenses occasioned to the estate by the injury, the probable duration of life but for the injury, and the capacity to earn money during the deceased party's probable working life." *N.H.Rev.Stat. Ann. § 556:12*. Recoverable damages also include damages for loss of life and loss of enjoyment of life. See *Bennett v. Lembo*,

145 N.H. 276, 761 A.2d 494, 498 (2000); *Marcotte v. Timberlane/Hampstead Sch. Dist.*, 143 N.H. 331, 733 A.2d 394, 405 (1999). Under New Hampshire law, however, the amount of damages recoverable for the benefit of a decedent's sibling is limited to a total of \$50,000,⁵¹ unless the sibling shows proof of financial dependency upon the decedent.

b. Intentional Infliction of Emotional Distress

New Hampshire recognizes the tort of intentional infliction of emotional distress, following Section 46 of the RESTATEMENT (SECOND) OF TORTS. Under New Hampshire law, the elements of the tort of intentional infliction of emotional distress are: (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that his conduct would cause such distress; (2) the conduct was extreme and outrageous; (3) the defendant's conduct caused the plaintiff's emotional distress; and (4) the plaintiff suffered severe emotional distress. See *Orono Karate, Inc. v. Fred Villari Studio of Self Defense, Inc.*, 776 F.Supp. 47, 51 (D.N.H.1991).

In recognizing the tort of intentional infliction of emotional distress, New Hampshire courts have adopted Section 46 of the RESTATEMENT (SECOND) OF TORTS..... See *Orono Karate, Inc.* 776 F.Supp. at 51. Though § 46(2) of the Restatement specifically states that only present third parties may recover for an IIED claim, the Caveat to the section leaves open the possibility of other possible situations where a defendant could be liable for intentional infliction of emotional distress under this section. Moreover, Comment I. to the section specifically expands on the Caveat's language, stating that the Caveat was intended "to leave open the possibility of situations in which presence at the time may not be required." RESTATEMENT (SECOND) OF TORTSSSSSS § 46, cmt. I.⁵²

The Court finds that a terrorist attack is precisely the sort of situation in which presence at the time is not required in light of the severity of the act and the obvious range of potential grief and distress that directly results from such a heinous act. This Court and courts of other jurisdictions have found that "a terrorist attack-by its nature-is directed not only at the victims but also at the victims' families." *Salazar*, 370 F.Supp.2d at 115 n. 12 (citing *329 *Burnett v. Al Baraka Inv. and Dev. Corp.*, 274 F.Supp.2d 86, 107 (D.D.C.2003)). In this case, the evidence demonstrates that the defendants' motives in planning the attack on the Khobar Towers, and indeed their motives in carrying out

a systematic plan of funding and organizing terrorist attacks, were intended to harm both the victims of the attack, and to instill terror in their loved ones and others in the United States. Accordingly, in the case of a terrorist attack as this, the Court finds that the presence element does not need to be proven in order to successfully bring a cause of action for intentional infliction of emotional distress under New Hampshire law.

Still, it is of paramount concern to this Court that a line be drawn to prevent a potentially unlimited number of plaintiffs who were not present at the site of the attack from seeking redress. See [RESTATEMENT \(SECOND\) OF TORTS § 46](#), cmt. 1. The Restatement has noted that recovery for third-party bystanders has typically been granted to members of the victim's "near relatives." *Id.* State courts have also followed this approach, allowing recovery for the victim's spouse, child, sibling or parents. See, e.g., *Williams v. City of Minneola*, 575 So.2d 683, 690 (Fla.App.1991). The Court finds this approach to be a logical one. Accordingly, under New Hampshire law, a victim's near relatives, as defined by the state's intestate succession statute, who were not present may nonetheless have standing to seek redress under a claim of intentional infliction of emotional distress.

2. Plaintiffs

a. Estate and Surviving Family Members of Peter Morgera

i. Estate of Peter Morgera

Peter Morgera was killed on June 25, 1996 at the Khobar Towers. Ex. 9. He is survived by his two brothers, Michael Morgera and Thomas Morgera. Michael is three years older than Peter, who was 11 months older than Thomas. (Dec. 5, 2003 P.M. Tr. at 94–96.)

After high school Peter attended classes at the University of New Hampshire and had a few different jobs before deciding to join the Air Force. Peter also spent time as a volunteer firefighter in Stratham, New Hampshire. After basic training and technical school, Peter was assigned to a duty station in Germany. *Id.* at 109–111, Ex. 93.

After completing his tour of duty in Germany, Peter was assigned to Eglin AFB in Florida. Peter and Michael spoke on the telephone several times during this period. Michael testified that the Air Force changed Peter.

According to his brother, the time Peter spent in the Air Force and the time he spent in Germany had given Peter the confidence to "be much more concerned with the way he lived his life, not for others but for himself." (Dec. 5, 2003 P.M. Tr. at 111–14.) Peter volunteered to be temporarily deployed to Saudi Arabia in place of Stan Dworkin, a higher ranking airman who had a wife and children. *Id.* at 114–115. Fittingly, Peter's tombstone reads "Family, community, country." *Id.* at 128.

Peter's estate is represented by his brother, Michael Morgera. Peter's estate has asserted claims under New Hampshire's wrongful death statute because he was last domiciled in New Hampshire. As the administrator of Peter's estate, Michael Morgera is the proper plaintiff to bring a wrongful death action under New Hampshire law. See [N.H.Rev.Stat. Ann. § 556:12](#). In light of the fact that Peter is survived solely by his brothers, Michael and Thomas Morgera, any recovery under this wrongful death action is for Michael and Thomas Morgera.

***330** Based upon the pleadings and evidence presented to the Court, the estate of Peter Morgera has made out a valid claim for wrongful death under New Hampshire law. The beneficiaries of his estate are entitled to recover compensatory damages arising from the wrongful death, including "capacity to earn money during the deceased party's probable working life." See [N.H.Rev.Stat. Ann. § 556:12\(I\)](#). Plaintiffs have presented no evidence of any financial dependency upon the decedent in this case. Therefore, to the extent that Peter Morgera's lost wages exceed \$50,000, the total amount of recovery for his estate must be reduced to conform to the \$50,000 limit imposed by statute under New Hampshire law.

Dr. Herman Miller, an economic consultant testified as an expert that, as a result of Peter's untimely death, he experienced a net economic loss of \$1,294,377.00. In light of the statutory limitation on damages for non-dependent siblings, the Court must therefore award the Estate of Peter Morgera, by Michael Morgera as personal representative, \$50,000.00 in economic damages for the benefit of his brothers, Michael and Thomas Morgera, to be distributed in accordance with the method of distribution prescribed under New Hampshire law. See [N.H.Rev.Stat. Ann. § 556:14](#). As for the intangible pain and suffering damages incurred by Peter's surviving brothers, the Court will address those awards below, in an individualized discussion of the claims of Michael and Thomas Morgera.

ii. Michael Morgera

Michael William Morgera is a United States citizen and the brother of Peter Morgera and Thomas Morgera. Michael is three years older than Peter who was 11 months older than Thomas. (Dec. 5, 2003 P.M. Tr. at 94–96.) Michael was born in Dorchester, Massachusetts on June 4, 1969, and graduated from Exeter Area High School in 1988. Michael is currently employed as a chef at First Impressions Catering. Michael was married to his wife, Kristen, on September 15, 1996. *Id.* at 94–96.

Upon learning of his brother's death, Michael said that he "never felt as much joy as [he] felt pain when [he] lost [his] brother Peter." (Feb. 10, 2004 Tr. at 173.) According to Dr. Cable, Michael

is in loss and loneliness. His grief is compounded by the whole family history of abuse and emotional scars that all three brothers shared. I think it's hard for him to know what they survived early in life, only to have his brother taken away this way with everything else that had happened.... [There's] still a lot of emotional upheaval in his life.... His grief will continue for a very long time.... I am not sure he is strong enough yet that he could handle any other significant loss in his life right now. I think that would be devastating to him.

Id. at 174.

As the brother of Peter Morgera, Michael Morgera has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Michael Morgera's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Michael Morgera. Finally, it is clear that Michael Morgera has continued to experience emotional *331 distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to

Michael Morgera \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

iii. Thomas Morgera

Thomas E. Morgera, a United States citizen, is on active duty in the United States Air Force. He is currently assigned to Andrews AFB with the 89th Airway MXG, a special mission unit. The unit maintains aircraft that serve as Air Force 2 and transport the Vice President, the Joint Chiefs of Staff, and Cabinet Members. Thomas Morgera is a flying crew chief with Air Force 2. He has been in the Air Force for 12 years, and has been assigned to bases throughout the United States and the world. He has been deployed to South America, Guam, and Puerto Rico, the Far East, Japan, Thailand, the Philippines and Micronesia as well as England, Europe, Southwest Asia, Somalia and Kenya. He has been deployed twice to Dhahran AFB in Saudi Arabia and has lived in the Khobar Towers complex. (Dec. 5, 2003 P.M. Tr. at 40–43.)

Thomas Morgera grew up in a small house located at 35 Lewis Street in Chelsea, Massachusetts. As children, Peter and Thomas were inseparable. Thomas' earliest memory of Peter was missing him. He remembers that, when Peter started kindergarten, he would sit in the window all day long waiting for his brother to come home because before Peter went to kindergarten, the two boys played together everyday from the time they woke up until they went to sleep. *Id.* at 45–47.

Thomas and Peter Morgera lived in a difficult and sometimes violent environment as they were growing up. Their parents frequently quarreled and there was much screaming and sometimes physical violence. Thomas recalled that his mother would consume large amounts of alcohol and took illegal drugs. Many times she would not come home at night. Peter and Thomas' parents separated in 1972 when Thomas was approximately six years old. *Id.* at 50–51.

After his parents separated, Thomas, Peter, and Michael stayed with their mother. At this point their mother was home even less than previously. The three boys were left to fend for themselves, and Michael, who was four years older, spent more and more time away from the home. Peter and Thomas often cooked their own meals. On some occasions they would go down the street to their grandmother's house, but their mother warned them not to go their grandmother's house too often for dinner. As a result, they often went without dinner. *Id.* at 51–53.

When Thomas returned to Japan, he was suffering from depression. He wanted to sleep all the time and became introverted. He cut himself off from all others, including his wife and step-daughter. Further, he was deployed from Japan and away from his family soon after he returned there. His wife had no family or other support in Japan. As things worsened for Thomas, his wife left and came home to the United States. Thomas and his wife ultimately separated and divorced.

Thomas' chain of command told him that he could either voluntarily go to psychiatric counseling or they would order him to do so. Thomas met with an Air Force psychiatrist who, after hearing Thomas' story, told Thomas that he had been through more in the last six to eight months than most people go through in their entire lifetime. Thomas still has bad days and thinks often of Peter. *Id.* at 89–90.

*332 Thomas has remarried and has a son who he named Peter James Morgera, II. Thomas gave his son this name because he wants people to ask why his son has this name, so that he has an opportunity to explain who Peter was and what he endured and accomplished in life. *Id.* at 92–93. According to Dr. Cable, Thomas

is still in loss and loneliness. He was greatly affected by Peter's death. He is able to move on to a degree because of his family, his new family. But I think that description he uses of a roller coaster is very accurate—that it's still a lot of ups and downs for him. There is not a sense of real stability. There is still a lot of pain, still a lot of emotion there. Again, for him, it's hard to see—it's hard for him to understand how they could come through so much only to have Peter die this way.... He will continue with his grief, more in the sense of waves, because his family will help stabilize his grief to a degree. But there will still be those events and those activities and time when he is going to be kind of overcome for a period with ongoing grief.

(Feb. 10, 2004 Tr. at 177.)

As the brother of Peter Morgera, Thomas Morgera has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Thomas Morgera's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Thomas Morgera. Finally, it is clear that Thomas Morgera has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Thomas Morgera \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

E. Texas

1. Causes of Action

a. Wrongful Death

Under Texas' wrongful death statute, a wrongful death action may be brought against a person if that person's "wrongful act, neglect, carelessness, unskillfulness, or default" causes an individual's death. [Tex. Civ. Prac. & Rem.Code Ann. § 71.002](#). Such an action is brought for the exclusive benefit of the decedent's surviving spouse, children, and parents. [Tex. Civ. Prac. & Rem.Code Ann. § 71.004\(a\)](#). Any one of the surviving spouse, children, or parents of the deceased may bring a wrongful death action. [Tex. Civ. Prac. & Rem.Code Ann. § 71.004\(b\)](#).

A wrongful death plaintiff may seek those damages that are "proportionate to the injury resulting from the death." [Tex. Civ. Prac. & Rem.Code Ann. § 71.010\(a\)](#). These damages include pecuniary loss, medical expenses, funeral expenses, loss of companionship and society, and mental anguish. See [Wellborn v. Sears, Roebuck & Co., 970 F.2d 1420, 1427–29 \(5th Cir.1992\)](#). Any awarded damages are divided among those entitled to recover and who are alive at the time of the award. [Tex. Civ. Prac. & Rem.Code Ann. § 71.010\(b\)](#). Though a right of action exists for all persons within the designated class to

recover for wrongful death, under the statute only one wrongful death action can exist to recover a single sum that is *333 apportioned among the entire eligible class. *Texas & P. Ry. Co. v. Wood*, 145 Tex. 534, 199 S.W.2d 652, 654 (1947).

b. Intentional Infliction of Emotional Distress

As a general rule, to state a claim for intentional infliction of emotional distress, the outrageous and extreme conduct must be directed at the plaintiff, although a cause of action may be allowed to an immediate family member who was present at the time. See *RESTATEMENT (SECOND) OF TORTS § 46(2)*. Some states, however, have done away with the plaintiff presence element altogether. In Texas, however, the issue of whether a plaintiff must be present in order to recover for a claim of intentional infliction of emotional distress has not been specifically addressed by the courts. In cases such as these, the Court must assess whether such a claim would be valid under the laws of that state. See, e.g., *Dammarell v. Islamic Republic of Iran*, 2006 WL 2382704, *175–76 (D.D.C. Aug 17, 2006) (Facciola, J.) (interpreting law of Washington State); *Salazar*, 370 F.Supp.2d at 115 (interpreting Illinois law).

In Texas, the issue of whether a plaintiff must be present in order to recover for a claim of intentional infliction of emotional distress has not been specifically addressed by the courts. The fact that Texas courts have adopted Section 46 of the *RESTATEMENT (SECOND) OF TORTS* in recognizing the tort of intentional infliction of emotional distress allows this Court to follow the same reasoning regarding the presence requirement set forth previously in this opinion.⁵³ Applying this rationale, this Court finds that the presence element does not need to be proven in order to successfully bring a cause of action for intentional infliction of emotional distress under Texas law, and that standing to seek such recovery is limited to the victim's near relatives who were not present at the time of the attack.

2. Plaintiffs

a. Estate and Surviving Family Members of Millard Campbell

i. Estate of Millard Campbell

Millard D. Campbell (“Dee”) was a Sergeant in the Air Force. (Dec. 6, 2003 A.M. Tr. at 83.) He was killed at Khobar Towers on June 25, 1996. Ex. 9. Dee was born in a small town in California on September 20, 1965, where he lived for just a couple of years and then moved with his family to Angleton, Texas. (Dec. 6, 2003 A.M. Tr. at 89.) Dee went to the public schools in Angleton, graduating from high school in 1984. *Id.* During high school, Dee was a baseball player, and received a baseball scholarship to play baseball in junior college. *Id.* at 109.

Dee became engaged to his future wife, Marie, in the fall of 1986, and shortly after the engagement, he enlisted in the Air Force. *Id.* at 90. Dee was supposed to be on a three-year tour in England, but ultimately he received a humanitarian reassignment back to Texas because his father had cancer. His father died in April 1989. When Dee returned to Texas, he was stationed at Bergstrom Air Force Base in Austin, Texas. There, Dee changed his career field, and started working in flight operations and scheduling. *Id.* at 95.

Marie continued to attend college at Sam Houston State University. She was apart from him during the week, but they were with each other on weekends. Being away from him so that she could go to school was not easy because her school *334 was three hours away from his Air Force Base, but Dee was determined that she get her college degree. *Id.* at 96–97.

After Marie received her college degree, she moved to Austin in order to be with Dee. She worked at a couple of different jobs, the most permanent of which was a job in a retail department store. *Id.* at 97. Dee volunteered to go to Iraq as part of Operation Desert Storm in early 1991. Marie was very worried about this. Dee arrived in the Middle East just a few days before the war started and came home at the end of March or the beginning of April 1991. *Id.* at 98.

In October 1992, Dee and Marie moved to Eglin Air Force Base in Florida, where again, he was with a fighter squadron, being the air controller and scheduling arrivals and departures. *Id.* at 101. Dee was very popular with the other men in the Air Force. He also did his job very well. He re-enlisted for another six years because he loved his job so much. Dee planned to be an air traffic controller in private industry after the conclusion of his tour of duty with the Air Force. *Id.* at 102. Dee returned to Saudi Arabia the second (and last time) in April 1996.

Dee’s estate is represented by his wife, Marie Campbell. Dee’s estate has asserted claims under Texas’ wrongful

death statute because he was last domiciled in Texas. As the personal representative of Dee's estate, Marie Campbell is the proper plaintiff to bring a wrongful death action under Texas law. See [Tex. Civ. Prac. & Rem.Code Ann. § 71.004\(b\)](#). Any recovery under this wrongful death action is for the benefit of his wife, Marie Campbell, and his mother, Bessie Campbell, to be distributed in a manner consistent with Texas law governing intestate property distribution. [Tex. Civ. Prac. & Rem.Code Ann. § 71.010\(b\)](#); see also [Texas & P. Ry. Co. v. Wood](#), 199 S.W.2d at 654.

Based upon the pleadings and evidence presented to the Court, the estate of Millard "Dee" Campbell has made out a valid claim for wrongful death under Texas law, and the beneficiaries of this estate are entitled to recover the present value of any lost wages and compensatory damages that would have been recoverable had Dee lived. Dr. Herman Miller, an economic consultant testified as an expert that, due to Dee's untimely death, he experienced a net economic loss of \$1,572,314.00. The Court therefore awards the Estate of Millard "Dee" Campbell, by Marie Campbell as personal representative, \$1,572,314.00 in economic damages for the benefit of Marie Campbell and Bessie Campbell, to be distributed in a manner in accordance with the method of intestate distribution under Texas law. A discussion of intangible economic damages of the wrongful death recovery will be addressed below in an individualized discussion of the claims of Marie Campbell and Bessie Campbell.

ii. Marie Campbell

Marie was born on June 13, 1966, and was raised in Houston. Her parents are still alive, and her father works for a credit union. *Id.* at 83. Marie attended public schools as well, graduating from high school in 1984. After high school, she attended Glen Junior College, in Burham, Texas, where she met Dee. *Id.* When Dee first thought about joining the Air Force, Marie was concerned because her two grandfathers had served in World War II and she only knew of the military in terms of war time. Dee told her not to worry about it. *Id.* at 91. On the afternoon Dee learned he passed his test to join the Air Force, he proposed marriage to Marie, and she accepted. *Id.* at 92.

Dee joined the Air Force on April 15, 1987. Dee and Marie had been married *335 one month earlier, while she was on spring break from school. At first, Dee and Marie moved into Marie's grandfather's house, where she had been living while at school. *Id.* at 92–93. In October 1992, Dee and Marie moved to Eglin Air Force Base in

Florida, where again, he was with a fighter squadron, being the air controller and scheduling arrivals and departures. *Id.* at 101.

Dee and Marie never had any children. *Id.* at 113. Dee wanted children but Marie wanted to wait until she was about 32 years old. When Dee died, she had just turned 30. *Id.* at 113. For two years Marie tried not to take any medication, but around 1998 she had to start taking medication to help her. She went on [Prozac](#), then went off of it for a while, but has now been taking it for several years continuously. *Id.* at 145.

Marie continued to teach, but only on a sporadic basis. After missing a number of days, Marie took a leave of absence, and ultimately quit her job altogether. Finally, Marie moved back to Dallas, and eventually went back to school to get a master's degree with teaching certification. *Id.* at 147.

In early 1998, Marie started seeing a licensed professional counselor, and still sees a counselor today. Her feelings fluctuate. Sometimes she sleeps well, but at other times, she wakes up in the middle of the night and dreams about Dee. *Id.* at 148.

She is also followed by the fact that she hasn't had any children, that she had wanted to wait until she was 32 to have children, but that now she is 37. This has also made it difficult to have relationships with another man. She cannot think about marriage because she wakes up every day and thinks about Dee. *Id.* at 149.

As Dr. Cable stated, Marie "still needs medication to help her cope with the depression. So it's a very extreme sense of loss and loneliness, a lot of pain.... I see her continuing to grieve in the foreseeable future.... [S]he is probably going to need to continue with medication for quite some time." (Feb. 10, 2004 Tr. at 36–37.)

Based upon the evidence presented at trial, Marie Campbell has experienced severe mental anguish and suffering as a result of her husband's untimely death. Therefore, this Court shall award to the estate of Millard "Dee" Campbell, by Marie Campbell as Personal Representative, \$8 million for the benefit of his wife Marie Campbell to compensate her for the mental pain and suffering she sustained as a result of her husband's death.

iii. Bessie Campbell

Bessie Amaryllis Campbell was the mother of Millard D. Campbell (“Dee”). Telephone Deposition Tr., Ex. 181 at 5. Bessie was born a little town in Texas on January 25, 1928. Her father was initially a farmer for a period and then became a shipper of jars. Her mother was a homemaker. Mrs. Campbell had two brothers, both of whom served in World War II. *Id.* at 6. Bessie graduated from high school but did not go to college. After high school she went to work in a county clerk’s office for three years, and then she met her husband. He was a truck driver at that time and became a mechanic. *Id.* at 8–9. She and her husband had seven children. Dee was the youngest. *Id.* at 10.

After Dee died, Mrs. Campbell went to the cemetery several times a week for a very long time and would talk to Dee. Even today, she goes to the cemetery at least once a week. *Id.* at 36–37. She thinks of Dee every day. At times she can’t believe that he’s gone and she thinks that “he’ll probably walk in the door any *336 minute.” She dreams about him a lot. She and her family even endowed a scholarship fund in Dee’s name. She put some of her own money into the fund. *Id.* at 38.

She often wakes up in the middle of the night thinking about Dee and as a result can’t go back to sleep. *Id.* at 39. Bessie finds it very difficult to watch television when she hears about our soldiers being killed in Iraq because it makes her think about Dee. *Id.* at 41. Life has not been easy for her since her son was killed on June 25, 1996.

According to Dr. Cable, Bessie Campbell

is still really in loss and loneliness. She still has a hard time admitting to his death.... Her prognosis is she is one who does cope but it’s very difficult. I would see her continuing to experience pain, feelings of emptiness for a considerable period of time in the future.

(Feb. 10, 2004 Tr. at 32–33.)

Based upon the evidence presented at trial, Bessie Campbell has experienced severe mental anguish and suffering as a result of her son’s untimely death. Therefore, this Court shall award to the estate of Millard “Dee” Campbell, by Marie Campbell as Personal Representative, \$5 million for the benefit of his mother Bessie Campbell to compensate her for the mental pain

and suffering she sustained as a result of her son’s death.

b. Steve Kitson

Steve Kitson is a brother to decedent Kendall Kitson, Jr. (“Kenny”). As Steve explained in his affidavit to the Court, on June 25, 1996, “the rug was pulled out from under [him.]” Ex. 293 at 10. Up until Kenny’s death, Steve was doing very well professionally and making a happy life for himself in Dallas, Texas. *Id.* at 9.

After Kenny’s death, Steve’s father asked him to quit his job and come and live with them in Florida. *Id.* at 14. Steve gave up his job in Dallas to be with his parents and help them through the difficult time. *Id.* at 14. After living with his parents for a year or so in Florida following Kenny’s death, Mr. Kitson then asked Steve to move to Oklahoma and assist him with his properties and farms. For several years now, Steve has lived in one of his parent’s homes in Oklahoma and helped his father watch over their properties. *Id.* at 16.

The mornings are the hardest time of day for Steve. The most difficult days for Steve include Kenny’s birthday, the anniversary of his death, and holidays. It is difficult for Steve because his friends do not understand what he is going through and so it has created some awkward moments. Steve’s therapy is working in the yard and lifting weights. *Id.* at 20–22. Steve has dreamed about Kenny. *Id.* at 24.

According to Dr. Cable, Steve

is in loss and loneliness. He has got his own grief issues, but it’s complicated by his parent’s bitterness, by his mother’s health issues. Kenny was the person who accepted [Steve] for who he was. He doesn’t feel any of that now.... He is going to have significant difficulties, because he keeps so much into himself and he doesn’t really have an outlet.... So it’s not a good prognosis.

(Feb. 10, 2004 Tr. at 149.)

As the brother of Kendall Kitson, Jr., Steve Kitson has

brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Steve Kitson's intentional infliction of emotional distress claim are met. The defendants' conduct in *337 facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Steve Kitson. Finally, it is clear that Steve Kitson has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Steve Kitson \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

F. Ohio

1. Causes of Action

a. Wrongful Death

Under Ohio's wrongful death statute, a civil action may be brought "in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, ... [as well as] the other next of kin of the decedent." *Ohio Rev.Code. Ann. § 2125.02(A)(1)*.⁵⁴ A decedent's next of kin may include the decedent's siblings. *Karr v. Sixt*, 146 Ohio St. 527, 67 N.E.2d 331, 335 (1946). Available compensatory damages for a wrongful death action include pecuniary damages, loss of support, services, society and prospective inheritance, as well as pain and suffering incurred by the bereaved plaintiff. The surviving spouse, children and parents of the decedent, if any, are "rebuttably presumed to have suffered damages by reason of the wrongful death." *Ohio Rev.Code. Ann. § 2125.02(A)(1)*. The decedent's next of kin, however, bear the burden of proving that the alleged damages were suffered. *Ohio Rev.Code. Ann. § 2125.02(A)(1)*; *Shoemaker v. Crawford*, 78 Ohio App.3d 53, 603 N.E.2d 1114, 1119–21 (1991).

2. Plaintiffs

a. Estate and Surviving Family Members of Christopher Lester

i. Estate of Christopher Lester

In June 1996, Christopher Lester ("Chris") was nineteen years old. Ex. 14. Although regularly stationed at Wright Patterson AFB in Ohio, in June 1996, Chris was on assignment in Dhahran, Saudi Arabia where he resided at the Khobar Towers Complex. *Id.* On June 25, 1996, Chris was killed at Khobar Towers as a result of the terrorist bombing. Ex. 9. As previously noted,⁵⁵ Chris was the only decedent of the 17 decedents whose estates are represented in this trial who survived the blast for a discernable amount of time prior to his death.

Plaintiffs Judy Lester, Cecil Lester, Cecil Lester, Jr., and Jessica Lester are Chris' mother, father, brother, and sister respectively (collectively, the "Lester family"). The Lester family testified at the trial of this matter on December 8, 2003.

Before he entered the Air Force, Chris was an outstanding athlete. He loved football and played on various football teams from the time he was six years old until he graduated from high school. *Id.* at 6. *338 Chris was known as being pleasant, honest, sweet, loving, and generous. *Id.* at 6. Most remarkable about Chris was his ever-present smile. *Id.* at 5. Throughout school, Chris was an outstanding student his whole life. He never received a grade below a "B." *Id.* He was a member of the Honors Society at Pineville High School, where he graduated in 1995. Chris always talked about going to college and he joined the Air Force to pay for college. *Id.* at 7–8. Chris planned on taking college courses when he returned from his deployment in Saudi Arabia. *Id.* at 8.

Christopher's estate is represented by his parents, Cecil Lester, Sr., and Judy Lester. Christopher's estate has asserted claims under Ohio's wrongful death statute because he was last domiciled in Ohio. As a personal representatives of Christopher's estate, Cecil Lester, Sr., and Judy Lester are proper plaintiffs to bring a wrongful death action under Ohio law. See *Ohio Rev.Code. Ann. § 2125.02(A)(1)*. Under Ohio law, any recovery under this wrongful death action is for the benefit of his parents, Cecil Lester, Sr., and Judy Lester, as well as his siblings, Cecil Lester, Jr., and Jessica Lester, who have proven that they suffered damages resulting from Christopher's death.⁵⁶

Based upon the pleadings and evidence presented to the

Court, the estate of Christopher Lester has made out a valid claim for wrongful death under Ohio law. The beneficiaries of this estate are entitled to recover the present value of compensatory damages, including lost wages that the decedent might reasonably have been expected to earn but for the wrongful death. Dr. Herman Miller, an economic consultant testified as an expert that, as a result of Christopher's untimely death, he experienced a net economic loss of \$1,960,466.00.

Additionally, Christopher's beneficiaries are entitled to pain and suffering damages suffered by Christopher because he survived in extreme pain for a time following the attack. In cases where victims survive an attack for a period of time, courts typically award a lump sum award. *Haim*, 425 F.Supp.2d at 71–72. In light of Dr. Parson's testimony that Christopher Lester was alive for 15 minutes after the attack, and was conscious for 10 minutes, this Court finds that the estate of Christopher Lester should be awarded an additional \$500,000.

Accordingly, the Court should award the Estate of Christopher Lester, by Cecil Lester, Sr., and Judy Lester as personal representatives, \$1,960,466.00 in economic damages, plus \$500,000 in personal pain and suffering damages for the benefit of Cecil Lester, Sr., Judy Lester, Cecil Lester, Jr., and Jessica Lester, to be distributed in a manner consistent with the statute governing intestate distribution of property under Ohio law. A discussion of intangible economic damages of the wrongful death recovery, will be addressed below in an individualized discussion of the claims of Cecil Lester, Sr., Judy Lester, Cecil Lester, Jr., and Jessica Lester.

ii. Cecil Lester, Sr. & Judy Lester

Judy and Cecil Lester met when Judy was still in high school. *Id.* at 4. They were married on February 4, 1972. *Id.* Judy and Cecil Lester have three children: Cecil Lester, Jr. ("Cecil Jr."), born in 1974; Chris, born in 1977, and Jessica Lester, born in 1987. *Id.* at 3–4. All three children were born in Beckley, West Virginia. *Id.* The Lester children, like their parents, *339 are all United States citizens. *Id.* at 55, 71.

Chris' death has dramatically affected Judy and Cecil and their marriage. Judy was so distraught that for several years after Chris' death, she prayed to God to help her get through each day. She could not sleep. *Id.* at 29. Indeed, Cecil testified that Judy still wakes up at night and cries. *Id.* at 25. Judy feels incomplete since Chris died. *Id.* at 29. In order not to think about Chris, both Judy and Cecil

intentionally keep themselves busy. Although Judy questioned her faith in God when Chris died, she now believes her faith is allowing her to heal. *Id.* at 51.

Similarly, Cecil is not the same man since Chris' death. Mr. Lester testified that things he once took a lot of joy in no longer interest him anymore. Cecil rarely fishes and hunts anymore. He cannot get himself to go motorcycle riding at all. Cecil has lost interest in football. *Id.* at 28.

Cecil also explained that Judy and he deal with Chris' death differently. Judy finds it helpful to talk about Chris. *Id.* at 51. She also has pictures and memorabilia of Chris throughout the house. *Id.* at 32; Ex. 105. Cecil is the opposite. He becomes upset and emotional when discussing Chris. *Id.* at 51. Cecil returned to work six weeks after Chris' funeral. A year later, Cecil's employer asked him to see a counselor because he was not focused at his job. He saw the counselor several times but did not find counseling helpful because it is too painful to talk about Chris. *Id.* at 52–53.

Even though they deal with Chris' death differently, both Judy and Cecil think about Chris every day. *Id.* at 32, 54. For the first five years following Chris' death, Judy visited his grave two or three times a week. Presently, she visits Chris' grave about every other week. *Id.* at 20. Cecil visits Chris' grave three or four times a month. *Id.* at 48. Both Judy and Cecil Lester clean Chris' tombstone when they visit. *Id.*; Ex. 104.

According to Dr. Cable, Judy

is still in loss and loneliness, but she has made conscious efforts to try to move on. She has got a lot of guilt issues, and the guilt is this not being able to protect her son.... She will continue with her grief. She was a mother for whom the mother role was very important. Her sense of having failed to protect her son is an issue that's not going to resolve itself quickly.

(Feb. 10, 2004 Tr. at 155–56.)

Additionally, Dr. Cable stated that Cecil

is still in loss and loneliness. He

can't seem to let go; holding on to those memories. The dreams are a part of those ongoing memories. He just can't seem to move to the next step along the way.... His grief will continue. I think he is one of these individuals who likely will have a very difficult time ever getting his life really back together again.

(Feb. 10, 2004 Tr. at 158.)

Based upon the evidence presented at trial, both Cecil Lester, Sr., and Judy Lester have experienced severe mental anguish and suffering as a result of their son's untimely death. Therefore, this Court shall award to the estate of Christopher Lester, by Cecil Lester, Sr., and Judy Lester as Personal Representatives, \$5 million for the benefit of his mother Judy Lester, and \$5 million for the benefit of his father Cecil Lester, Sr., to compensate both for the mental pain and suffering both have sustained as a result of their son's untimely death.

iii. Cecil Lester, Jr.

Cecil Jr. was utterly crushed by his brother's death. Chris was Cecil Jr.'s confidant. *340 Cecil Jr. shut down emotionally after Chris died. Cecil Jr. believes that the effect that Chris' death had on him directly affected his own marriage. He wouldn't share his emotions with his wife, and found it difficult to talk with her. (Dec. 8, 2003 Tr. at 67.)

According to Judy, "Cecil Jr. and Chris [were] like twins ... there was 2-1/2 years between them, but you would never know that. When they were together, they were like best of friends, playmates and they just loved each other." *Id.* at 30. Because of their close relationship, Chris' death has left an unspeakable void in Cecil Jr.'s life. Cecil, Jr. thinks about Chris every day. Like his father, Cecil Jr. does not enjoy fishing or hunting anymore since Chris' death, and believes that he has become less sociable since Chris died. *Id.* at 68-69.

Cecil Jr. has dreamed often about Chris. He visits Chris' grave on the holidays, and drives by Chris' grave two or three times a day on his way to and from work. *Id.* at 66-67.

As Dr. Cable stated, Cecil

is still in loss and loneliness. He also has some elements of guilt ... that [their] last conversation, [their] last time together had an element of an argument to it.... [I]n his own mind, it was not the way to end his relationship to his brother.... His grief will continue. He will always have a feeling of needing to be the protector for others. His brother's [death] will affect his life in many ways throughout his life.

(Feb. 10, 2004 Tr. at 163-64.)

Based upon the evidence presented at trial, Cecil Lester, Jr., experienced severe mental anguish and suffering as a result of his brother's untimely death. Therefore, this Court shall award to the estate of Christopher Lester, by Cecil Lester, Sr., and Judy Lester as Personal Representatives, \$2.5 million for the benefit of his brother Cecil Lester, Jr., to compensate him for the mental pain and suffering he sustained as a result of his brother's untimely death.

iv. Jessica Lester

Jessica Lester is the sister of Christopher Lester. She was nine years old when Chris died. (Dec. 8, 2003 Tr. at 30.) Jessica remembers Chris "as being so friendly and happy all the time." He was a cheerful person who played and watched movies with her. *Id.* at 75-76. He was a great big brother to her.

Since Chris' death, Jessica visits Chris' grave about once or twice a month. *Id.* at 78. Jessica is saddened by the void Chris' death has caused her and her family. She laments the fact that she does not have Chris in her life anymore.

As Dr. Cable stated, Jessica

is in loss and loneliness. Her grief is complicated by the age she was at the time that this happened.... She not only lost a brother, but she lost a father figure and she lost a part of her own identity.... She will continue in her grief for a long

time. I think she will begin to recover, but I think that down the road the issue she may face is that when she marries, when she has children, the regrets that Chris can't be there to be a part of those things. Because of the significant role he played in her life, she is going to miss that he can't be a significant role in the rest of her family's life at that point.

(Feb. 10, 2004 Tr. at 160–61.)

Based upon the evidence presented at trial, Jessica Lester experienced severe mental anguish and suffering as a result of her brother's untimely death. Therefore, this Court shall award to the *341 estate of Christopher Lester, by Cecil Lester, Sr., and Judy Lester as Personal Representatives, \$2.5 million for the benefit of his sister Jessica Lester to compensate her for the mental pain and suffering she sustained as a result of her brother's untimely death.

G. Minnesota

1. Causes of Action

a. Wrongful Death

Under Minnesota's wrongful death statute a court-appointed trustee may bring an action "when death is caused by the wrongful act or omission" of another. *Minn.Stat. Ann. § 573.02*. The amount of recovery for a wrongful death action is the amount the judge "deems fair and just in reference to the pecuniary loss resulting from the death." *Minn.Stat. Ann. § 573.02*. Pecuniary loss includes loss of income, as well as "loss of advice, comfort, assistance, and protection." *Rath v. Hamilton Standard Div. of United Tech. Corp.*, 292 N.W.2d 282, 284–85 (Minn.1980) (quoting *Gravley v. Sea Gull Marine, Inc.*, 269 N.W.2d 896, 901 (Minn.1978)).

Any damages awarded in a wrongful death action are "for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death." *Minn.Stat. Ann. § 573.02*. "Next of kin" are those blood relatives who may properly recover under Minnesota's intestacy statute, and include

the decedent's children, parents, and siblings. *Wynkoop v. Carpenter*, 574 N.W.2d 422, 427 (Minn.1998).

b. Intentional Infliction of Emotional Distress

Minnesota recognizes the tort of intentional infliction of emotional distress, and has adopted Section 46 of the RESTATEMENT (SECOND) OF TORTS. See *Dornfeld v. Oberg*, 503 N.W.2d 115, 117 (Minn.1993). Accordingly, the elements of the tort of intentional infliction of emotional distress under Minnesota law are: (1) extreme and outrageous conduct; (2) the conduct is intentional or reckless; (3) the conduct causes emotional distress; and (4) the emotional distress is severe. *Dornfeld*, 503 N.W.2d at 117. In order for a defendant's conduct to be considered extreme and outrageous, it must be "so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community." *Hubbard v. United Press Intl., Inc.*, 330 N.W.2d 428, 438–39 (Minn.1983).

In Minnesota, the issue of whether a plaintiff must be present in order to recover for a claim of intentional infliction of emotional distress has not been specifically addressed by the courts. The fact that Minnesota courts have adopted Section 46 of the RESTATEMENT (SECOND) OF TORTS in recognizing the tort of intentional infliction of emotional distress allows this Court to follow the same reasoning regarding the presence requirement set forth previously in this opinion.⁵⁷ Applying this rationale, this Court finds that the presence element does not need to be proven in order to successfully bring a cause of action for intentional infliction of emotional distress under Minnesota law, and that standing to seek such recovery is limited to the victim's near relatives who were not present at the time of the attack.

2. Plaintiffs

a. Additional Surviving Family Members of Brent Marthaler

i. Matthew Marthaler

Matthew Lucas Marthaler ("Matt"), a United States citizen, was Brent Marthaler's *342 brother. Matt was

born in St. Paul, Minnesota on February 19, 1975. (Dec. 3, 2003 Tr. at 110.) Matt is one year younger than his brother Kirk, and one year older than his brother Brent.

Matt testified that Brent's funeral service at the church in Minnesota "was a blur." In the days and weeks following Brent's death, Matt "made sure that [his] Mom and Dad were able to go to work the next day and soldier on." Matt then returned to the base in Meridan, Mississippi and told his Chief, "I'll hold on for as long as you tell me but I don't have much left for the Navy. I just got my heart ripped out."

Matt felt isolated following Brent's death. Matt visited Kirk in Alabama every chance he could even though they were stationed about 200 or 300 miles away from each other. *Id.* at 120–22. He still thinks of Brent often. *Id.* at 127.

According to Dr. Cable, Matt

is in loss and loneliness. He has had a very difficult time coping with his brother's death.... Following the death and the family estrangement, he was the only member of the family speaking to everybody.... He will have continuing grief for a good many years to come. He is one again that ... is in need of some real grief therapy. The fact that this is the first time in all these years he has really talked about this would clearly say there is a need to have an opportunity to share and to deal with it. He, too, will have grief that re-emerges with significant life events in the future.

(Feb. 10, 2004 Tr. at 79–80.)

As the brother of Brent Marthaler, Matthew Marthaler has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Matthew Marthaler's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the

defendants' planning and assistance brought immediate emotional distress to Matthew Marthaler. Finally, it is clear that Matthew Marthaler has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Matthew Marthaler \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

ii. Kirk Marthaler

Kirk Charles Marthaler, a United States citizen, was Brent Marthaler's brother. Kirk was born in St. Paul, Minnesota on December 8, 1973. (Dec. 3, 2003 Tr. at 82.) Kirk is one year older than his brother Matt and was two years older than Brent. As children, the three brothers were very close.

Kirk attended the memorial service at Eglin AFB in Florida with his parents and brother and Katie and Katie's family. Brent's body was returned to Minnesota after the memorial service. Kirk remembers that the funeral home director called the Marthaler home and told Herm and Sharon that he was not sure if they wanted to do an open casket. The funeral home was willing to take the wrapping and gauze off of Brent only if they received strict instructions to do so. The funeral home explained that the injuries to Brent were horrific, and the Air Force had done a very clean job of wrapping him. The *343 funeral home explained that if they had undressed the wrapping, they would not be able to make him viewable. The funeral home director asked if Herman would come in first and view the body. Kirk was sent to do this. Kirk recalled that viewing his brother's body in the casket was the most hollow thing he had ever felt in his life. He then had to call his parents and tell them what he had seen. *Id.* at 102–04.

Kirk blames himself for his brother's death because he was the one who convinced Brent to join the Air Force and become a jet airplane mechanic. *Id.* at 105–08. He laments the fact that he and Brent "could've been best friends [but] me and my brother spent too much time competing. We never had an opportunity to become best friends." *Id.* at 108–09.

As Dr. Cable stated, Kirk is

very much in loss and loneliness,

but with guilt added in his case. He sees what he will miss the rest of his life in terms of a relationship with his brother, how the family had changed, and how the family and Kirk will never be the same again.... The grief will continue, and that with every major event in life, he will be struck by the fact that Brent isn't here to be a part of that. So a very strong sense of yearning [T]he grief will be re-emerging for many years to come.

(Feb. 10, 2004 Tr. at 77–78.)

As the brother of Brent Marthaler, Kirk Marthaler has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Kirk Marthaler's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Kirk Marthaler. Finally, it is clear that Kirk Marthaler has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Kirk Marthaler \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

H. Wisconsin

1. Causes of Action

a. Wrongful Death

Under Wisconsin's wrongful death statute, a decedent's personal representative may bring an action when the decedent's death is "caused by a wrongful act, neglect or default" of another. [Wis. Stat. Ann. §§ 895.03, 895.04\(1\)](#). If the decedent dies without a surviving spouse, any damages inure to the benefit of the decedent's "lineal

heirs." [Wis. Stat. Ann. § 895.04\(2\)](#). "Lineal heirs" include the decedent's parents. [Wis. Stat. Ann. §§ 852.01\(1\)\(c\)](#). Damages recoverable in a wrongful death action include pecuniary damages, non-pecuniary damages limited to \$350,000, as well as medical and funeral expenses. [Wis. Stat. Ann. §§ 895.04](#).

b. Intentional Infliction of Emotional Distress

Under Wisconsin law, a plaintiff must prove the following elements to establish a successful claim of intentional infliction of emotional distress: (1) the defendant's conduct was intended to cause emotional distress; (2) the defendant's conduct was extreme and outrageous; (3) the defendant's conduct caused plaintiff's emotional distress; and (4) the plaintiff *344 "suffered an extreme disabling emotional response to the defendant's conduct." [Rabideau v. City of Racine](#), 243 Wis.2d 486, 627 N.W.2d 795, 802–03 (2001). In Wisconsin, the issue of whether a plaintiff must be present in order to recover for a claim of intentional infliction of emotional distress has not been specifically addressed by the courts. The fact that Wisconsin courts have adopted Section 46 of the RESTATEMENT (SECOND) OF TORTS in recognizing the tort of intentional infliction of emotional distress allows this Court to follow the same reasoning regarding the presence requirement set forth previously in this opinion.⁵⁸ Applying this rationale, this Court finds that the presence element does not need to be proven in order to successfully bring a cause of action for intentional infliction of emotional distress under Wisconsin law, and that standing to seek such recovery is limited to the victim's near relatives who were not present at the time of the attack.

2. Plaintiffs

a. Paul Fennig

Mark Fennig and Paul D. Fennig are United States citizens and the brothers of Patrick Fennig ("Pat"). Exs. 281, at 1–3; 282, at 1, 3–4. In high school, Pat and Paul had common interests and friends, and were close to each other. Ex. 281, at 7.

Pat's death affected Paul deeply. He has dreams of Pat and him spending time together. Paul thinks about Pat

every day. He is sorry that he did not have a chance to say good-bye to Pat. There is a void in Paul's life without Pat. Paul has trouble understanding why Pat was killed. Ex. 281, 21–22. Things are particularly difficult for Paul when his friends bring up Pat out of the blue. Nevertheless, though it hurts him emotionally to think of his dead brother, it means a lot to Paul that his friends remember Pat so fondly. Ex. 281.

According to Dr. Cable, Paul

is in loss and loneliness. He was very close to his brother growing up. That closeness is something that he misses desperately. So the loneliness persists. Even though his life is full, there is an element there that's not be replaced that's not been taken care of.... He will continue with this grief in the future. He will move on, but there will always be an element of regret there. There will always be for him something missing, something that's just incomplete in his life.

(Feb. 10, 2004 Tr. at 134–35.)

As the brother of Patrick Fennig, Paul Fennig has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Paul Fennig's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Paul Fennig. Finally, it is clear that Paul Fennig has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Paul Fennig \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

***345 b. Mark Fennig**

Mark Fennig is a brother to Patrick Fennig ("Pat"). Throughout their lives together, Mark and Pat shared many common interests. As children, both Mark and Pat loved building model airplanes with each other. (Ex. 282, 9.) As adults, Pat and Mark developed a common interest in fine cigars.

Mark returned to work about a week after Pat's death hoping that a normal routine would help him deal with everything. Mark was distracted for several months after Pat's death. It was very difficult to concentrate on his work. Mark's Catholic upbringing, faith, and family provided support for him after Pat's death.

Mark has kept a number of Pat's personal belongings. The one that means the most to him is a cigar humidor. It is displayed in Mark's office and holds the cigars that he received from Pat after his death. Ex. 282, 23.

Holidays, anniversaries, and birthdays are difficult for Paul and Mark. Each involves personal reflection by Mark and his family. Thanksgiving and Memorial Day also have much more meaning for Mark now. Mark and his family attend a Memorial Day procession and service at the cemetery and in their village. Mark's sons are involved in the boy scouts and take part in the procession which affords Mark the opportunity to share his memories of Pat with his sons. The Fennig family has a toast on major holidays in memory of Pat. Ex. 281, 23; 282, 24. Mark has not been able to shake the feeling of being cheated. Mark has been cheated out of a relationship with his brother and having an uncle for his sons. Ex. 282, 25.

According to Dr. Cable, Mark

is in loss and loneliness.... He still shows a lot of concern over his mother, worries about how she is doing. Mark, being the oldest, has sort of been the family protector, so he still sees himself as having some responsibility.... His grief will certainly continue. He is fortunate in that he does have a good support system. But because he is so concerned about everybody else, he is not necessarily getting some of his own needs met and getting his own grief resolved. So he will have a road yet ahead of him.

(Feb. 10, 2004 Tr. at 132–33.)

As the brother of Patrick Fennig, Mark Fennig has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Mark Fennig’s intentional infliction of emotional distress claim are met. The defendants’ conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants’ planning and assistance brought immediate emotional distress to Mark Fennig. Finally, it is clear that Mark Fennig has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Mark Fennig \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother’s untimely death.

I. New York

1. Causes of Action

a. Intentional Infliction of Emotional Distress

New York, adopting the approach taken in Section 46 of the RESTATEMENT *346 (SECOND) OF TORTS, recognizes intentional infliction of emotional distress as a tort. *Howell v. New York Post Co.*, 81 N.Y.2d 115, 596 N.Y.S.2d 350, 612 N.E.2d 699, 702 (1993). The elements of intentional infliction of emotional distress under New York law are: “(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress.” *Id.*

In New York, the issue of whether a plaintiff must be present in order to recover for a claim of intentional infliction of emotional distress has not been specifically addressed by the courts. Two factors persuade this Court to find that the presence requirement for intentional infliction of emotional distress is unnecessary in this case. First, New York courts have adopted Section 46 of the RESTATEMENT (SECOND) OF TORTS in recognizing the tort of intentional infliction of emotional distress. Second, the Southern District of New York held in *In re*

Terrorist Attacks on September 11, 2001, 349 F.Supp.2d 765, 829–30 (S.D.N.Y.2005) that non-present survivors of victims of the September 11, 2001, attacks on the World Trade Center and Pentagon were able to bring a claim of intentional infliction of emotional distress against the perpetrators of the attacks.⁵⁹ These two reasons allow this Court to follow the same reasoning regarding the presence requirement set forth previously in this opinion.⁶⁰ Applying this rationale, this Court finds that the presence element does not need to be proven in order to successfully bring a cause of action for intentional infliction of emotional distress under New York law, and that standing to seek such recovery is limited to the victim’s near relatives who were not present at the time of the attack.

2. Plaintiffs

a. Mary Young

Mary Young is the sister of Christopher Adams. She is the oldest of the Adams’ children. Mary is a police communications operator in Manhattan. (Dec. 10, 2003 A.M. Tr. at 87.)

On a personal level, Mary has been emotionally effected by Christopher’s death. In addition, Mary is angry that she had to watch her mother go through the seven years of grief in dealing with Christopher’s death. *Id.* at 99–100.

Mary thinks about the bombing and about Christopher every day. Due to the brutality of the attack that killed Christopher, Mary is much more emotional today than she was in 1996. *Id.* at 100. Ever since Christopher was killed, Mary has had constant trouble sleeping. Additionally, Mary gained about 60 pounds after Christopher died. She went on medication shortly after he died. *Id.* at 102–103. The medication, the insomnia, and the weight gain are all attributable to the trauma and sadness that occurred when Christopher was killed. *Id.* at 102–104.

Christopher’s death and the manner in which he was killed has been one of the most devastating things that have ever happened to Mary and to her whole family. As she testified, “Death is part of life but *347 not that way, not the way it all went. It’s just not normal.” *Id.* at 106.

According to Dr. Cable, Mary

is still in loss and loneliness. She is still very much affected by Chris' death. And her need for ongoing medication, the sleep difficulties, help verify the situation that she is in.... Her grief is going to continue, and she probably will need to continue on medication for quite a period of time. Any future losses are going to complicate all of this for her, and probably provide some setbacks, but I see her grief going on for a number of years.

(Feb. 10, 2004 Tr. at 102.)

As the sister of Christopher Adams, Mary Young has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of her brother. Based upon the evidence presented to the Court, the elements of Mary Young's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Mary Young. Finally, it is clear that Mary Young has continued to experience emotional distress since that time due to the fact that her brother was taken away from her in such a tragic and horrific manner. Therefore, this Court shall award to Mary Young \$2.5 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her brother's untimely death.

b. Daniel Adams

Daniel Adams is the youngest of the Adams children, eight years younger than Christopher. When Daniel first heard that Christopher had been killed, he didn't believe it. He felt powerless, sad, and angry. Daniel remembered everybody in the family crying for days and days. *Id.* at 43. He went to the service at Patrick AFB and to the other services and did so much crying, he couldn't even see out of his eyes. *Id.* at 44. Whenever he sees the American Flag, he thinks of Christopher. *Id.* at 46.

When Christopher died, Daniel had been working but was unable to return to work because he lost much of his

motivation. He was angry at God, at the terrorists, and at the government. He visits the cemetery at least once a month. *Id.* at 47.

Prior to Christopher's death, Daniel had trouble with drugs, but stopped using them completely during the five year period before Christopher died. But when Christopher died, Daniel immediately started drinking alcohol. Up to about the middle of 2002, he had been very active in drugs and alcohol constantly for the six-year period after the murder. *Id.* at 47–48. He has obtained counseling from various places. Most of the counseling centers on his reaction to Christopher's dying. *Id.* at 48.

According to Dr. Cable, Daniel "is in loss and loneliness ... also some of those earlier stages, the volatile emotions, some of the guilt is very present. He has got a lot of pain, a lot of emotion over Chris. That's not gone away. He is at some great risk.... [H]is prognosis is guarded." (Feb. 10, 2004 Tr. at 115–16.)

As the brother of Christopher Adams, Daniel Adams has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Daniel Adams' intentional infliction of emotional distress ***348** claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Daniel Adams. Finally, it is clear that Daniel Adams has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Daniel Adams \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

c. Elizabeth Wolf

Elizabeth Wolf was Christopher's only younger sister. She is now married with two children, ages 1 and 2. When Christopher was killed, she felt that she had been abandoned. When she married in 1997, just a year after Christopher's death, it was a time of sadness instead of joy for Elizabeth because Christopher was going to be the one to walk her down the aisle, and he wasn't there. She also felt a sense of guilt because he was not present. *Id.* at 29–30.

Elizabeth continues to feel pain today. Many things bring back the memory of that terrible day, and family gatherings no longer have the same sense of joy that they had before 1996. *Id.* at 32.

After Christopher died, Elizabeth would go to the cemetery once a month. Even today, seven years later, she goes once every two months. *Id.* It hurts Elizabeth that she was never able to say goodbye to him in person. She is hurt that the family wasn't there to help him when he was killed. *Id.* at 34. Other terrorist attacks make her think about Christopher's death all over again because she thinks it's happening again. She thinks about how other families have to go through the pain, the grief, and the anguish which the Adams family has experienced. *Id.* at 35.

According to Dr. Cable, Elizabeth

is in loss and loneliness, with some real feelings of missing [her brother, plus] some issues of guilt.... She chose not to view the body, and ... there is a lot of regret over not having had that last connection.... Her pain is going to continue into the future. She will put a lot of her effort into ways of helping keep Chris' memory alive. That, to her, will be important, that people don't forget [Chris]. That helps her grief as well as helps his memory in her mind.

(Feb. 10, 2004 Tr. at 107–08.)

As the sister of Christopher Adams, Elizabeth Wolf has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of her brother. Based upon the evidence presented to the Court, the elements of Elizabeth Wolf's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Elizabeth Wolf. Finally, it is clear that Elizabeth Wolf has continued to experience emotional distress since that time due to the fact that her brother was

taken away from her in such a tragic and horrific manner. Therefore, this Court shall award to Elizabeth Wolf \$2.5 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her brother's untimely death.

*349 J. North Carolina

1. Causes of Action

a. Intentional Infliction of Emotional Distress

North Carolina recognizes the tort of intentional infliction of emotional distress. *Stanback v. Stanback*, 297 N.C. 181, 254 S.E.2d 611 (1979). The tort recognized in *Stanback* is in accord with the version found in Section 46 of the RESTATEMENT (SECOND) OF TORTS. *Dickens v. Puryear*, 302 N.C. 437, 276 S.E.2d 325, 332 (1981). The elements of this tort under North Carolina law are: “(1) extreme and outrageous conduct, (2) which is intended to cause and does cause (3) severe emotional distress to another.” *Id.* In North Carolina, the issue of whether a plaintiff must be present in order to recover for a claim of intentional infliction of emotional distress has not been specifically addressed by the courts. The fact that North Carolina courts have found their tort of intentional infliction of emotional distress to be in accord with Section 46 of the RESTATEMENT (SECOND) OF TORTS allows this Court to follow the same reasoning regarding the presence requirement set forth previously in this opinion.⁶¹ Applying this rationale, this Court finds that the presence element does not need to be proven in order to successfully bring a cause of action for intentional infliction of emotional distress under North Carolina law, and that standing to seek such recovery is limited to the victim's near relatives who were not present at the time of the attack.

2. Plaintiffs

a. Patrick Adams

Patrick Adams is a brother to Christopher Adams. Patrick thinks about Christopher every day. *Id.* at 18. He often prays to Christopher for guidance, for support, and for help in making the right decisions about his children. *Id.*

at 19. He always thinks about Christopher when he reads about other terrorist killings. He thinks about Christopher a lot on April 18, because that was the birthday of both Christopher and Paul Revere, a great patriot. *Id.* at 21. According to Dr. Cable, Patrick

is in loss and loneliness. Grief has altered his world view, in a sense; this attitude of live today, you don't know what's coming. But very much misses his brother and what his brother's role would be in his life now.... Patrick still has feelings, empty feelings, that overwhelm him at times.... [G]rief [will continue] to be a pretty significant issue for him for a long time.

(Feb. 10, 2004 Tr. at 105–06.)

As the brother of Christopher Adams, Patrick Adams has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Patrick Adams' intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to Patrick Adams. Finally, it is clear that Patrick Adams has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Patrick Adams ***350** \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

b. John Adams

John Adams is the twin brother of Patrick Adams, and is the younger brother of Christopher Adams by one year. Christopher's death has had a terrible impact on John because Christopher was his power base and gave him strength. *Id.* at 68. John thinks of him a lot, definitely during the holidays, and whenever he sees the flag, and whenever he hears the National Anthem. *Id.* at 68–69.

When September 11 occurred, he thought about the experiences of other families. Every year on June 25, John says a prayer and thanks God that there is an angel up in heaven looking over the family. *Id.* at 69. For John, family occasions are not the same anymore. The biggest difference is their mother. She is not the same. *Id.*

As Dr. Cable stated, John is in loss and loneliness:

Chris was the big brother. He was the one everybody looked up to.... John has an inner strength and a faith that helps him get by. There is a wistfulness in his voice for a relationship with his brother that can never be. His grief will continue, but he will work on it. He will work to move on.

(Feb. 10, 2004 Tr. at 104.)

As the brother of Christopher Adams, John Adams has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of John Adams' intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to John Adams. Finally, it is clear that John Adams has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to John Adams \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

c. William Adams

William Adams ("Billy") was a brother of Christopher Adams, who was six years older. Billy was the seventh of the eight children in the family and his oldest brother was six years older than he was. Ex. 277, 3. Billy's testimony was admitted by Affidavit. *Id.*

Christopher's death had a huge impact on Billy. (Dec. 3, 2003 P.M. Tr. at 66–67.) About two months after the Khobar Towers incident, Billy moved away from North Carolina to go back up to Long Island to be with his mother. Billy thinks about Christopher every day, especially on holidays, and on June 25. He keeps pictures of Christopher in his home and has Christopher's Air Force Academy sword that Caren gave to him, a flag and a bracelet that Christopher bought for him on one of his previous trips to Saudi Arabia. Ex. 277, 19 and 20.

According to Dr. Cable, Billy

is in the loss and loneliness stage. He does ... have some repressed emotion.... He will continue in grief for a significant time. There is a strong identification with his brother, and so the loss of his brother will impact him for a long time into the future. There is a *351 need for some real therapy to help him work through and express some of those repressed emotions.

(Feb. 10, 2004 Tr. at 112–13.)

As the brother of Christopher Adams, William Adams has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of William Adams' intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional distress to William Adams. Finally, it is clear that William Adams has continued to experience emotional distress since that time due to the fact that his brother was taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to William Adams \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

d. Michael Adams

Michael Adams, brother to Christopher Adams, was born in 1971; he was the sixth of the eight children. Christopher was five years older than Michael. Ex. 276, at 3–4. Michael's testimony was admitted by way of Affidavit. Ex. 276.

Christopher's death has greatly affected Michael. Michael has kept all the newspaper accounts of Christopher's death and funeral and his medals in a box at his home. He also keeps his green flight suit and keeps a poster of the Khobar Towers after the bombing on the wall above his desk. *Id.* at 27.

Michael thinks a lot about Christopher during the entire month of June, not just June 25, and many other things remind him of Christopher. *Id.* at 29. He thinks of Christopher every time he turns on the news and hears about military casualties. He thinks about the grief that all the families are going through, not only the families of the dead Iraqi soldiers, but also the families of the people who were killed on September 11. *Id.* at 30. Watching his mother today dealing with Christopher's loss brings as much pain to him as Christopher's own death. *Id.* at 32.

It makes Michael very sad to think that Christopher will not be part of the lives of his children. *Id.* at 34. As Dr. Cable stated, Michael

is in loss and loneliness.... He has got a lot of pent up emotion there that he really hasn't allowed himself to express.... [T]here is some volatile emotions that are not quite out in the open. There is still a lot of effort to protect his mother.... He has a lot of pain ahead and a lot of grief work to do.

(Feb. 10, 2004 Tr. at 110.)

As the brother of Christopher Adams, Michael Adams has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based upon the evidence presented to the Court, the elements of Michael Adams' intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional

distress to Michael Adams. Finally, it is clear that Michael Adams has continued to experience emotional distress since that time due to the fact that his brother was *352 taken away from him in such a tragic and horrific manner. Therefore, this Court shall award to Michael Adams \$2.5 million to compensate him for the emotional distress, pain and suffering that he sustained as a result of his brother's untimely death.

K. Indiana

1. Claims Under Indiana Law

a. Wrongful Death

Under Indiana's wrongful death statute, the decedent's personal representative may bring an action against the person whose wrongful act or omission caused the death of the decedent. [Ind.Code Ann. § 34-23-1-1](#). A successful wrongful death plaintiff may recover damages that include "reasonable medical, hospital, funeral, and burial expenses," in addition to the decedent's lost earnings. [Ind.Code Ann. § 34-23-1-1](#). Any damages awarded for reasonable medical, hospital, funeral, and burial expenses inure to the benefit of the decedent's estate, while all other damages are awarded to the benefit of "the widow or widower, ..., and to the dependent children, if any, or dependent next of kin, to be distributed in the same manner as the personal property of the deceased." [Ind.Code Ann. § 34-23-1-1](#).

"Dependent next of kin" include those individuals who show that: (1) they need support; and (2) the decedent contributed to their support. [Estate of Sears v. Griffin](#), 771 N.E.2d 1136, 1139 (Ind.2002). A plaintiff does not have to be wholly dependent on the decedent to be considered a dependent next of kin. *Id.* Instead, a court must examine "the assistance that the decedent would have provided through money, services or other material benefits." *Id.* (quoting [Luidar v. Skaggs](#), 693 N.E.2d 593, 596-97 (Ind.Ct.App.1998)).

b. Intentional Infliction of Emotional Distress

Indiana recognizes the tort of intentional infliction of emotional distress, following Section 46 of the RESTATEMENT (SECOND) OF TORTS. Under Indiana

law, the elements of an intentional infliction of emotional distress claim are: "(1) 'extreme and outrageous conduct' that (2) intentionally or recklessly (3) causes (4) severe emotional distress to another." [Creel v. I.C.E. & Assocs., Inc.](#), 771 N.E.2d 1276, 1282 (Ind.Ct.App.2002). In Indiana, the issue of whether a plaintiff must be present in order to recover for a claim of intentional infliction of emotional distress has not been specifically addressed by the courts. The fact that Indiana courts have adopted Section 46 of the RESTATEMENT (SECOND) OF TORTS in recognizing the tort of intentional infliction of emotional distress allows this Court to follow the same reasoning regarding the presence requirement set forth previously in this opinion.⁶² Applying this rationale, this Court finds that the presence element does not need to be proven in order to successfully bring a cause of action for intentional infliction of emotional distress under Indiana law, and that standing to seek such recovery is limited to the victim's near relatives who were not present at the time of the attack.

2. Plaintiffs

a. Lewis Cartrette

Lewis W. Cartrette is a United States citizen, and the brother of Earl "J.R." Cartrette, Jr. Exs. 279, 1-2. Lewis was born in Sellersberg, Indiana on November 1, 1976. His parents are Denise Eichstaedt *353 and the late Earl Frederick Cartrette, Sr. Ex. 279, at 4.

Lewis was unable to shake the misery that he felt as a result of J.R.'s death. Lewis shut everyone out and did not want to go on with his life. Lewis was depressed and did not want to function. Lewis testified, "J.R.'s death is the hardest, most painful thing that I have ever had to deal with because just when everything was good, J.R. was killed and there was nothing I could do about it. My brother, my friend was gone." After J.R.'s death, Lewis began using drugs and alcohol, became physically violent, and contemplated suicide on more than one occasion. Lewis had three encounters with the criminal justice system which involved increasingly serious offenses. Lewis lost his job, his wife, his children, his home, and spent one year in jail. Ex. 279, 16-17.

After J.R.'s death, Lewis began seeing a psychiatrist and was prescribed medication. Lewis is no longer seeing the psychiatrist or taking medication. Ex. 279, at 18. Holidays, anniversaries, and birthdays are still particularly

difficult days for Lewis. Lewis is remarried and will soon become a father of twins. Lewis' children will never know their uncle J.R. Lewis always wanted his children to have someone like J.R. in their life.

J.R.'s death is also difficult for Lewis when he is around antique cars which J.R. and Lewis both loved. When Lewis thinks about J.R., the pain and misery today is as strong as it was when Lewis learned of J.R.'s death on June 27, 1996. Ex. 279, at 19–20.

According to Dr. Cable, Lewis

very clearly is in loss and loneliness. He has had major difficulties with his brother's death. His brother was really a father figure as well as a brother to him, very close, and was not there to keep [Lewis] from kind of sinking in what happened to him. So the death has had a major impact on [Lewis], and continues to do so.... His problems, his grief, is going to continue in the future. He is in need of grief therapy. He has got a lot of rebuilding of his life to do, and that's going to take a significant amount of time. It's going to be an ongoing struggle for him to get back where he can function effectively.

(Feb. 10, 2004 Tr. at 123–24.)

As the brother of Earl Cartrette, Jr., Lewis Cartrette has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of his brother. Based on the evidence presented to the Court, Lewis Cartrette has satisfied the elements to establish a valid claim for intentional infliction of emotional distress. First, defendants Iran, MOIS, and the IRGC provided material support to Saudi Hezbollah with the intent that Saudi Hezbollah would carry out attacks that would cause severe emotional distress. Second, the tragic bombing of the Khobar Towers by means of material support and civil conspiracy is an act that is nothing short of extreme, outrageous, and beyond all bounds of civil decency. As is the nature of terrorism, terrorists seek to perform acts that are deliberately outrageous and bring about extreme suffering

in order to achieve political ends. Third, the defendants' actions in facilitating and supporting the Khobar Towers bombing proximately caused Lewis emotional distress because the material support and direction given to Saudi Hezbollah ensured the event would occur. Finally, the evidence shows that Lewis suffered emotional distress, and that his emotional distress was severe. Accordingly, the Court finds that Lewis Cartrette is entitled to recover from defendants \$2.5 million in compensatory damages for the mental anguish and suffering *354 associated with the loss of his brother.

L. Oklahoma

1. Causes of Action

a. Intentional Infliction of Emotional Distress

Oklahoma also recognizes the tort of intentional infliction of emotional distress, having adopted Section 46 of the RESTATEMENT (SECOND) OF TORTS. *Breeden v. League Servs. Corp.*, 575 P.2d 1374, 1376–78 (Okla.1978). To recover damages for intentional infliction of emotional distress under Oklahoma law, the plaintiff must show: “(1) the defendant acted intentionally or recklessly; (2) the defendant's conduct was extreme and outrageous; (3) the defendant's conduct caused the plaintiff emotional distress; and (4) the resulting emotional distress was severe.” *Computer Publ'n, Inc. v. Welton*, 49 P.3d 732, 735 (Okla.2002).

In Oklahoma, the issue of whether a plaintiff must be present in order to recover for a claim of intentional infliction of emotional distress has not been specifically addressed by the courts. The fact that Oklahoma courts have found their tort of intentional infliction of emotional distress to be in accord with Section 46 of the RESTATEMENT (SECOND) OF TORTS allows this Court to follow the same reasoning regarding the presence requirement set forth previously in this opinion.⁶³ Applying this rationale, this Court finds that the presence element does not need to be proven in order to successfully bring a cause of action for intentional infliction of emotional distress under Oklahoma law, and that standing to seek such recovery is limited to the victim's near relatives who were not present at the time of the attack.

2. Plaintiffs

a. Nancy A. Kitson

Nancy A. Kitson is the oldest sibling to Kendall Kitson, Jr. ("Kenny"). After Kenny's death, Nancy took at least one month off of work. She stayed in Florida with her parents. Nancy was the only one to keep many of Kenny's personal items. Ex. 292, 21.

For the first several years after Kenny's death, Nancy attended the memorial services the military hosted in Washington, D.C. and Quantico, Virginia. *Id.* at 22. Nancy does her best to keep going, in spite of her grief. She breaks down sometimes when people ask her how she is or do not know that Kenny was killed. *Id.* at 23.

The most difficult time of the year for Nancy is around Kenny's birthday in October. For many years, Christmas time was also very difficult for Nancy and she would not celebrate the holiday. *Id.* at 24. In addition to her own loss of Kenny, Nancy's grief has been compounded by the tension Kenny's loss has created between herself and her parents. Nancy's parents will not even visit Nancy's daughter. Nancy is very hurt by her parents' failure to love anyone else since Kenny died. *Id.* at 27.

As Dr. Cable stated, Nancy A. Kitson

is in loss and loneliness. She misses her brother terribly, and in addition has to cope with her parents' bitterness, her mother's illness. Fells very alone in the family and very lonely without Kenny.... She, too, will continue to experience grief into the future. The feelings of loss and loneliness will continue.

(Feb. 10, 2004 Tr. at 151–52.)

As the sister of Kendall Kitson, Jr., Nancy Kitson has brought an *355 intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of her brother. Based upon the evidence presented to the Court, the elements of Nancy Kitson's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the

defendants' planning and assistance brought immediate emotional distress to Nancy Kitson. Finally, it is clear that Nancy Kitson has continued to experience emotional distress since that time due to the fact that her brother was taken away from her in such a tragic and horrific manner. Therefore, this Court shall award to Nancy Kitson \$2.5 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her brother's untimely death.

M. Kansas

1. Causes of Action

a. Outrage

In Kansas the tort of intentional infliction of emotional distress is recognized, although it is called the tort of Outrage.⁶⁴ Naturally, the elements of Outrage are the same as those for intentional infliction of emotional distress, namely the plaintiff must prove that: "(1) the conduct of the defendant was intentional or in reckless disregard of the plaintiff; (2) the conduct was extreme and outrageous; (3) there was a causal connection between the defendant's conduct and the plaintiff's mental distress; and (4) the plaintiff's mental distress was extreme and severe." *Smith v. Welch*, 265 Kan. 868, 967 P.2d 727, 733 (1998).

In Kansas, the issue of whether a plaintiff must be present in order to recover for a claim of Outrage has not been specifically addressed by the courts. The fact that Kansas courts have found their tort of Outrage to be rooted in Section 46 of the RESTATEMENT (SECOND) OF TORTS allows this Court to follow the same reasoning regarding the presence requirement set forth previously in this opinion.⁶⁵ Applying this rationale, this Court finds that the presence element does not need to be proven in order to successfully bring a cause of action for Outrage under Kansas law, and that standing to seek such recovery is limited to the victim's near relatives who were not present at the time of the attack.

2. Plaintiffs

a. Starlina Taylor

Starlina Taylor is the sister to Jeremy Taylor. Jeremy's death has been particularly difficult for Starlina due to the closeness of her relationship with Jeremy. When Jeremy died, Starlina lost both a brother and her best friend. Moreover, Starlina is grieving the loss of the her relationship with her parents due to the fact that her parents—in particular, her father—have become emotionally unavailable as a result of Jeremy's death. Ex. 289, 35. Further, since Jeremy's death, Starlina has had difficulty maintaining a fulfilling relationship with a man. She has been divorced twice and has trouble letting anyone get close to her. Exs. 289, 35 and 290, 32.

*356 After Jeremy died, Starlina was upset to her stomach all the time and had menopausal symptoms. She also drank excessively from time to time following Jeremy's death. While she visited a counselor for a short period, she felt like it was a waste of time and only added to her father's bills. Ex. 290, 29–30. Starlina feels as though the grief process is getting worse instead of better for her. She is withdrawing into a smaller and smaller group, and there are only a few people who are her friends. Starlina fantasizes about running away and going somewhere where no one knows her. *Id.* at 35.

According to Dr. Cable, Starlina

is in loss and loneliness, feeling very much the loss of her brother, her support system. Then complicated because there is a loss of her father as well. He is no longer effective or functioning in that father role, and so that just makes it more intense of loss and loneliness.... She will continue in her grief for a long period of time.

(Feb. 10, 2004 Tr. at 199–200.)

As the sister of Jeremy Taylor, Starlina Taylor has brought an intentional infliction of emotional distress claim against the defendants for pain and suffering caused by the death of her brother. Based upon the evidence presented to the Court, the elements of Starlina Taylor's intentional infliction of emotional distress claim are met. The defendants' conduct in facilitating, financing, and providing material support to bring about this attack was intentional, extreme, and outrageous. As the evidence shows, this horrific act precipitated by the defendants' planning and assistance brought immediate emotional

distress to Starlina Taylor. Finally, it is clear that Starlina Taylor has continued to experience emotional distress since that time due to the fact that her brother was taken away from her in such a tragic and horrific manner. Therefore, this Court shall award to Starlina Taylor \$2.5 million to compensate her for the emotional distress, pain and suffering that she sustained as a result of her brother's untimely death.

CONCLUSION

This Court takes note of plaintiffs' courage and steadfastness in pursuing this litigation and their efforts to take action to deter more tragic suffering of innocent Americans at the hands of terrorists. Their efforts are to be commended.

A separate Order and Judgment consistent with these findings shall issue this date.

SO ORDERED.

ORDER & JUDGMENT

In accord with the Findings of Fact and Conclusions of Law issued this date, it is hereby

ORDERED that Default Judgment be entered in favor of plaintiffs and against defendants, jointly and severally, in the amount of \$254,431,903.00, which shall be allocated in the following manner:

Estate and Surviving Family Members of Brent Marthaler

- \$1,598,688.00 in economic damages to be allocated to the Estate of Brent Marthaler, by Katie Lee Marthaler as personal representative, for the benefit of Katie Lee Marthaler, Herman C. Marthaler, and Sharon Marthaler, to be distributed in a manner consistent with the statute governing intestate distribution of property under Florida law;

- \$8 million to be allocated to Katie Lee Marthaler;
- \$5 million to be allocated to Herman Marthaler;
- *357 • \$5 million to be allocated to Sharon Marthaler;
- \$2.5 million to be allocated to Matthew Marthaler;
- \$2.5 million to be allocated to Kirk Marthaler

Estate and Surviving Family Members of Justin Wood

- \$5 million to be allocated to Richard Wood;
- \$5 million to be allocated to Kathleen Wood;
- \$2.5 million to be allocated to Shawn Wood;

Estate and Surviving Family Members of Michael Heiser

- \$3,720,019.00 in economic damages to be allocated to the Estate of Michael Heiser, by Fran and Gary Heiser as personal representatives, for the benefit of Fran and Gary Heiser;
- \$5 million to be allocated to Fran Heiser;
- \$5 million to be allocated to Gary Heiser;

Estate and Surviving Family Members of Earl Cartrette, Jr.

- \$5 million to be allocated to Denise Eichstaedt
- \$2.5 million to be allocated to Anthony Cartrette
- \$2.5 million to be allocated to Lewis Cartrette

Estate and Surviving Family Members of Patrick

Fennig

- \$1,120,304.00 in economic damages to be allocated to the Estate of Patrick Fennig, by Thaddeus C. Fennig and Catherine Fennig as personal representatives, for the benefit of Thaddeus C. Fennig and Catherine Fennig;
- \$5 million to be allocated to Thaddeus C. Fennig;
- \$5 million to be allocated to Catherine Fennig;
- \$2.5 million to be allocated to Paul Fennig;
- \$2.5 million to be allocated to Mark Fennig;

Estate and Surviving Family Members of Christopher Adams

- \$3,153,953.00 in economic damages to be allocated to the Estate of Christopher Adams, by Catherine Adams as personal representative, for the benefit of Catherine Adams;
- \$5 million to be allocated to Catherine Adams;
- \$2.5 million to be allocated to Mary Young;
- \$2.5 million to be allocated to Daniel Adams;
- \$2.5 million to be allocated to Elizabeth Wolf;
- \$2.5 million to be allocated to Patrick Adams;
- \$2.5 million to be allocated to John Adams;
- \$2.5 million to be allocated to William Adams;
- \$2.5 million to be allocated to Michael Adams;

Estate and Surviving Family Members of Thanh “Gus” Nguyen

- \$596,905.00 in economic damages to be allocated to the Estate of Thanh “Gus” Nguyen, by Christopher Nguyen as personal representative, for the benefit of Christopher Nguyen;

- \$5 million to be allocated to Christopher Nguyen;

358 *Estate and Surviving Family Members of Brian McVeigh

- \$5 million to be allocated to Sandra M. Wetmore;

Estate and Surviving Family Members of Joseph Rimkus

- \$5 million to be allocated to Bridget Brooks;
- \$2.5 million to be allocated to James Rimkus;
- \$2.5 million to be allocated to Anne Rimkus;

Estate and Surviving Family Members of Kendall Kitson, Jr.

- \$2,183,460.00 in economic damages to be allocated to the Estate of Kendall Kitson, Jr., by Kendall Kitson, Sr., and Nancy R. Kitson as personal representatives, for the benefit of Kendall Kitson, Sr., and Nancy R. Kitson;
- \$5 million to be allocated to Kendall Kitson, Sr.;
- \$5 million to be allocated to Nancy R. Kitson;
- \$2.5 million to be allocated to Steve K. Kitson;
- \$2.5 million to be allocated to Nancy A. Kitson;

Estate and Surviving Family Members of Jeremy Taylor

- \$5 million to be allocated to Lawrence Taylor;
- \$5 million to be allocated to Vickie Taylor;
- \$2.5 million to be allocated to Starlina Taylor;

Estate and Surviving Family Members of Joshua Woody

- \$1,981,521.00 in economic damages to be allocated to the Estate of Joshua Woody, by Dawn Woody as personal representative, for the benefit of Dawn Woody;
- \$8 million to be allocated to Dawn Woody;
- \$5 million to be allocated to Bernadine Beekman;
- \$2.5 million to be allocated to Tracy Smith;
- \$2.5 million to be allocated to Jonica Woody;
- \$2.5 million to be allocated to Timothy Woody;

Estate and Surviving Family Members of Leland “Tim” Haun

- \$2,822,796.00 in economic damages to be allocated to the Estate of Leland “Tim” Haun, by Ibis “Jenny” Haun as personal representative, for the benefit of Ibis “Jenny” Haun, Senator Haun, and Milly Perez–Dallis, to be distributed in a manner in accordance with the method of intestate distribution under California law;
- \$8 million to be allocated to Ibis “Jenny” Haun;
- \$5 million to be allocated to Senator Haun;
- \$7 million to be allocated to Milly Perez–Dallis;

Estate and Surviving Family Members of Christopher Lester

- \$1,960,466.00 in economic damages, plus \$500,000.00 in pain and suffering damages to be allocated to the Estate of Christopher Lester, by Cecil Lester, Sr., and Judy Lester as personal representatives, for the benefit of Cecil Lester, Sr., Judy Lester, Cecil Lester, Jr., and Jessica Lester, to be distributed in a manner in accordance with the

method *359 of intestate distribution under Ohio law;

- \$5 million to be allocated to Cecil Lester, Sr.;
- \$5 million to be allocated to Judy Lester;
- \$2.5 million to be allocated to Cecil Lester, Jr.;
- \$2.5 million to be allocated to Jessica Lester;

Estate and Surviving Family Members of Kevin Johnson, Sr.

• \$1,171,477.00 in economic damages to be allocated to the Estate of Kevin Johnson, Sr., by Shyrl Johnson as personal representative, for the benefit of Shyrl Johnson, Kevin Johnson, Jr., and Nicholas Johnson, to be distributed in a manner in accordance with the method of intestate distribution under Louisiana law;

- \$8 million to be allocated to Shyrl Johnson;
- \$5 million to be allocated to Kevin Johnson, Jr.;
- \$5 million to be allocated to Nicholas Johnson;

Estate and Surviving Family Members of Peter Morgera

• \$50,000.00 in economic damages to be allocated to the Estate of Peter Morgera, by Michael Morgera as personal representative, for the benefit of Michael Morgera and Thomas Morgera, to be distributed in a manner in accordance with the method of intestate distribution under New Hampshire law;

- \$2.5 million to be allocated to Michael Morgera;
- \$2.5 million to be allocated to Thomas Morgera;

Estate and Surviving Members of Millard “Dee” Campbell

• \$1,572,314.00 in economic damages to be allocated to the Estate of Millard “Dee” Campbell, by Marie Campbell as personal representative, for the benefit of Marie Campbell and Bessie Campbell, to be distributed in a manner in accordance with the method of intestate distribution under Texas law;

- \$8 million to be allocated to Marie Campbell;

• \$5 million to be allocated to Bessie Campbell;
IT IS FURTHER ORDERED that the claims for compensatory damages in the form of lost wages and future earnings for the estates of the following decedents are hereby DENIED:

- Estate of Justin Wood
- Estate of Earl Cartrette, Jr.
- Estate of Brian McVeigh
- Estate of Joseph Rimkus
- Estate of Jeremy Taylor

IT IS FURTHER ORDERED that the claims brought by the following plaintiffs are hereby DISMISSED WITH PREJUDICE:

- James V. Wetmore
- George Beekman Che Colson
- Laura Johnson
- Bruce Johnson

IT IS FURTHER ORDERED that plaintiffs, at their own cost and consistent with the requirements of [28 U.S.C. § 1608\(e\)](#), send a copy of this Judgment and the Findings of Fact and Conclusions of Law issued this date to defendants.

*360 IT IS FURTHER ORDERED that the Clerk of this Court shall terminate this case from the dockets of this Court.

SO ORDERED.

All Citations

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Footnotes

- 1 According to the Oxford English Dictionary, the term “Hezbollah” is synonymous with the terms “Hizbollah” and “Hizbullah,” all of which are English transliterations of the Arabic term referring to the extremist Shiite Muslim group also known as the “Party of God.” See Oxford English Dictionary (2d ed.1989). Accordingly, to the extent that any of these terms are used within this opinion, they shall be used interchangeably.
- 2 At other points during the case, plaintiffs sought redress for their losses from various other defendants who have since been dismissed from the case, namely Hezbollah and Osama Bin Laden.
- 3 370 F.3d 41 (D.C.Cir.2004).
- 4 A detailed discussion of the facts and circumstances associated with each individual plaintiff will not be addressed in this section, but rather in the respective portions of this opinion relating to the merits of each individual plaintiff’s cause of action against the defendants. See *infra* Conclusions of Law, Part VI.
- 5 Plaintiffs have requested pursuant to [LCvR 72.3\(c\)](#) and [LCvR 78.1](#) that the Court hold a hearing on plaintiffs’ objections to the magistrate judge’s Report and Recommendation. Pl. Obj. to Report and Recommendation, at 1. Though the district court must consider any objections that have been made regarding the magistrate judge’s proposed findings, the language of [28 U.S.C. § 636\(b\)\(1\)](#) does not obligate the court to hold a hearing on those objections. See [United States v. Raddatz](#), 447 U.S. 667, 674–76, 100 S.Ct. 2406, 65 L.Ed.2d 424 (1980). Rather, by “providing for a ‘de novo determination’ rather than *de novo* hearing [in the statutory language], Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate’s proposed findings and recommendations.” *Id.* at 676, 100 S.Ct. 2406. Accordingly, to the extent that plaintiffs have objected to Magistrate Judge Robinson’s Report and Recommendation to this Court, those objections have been considered and will be addressed within the purview of this written opinion, and not at a hearing before this Court.
- 6 Previously, Piper Rudnick LLP.
- 7 As to the magistrate judge’s finding and recommendation regarding the sufficiency of the evidence plaintiffs submitted, plaintiffs object on the grounds that the evidence presented is sufficient to find the defendants liable, that such evidence is “consistent with and virtually identical to—and even more direct than—liability evidence found to be sufficient as a matter of law in 23 other [FSIA] cases,” and that this Court may take judicial notice of evidence, findings and conclusions entered by this Court in [Blais v. Islamic Republic of Iran](#), 2006 WL 2827372, at *3–4 (D.D.C. Sept.29, 2006) (Lamberth, J.). (Pl.’s Obj. to Report and Recommendation [130] 4–5.)
- 8 Plaintiffs chief concern is that any final judgment might be collaterally attacked by defendants on these grounds.
- 9 See *supra* Part III.A.
- 10 See, e.g., [Blais](#), 459 F.Supp.2d 40 (D.D.C.2006) (Lamberth, J.); [Prevatt v. Islamic Republic of Iran](#), 421 F.Supp.2d 152 (D.D.C. Mar.27, 2006) (Lamberth, J.); [Dammarell v. Islamic Republic of Iran](#), 404 F.Supp.2d 261 (D.D.C.2005) (Bates, J.); [Salazar v. Islamic Republic of Iran](#), 370 F.Supp.2d 105 (D.D.C.2005) (Bates, J.); [Peterson v. Islamic Republic of Iran](#), 264 F.Supp.2d 46 (D.D.C.2003) (Lamberth, J.).
- 11 According to Col. Cochran, the term “standing rules of engagement” is synonymous with the term “peacetime rules of engagement.” (Dec. 2, 2003 Tr. at 15.)
- 12 The magistrate judge had the parties brief the issue of whether a conflict of interest existed.
- 13 Of additional import is the fact that the former attorneys at the Firm who represented Sudan—and who thereby placed the Firm in the position of a potential conflict of interest—did not take part in the Firm’s work related to the present matter before the Court.
- 14 See Docket Nos. [77] and [79], respectively (ordering plaintiffs to file memoranda addressing the conflict of interest issue).

- 15 Mr. Freeh's testimony mirrors the testimony he provided at a Joint Hearing before the United States House of Representatives Permanent Select Committee on Intelligence and the United States Senate Select Committee on Intelligence, in which he testified under oath as to the defendants' involvement in sanctioning, funding and directing the Khobar Towers attack. A transcript of this testimony was admitted into evidence as Plaintiffs' Exhibit 24. See also Pl.'s Exh. 25 (May 20, 2003, *Wall Street Journal* article written by Mr. Freeh in which Mr. Freeh indicated that the FBI's investigation indicated Iran, IRGC, and MOIS's involvement in funding and coordinating the attack on the Khobar Towers).
- 16 *Blais v. Islamic Republic of Iran*, 2006 WL 2827372 (D.D.C. Sept.29, 2006) (Lamberth, J.).
- 17 This Court also found that Mr. Fallahian's representative in Damascus, Syria, a man by the name of Nurani, provided additional direct support for the operation. *Id.*
- 18 As noted in Finding of Fact # 23 in the *Blais* opinion:
Dr. Bruce Tefft was one of the founding members of the CIA's counterterrorism bureau in 1985. He served in the CIA until 1995, and has continued to work as a consultant on terrorism since that time, including work as an unofficial adviser to the New York Police Department's counterterrorism and intelligence divisions. *Id.* He retains a top-secret security clearance in connection with his work. *Id.* He has been qualified as an expert witness in numerous other cases involving Iranian sponsorship of terrorism. Ex. 1 at 3. He was qualified as an expert witness on terrorism in this case.
Blais, 459 F.Supp.2d at 48–49.
- 19 An investigation for which Watson was responsible for day-to-day oversight. *Id.*
- 20 See, e.g., *Greenbaum v. Islamic Republic of Iran*, 2006 WL 2374241 (D.D.C. Aug.10, 2006) (Lamberth, J.); *Prevatt v. Islamic Republic of Iran*, 421 F.Supp.2d 152 (D.D.C. Mar.27, 2006) (Lamberth, J.); *Haim v. Islamic Republic of Iran*, 425 F.Supp.2d 56 (D.D.C. Mar.24, 2006) (Lamberth, J.); *Stern v. Islamic Republic of Iran*, 271 F.Supp.2d 286 (D.D.C.2003) (Lamberth, J.); *Weinstein v. Islamic Republic of Iran*, 184 F.Supp.2d 13 (D.D.C.2002) (Lamberth, J.).
- 21 *Rusheen v. Cohen*, 37 Cal.4th 1048, 39 Cal.Rptr.3d 516, 128 P.3d 713, 722 (2006) ("The elements of an action for civil conspiracy are (1) formation and operation of the conspiracy and (2) damage resulting to plaintiff (3) from a wrongful act done in furtherance of the common design."); *Walters v. Blankenship*, 931 So.2d 137 (Fla.Dist.Ct.App. Apr.28, 2006) (finding that a civil conspiracy exists under Florida law where there is "(a) a conspiracy between two or more parties, (b) to do an unlawful act or to do a lawful act by unlawful means, (c) the doing of some overt act in pursuance of the conspiracy, and (d) damage to plaintiff as a result of the acts performed pursuant to the conspiracy"); *Sims v. Beamer*, 757 N.E.2d 1021 (Ind.Ct.App.2001) (" 'Civil conspiracy' consists of a combination of two or more persons, by concerted action, to accomplish an unlawful purpose or to accomplish some purpose, not in itself unlawful, by unlawful means."); *Sullivan v. Wallace*, 859 So.2d 245, 248 (La.App.2003) ("To recover under a civil conspiracy theory of liability, the plaintiff must prove that an agreement existed to commit an illegal or tortious act which resulted in plaintiff's injury."); *Harding v. Ohio Cas. Ins. Co. of Hamilton, Ohio*, 230 Minn. 327, 41 N.W.2d 818, 824 (Minn.1950) ("A conspiracy is a combination of persons to accomplish an unlawful purpose or a lawful purpose by unlawful means.") (quoting *Dairy Region Land Co. v. Paulson*, 160 Minn. 42, 199 N.W. 398 (1924)); *In re Appeal of Armaganian*, 147 N.H. 158, 784 A.2d 1185, 1189 (2001) ("[U]nder New Hampshire law, the elements of a civil conspiracy are: (1) two or more persons ...; (2) an object to be accomplished (i.e., an unlawful object to be achieved by lawful or unlawful means or a lawful object to be achieved by unlawful means); (3) an agreement on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as the proximate result thereof.") (quoting *Jay Edwards, Inc. v. Baker*, 130 N.H. 41, 534 A.2d 706, 709 (1987)); *Piccoli A/S v. Calvin Klein Jeanswear Co.*, 19 F.Supp.2d 157 (S.D.N.Y.1998) ("Elements of a civil conspiracy under New York law are (1) the corrupt agreement between two or more persons, (2) an overt act, (3) their intentional participation in the furtherance of a plan or purpose, and (4) the resulting damage."); *Boyd v. Drum*, 129 N.C.App. 586, 501 S.E.2d 91, 96 (1998) ("A civil conspiracy claim consists of: (1) an agreement between two or more persons; (2) to do an unlawful act or to do a lawful act in an unlawful way; (3) which agreement resulted in injury to the plaintiff."); *Matthews v. New Century Mortg. Corp.*, 185 F.Supp.2d 874 (S.D. Ohio 2002) ("Under Ohio law, the tort of civil conspiracy is a malicious combination of two or more persons to injure another in person or property, in a way not competent for one alone, resulting in actual damages."); *Jenkins v. Entergy Corp.*, 187 S.W.3d 785, 2006 WL 488580 (Tex.App. Corpus Christi 2006), reh'g overruled, (Apr. 7, 2006) ("Elements of a civil conspiracy claim include: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as a proximate result."); *Onderdonk v. Lamb*, 79 Wis.2d 241, 255 N.W.2d 507, 510 (1977) ("To state a cause of action for civil conspiracy, the complaint must allege:

(1) The formation and operation of the conspiracy; (2) the wrongful act or acts done pursuant thereto; and (3) the damage resulting from such act or acts.”).

22 See *supra* note 21.

23 This Court also found in *Blais* that “Saudi Hezbollah, Iran, MOIS and the IRGC reached an understanding to do an unlawful act, namely the murder and maiming of American servicemen.”

24 See, e.g., *Anderson v. Islamic Republic of Iran*, 90 F.Supp.2d 107, 113 (D.D.C.2000) (Jackson, J.) (awarding \$10 million to the wife of a hostage and torture victim); *Weinstein* (granting \$8 million to the widow of a bus bombing victim); *Kerr v. Islamic Republic of Iran*, 245 F.Supp.2d 59, 64 (D.D.C.2003) (awarding \$10 million to the widow of a murder victim); *Salazar*, 370 F.Supp.2d at 116 (awarding \$10 million to the widow of a bombing victim). As this Court noted in *Greenbaum*, however, “larger awards are typically reserved for cases with aggravating circumstances that appreciably worsen the surviving spouse’s pain and suffering, such as cases involving torture or kidnaping of a spouse, or in which the victim survives with severe physical and emotional conditions that continue to cause severe suffering by the spouse.” *Greenbaum v. Islamic Republic of Iran*, 451 F.Supp.2d 90, 108 (D.D.C. August 10, 2006) (Lamberth, J.) (citing *Cicippio*, 18 F.Supp.2d at 70; *Acree*, 271 F.Supp.2d at 222.)

25 *Eisenfeld*, 172 F.Supp.2d at 8.

26 *Prevatt v. Islamic Republic of Iran*, 421 F.Supp.2d 152, 161 (D.D.C.2006) (Lamberth, J.).

27 *Prevatt*, 421 F.Supp.2d at 161(citing *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 234 (D.C.Cir.2003)).

28 Fla. Stat. Ann. §§ 768.19 (2005).

29 Accordingly, siblings of a decedent are not considered “survivors” unless evidence is presented demonstrating that sibling’s dependence upon the decedent. Fla. Stat. Ann. § 768.18. As the Florida Supreme Court has held, a plaintiff’s dependency upon the decedent must be proven irrespective of any relationship or legal right to support. *Benoit v. Miami Beach Electric Co.*, 85 Fla. 396, 96 So. 158, 159 (1923). Moreover, in cases where adults—siblings or otherwise—claim dependency upon the deceased, the plaintiff must show “an actual inability to support themselves and an actual dependence upon some one for support, coupled with a reasonable expectation of support, or with some reasonable claim for support from the deceased.” *Id.*

30 The Act defines “net accumulations” as the portion of the decedent’s expected net business or salary income that the decedent would have retained if the decedent had lived her or his normal life expectancy. Fla. Stat. Ann. § 786.18(5). “Net business or salary income” means the part of decedent’s probable gross income after taxes and after the decedent’s costs of maintenance. *Id.*

31 Each parent of an adult child may recover for mental pain and suffering if there are no other survivors. *Id.*

32 As will be discussed further below, plaintiffs Matthew and Kirk Marthaler, Brent’s brothers, cannot recover under Florida’s wrongful death statute because no evidence was put forth that they were dependent upon the decedent, their brother. Accordingly, each must demonstrate that he may recover under a valid cause of action under the laws of Minnesota, the state in which each was domiciled at the time of the attack. A more detailed discussion of both Matthew and Kirk’s claims will be provided later in this opinion. See *infra* Part VI.G.2.a.

33 As will be discussed further below, plaintiff Shawn Wood, Justin Wood’s brother, cannot recover under Florida’s wrongful death statute because no evidence was put forth that he was dependent upon the decedent. Accordingly, he must demonstrate that he may recover under a valid cause of action under the laws of California, the state in which he was domiciled at the time of the attack. A more detailed discussion of his claim will be provided later in this opinion. See *infra* Part VI.B.2.c.

34 (Feb. 10, 2004 Tr. at 204–05.)

35 As will be discussed further below, plaintiff Lewis Cartrette, Earl Cartrette, Jr.’s brother, cannot recover under Florida’s

wrongful death statute because no evidence was put forth that he was dependent upon the decedent. Accordingly, he must demonstrate that he may recover under a valid cause of action under the laws of Indiana, the state in which he was domiciled at the time of the attack. A more detailed discussion of his claim will be provided later in this opinion. See *infra* Part VI.K.2.a.

36 In addition to being survived by his mother, J.R. was survived by his two brothers. J.R.'s brothers, however, are not considered "survivors" under the Florida wrongful death statute because they have not put forth evidence of any dependence upon J.R. See *supra* note 29. Therefore, any potential recovery under the wrongful death claim brought by J.R.'s estate shall be solely for the benefit of his mother, Denise Eichstaedt. To the extent that J.R.'s brothers can recover, they must make a valid intentional infliction of emotional distress claim under the laws of the states in which each was domiciled at the time of the attack.

37 As will be discussed further below, plaintiffs Paul and Mark Fennig, Patrick's brothers, cannot recover under Florida's wrongful death statute because no evidence was put forth that either was dependent upon the decedent. Accordingly, each must demonstrate that he may recover under a valid cause of action under the laws of Wisconsin, the state in which each was domiciled at the time of the attack. A more detailed discussion of their claims will be provided later in this opinion. See *infra* Part VI.H.2.a, b.

38 As will be discussed further below, Christopher Adams' siblings, plaintiffs Mary Young, Daniel Adams, Elizabeth Wolf, Patrick Adams, John Adams, William Adams, and Michael Adams, cannot recover under Florida's wrongful death statute because no evidence was put forth that any was dependent upon the decedent. Accordingly, each must demonstrate that he or she may recover under a valid cause of action for intentional infliction of emotional distress under the laws of the state in which each was domiciled at the time of the attack. A more detailed discussion of their claims will be provided later in this opinion. See *infra* Parts VI.I.2, J.2.

39 As the evidence before this Court shows, James Wetmore is a non-adoptive stepparent to Brian. Under Florida law, a non-adoptive stepparent is deemed *in loco parentis* to the child, as distinct from being considered as the child's parent. *K.A.S. v. R.E.T.*, 914 So.2d 1056, 1062–63 (Fla. Dist. Ct. App. 2005). This distinction is important because "a stepparent ... or other person standing *in loco parentis* to a child does not acquire all of the rights or assume all of the obligations of a natural parent." *Id.* at 1063. This is in large part due to the fact that a person *in loco parentis* is under no binding obligation to care for the child, whereas—absent an adoption order—the bond between a natural parent and child is permanent. *Id.* In light of Florida's stance limiting the rights of non-adoptive stepparents as to their stepchildren, this Court finds that a non-adoptive stepparent under Florida law may not seek personal recovery under Florida's wrongful death statute. Cf. *Florida East Coast Ry. Co. v. Jackson*, 65 Fla. 393, 62 So. 210, 211 (1913) (holding under a previous version of Florida's wrongful death statute that it was error for the child's stepfather to join the mother as a plaintiff in the wrongful death action because only parents—and not stepparents—had the right to sue for wrongful death on behalf of their children). Accordingly, though both Sandra and James Wetmore are listed as the personal representatives of Brian's estate, only Sandra Wetmore, as Brian's mother, may properly maintain the action on her son's behalf. To the extent that James Wetmore has sought any damages in his personal capacity as Brian's non-adoptive stepfather, his claim must be denied.

40 (Feb. 10, 2004 Tr. at 186.)

41 As will be discussed further below, plaintiffs Steve K. Kitson and Nancy A. Kitson, Kendall Kitson, Jr.'s siblings, cannot recover under Florida's wrongful death statute because no evidence was put forth that either was dependent upon the decedent. Accordingly, each must demonstrate that he may recover under a valid cause of action for intentional infliction of emotional distress under the laws of the state in which each was domiciled at the time of the attack, Texas and Oklahoma, respectively. A more detailed discussion of their claims will be provided later in this opinion. See *infra* Parts VI.E.2.b, L.2.a.

42 As will be discussed further below, plaintiff Starlina Taylor, Jeremy Taylor's sister, cannot recover under Florida's wrongful death statute because no evidence was put forth that she was dependent upon the decedent, her brother. Accordingly, she must demonstrate that she may recover under a valid cause of action under the laws of Kansas, the state in which she was domiciled at the time of the attack. A more detailed discussion of her claim will be provided later in this opinion. See *infra* Part VI.M.2.a.

43 *Fox v. Pacific Southwest Airlines*, 133 Cal.App.3d 565, 184 Cal.Rptr. 87, 89 (1982), disavowed on other grounds by, *Canavin v. Pacific Southwest Airlines*, 148 Cal.App.3d 512, 196 Cal.Rptr. 82 (1983).

44 Cal.Civ.Proc.Code § 377.34 ("In an action or proceeding by a decedent's personal representative ..., the damages

recoverable are limited to the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement.”); [Cal.Civ.Proc.Code § 377.61](#) (stating that “just” damages arising out of a wrongful death action *do not include* those damages allowed under [Section 377.34](#))

45 Because Josh was survived by his wife, Dawn, and because damages are only available to parents under California’s wrongful death statute when there is no surviving spouse or children, Mr. Beekman cannot recover for his loss under that statute. See [Cal Civ. Proc.Code § 377.60](#).

46 See, e.g., [Estate of Cleveland](#), 22 Cal.Rptr.2d at 595. Such a requirement makes sense because adoption of a child “extinguishes the rights of natural parents [as to that child] forever,” whereas mere guardianship by a stepparent “only suspends the rights of parents.” *Id.*

47 Senator Haun and Milly Perez–Dallis are the decedent’s non-adopted stepchildren, and may therefore only recover if plaintiffs show evidence that the stepparent-stepchild relationship between Tim Haun and his stepchildren was created during the time they were minors, and show clear and convincing evidence that Tim Haun would have adopted the Senator and Milly but for a legal barrier. See Cal. Ann. Prob.Code § 6454. Here, the Court finds there is sufficient evidence that both elements are met. Tim became Senator and Milly’s stepfather when both were still minors. (Dec. 19, 2003 Tr. at 13.) And plaintiffs have presented evidence that he wished to adopt his stepchildren, and would have but for the inability to locate their biological father, which this Court finds to be a sufficient legal barrier to prevent the legal adoption. Ex. 286. This Court is also persuaded by the litany of evidence plaintiffs have submitted that shows Tim Haun held Senator and Milly as his own children, and provided sole financial care for them. See, e.g., (Dec. 19, 2003 Tr. at 13–14.) Accordingly, this Court finds that Senator Haun and Milly Perez–Dallis may recover as beneficiaries to the estate of Leland “Tim” Haun. Consequently, they may also recover for own personal claims arising out of Tim Haun’s death, provided the elements of their claims are satisfied.

48 See *supra* note 43 and accompanying text.

49 According to Louisiana Civil Code, the decedent’s surviving spouse and children may bring such an action. If there are none, however, then the decedent’s parents, siblings, or grandparents—in that order—may bring the action for wrongful death. See [La. Civ.Code Ann. Art. 2315.2\(A\)](#).

50 Under Louisiana’s wrongful death code, surviving parents and siblings may not recover if there is a surviving spouse or surviving children. See [La. Civ.Code Ann. Art. 2315.2\(A\)\(2\), \(3\)](#). Accordingly, neither Kevin’s mother, Laura Johnson, nor his brother, Bruce Johnson, may bring a wrongful death action under Louisiana law. Additionally, as will be discussed below, Che Colson is not a proper plaintiff under Louisiana’s wrongful death statute due to the fact that non-adopted stepchildren are not considered “children” under Louisiana’s wrongful death code. See *infra* Part VI.C.2.a.vii.; [La. Civ.Code Ann. Art. 2315.2\(D\)](#).

51 This figure constitutes a sum of \$50,000 *in toto*, as opposed to \$50,000 per surviving non-dependent relative. Such a figure is justified because the New Hampshire legislature “intended wrongful death actions to benefit the estate, rather than the distributees.” [In re Estate of Infant Fontaine](#), 128 N.H. 695, 519 A.2d 227, 229 (1986).

52 Though the Court is cognizant that both the Caveat and comments to a section of the Restatement are not law by any means, they are instructive in helping to interpret the issue at hand.

53 See *supra* Part VI.D. 1.b.

54 Under Ohio law, a personal representative from a foreign state is not precluded from bringing an action under Ohio law on behalf of the decedent’s estate and its beneficiaries. See [Ohio Rev.Code Ann. § 2113.75](#). Therefore, notwithstanding the fact that Cecil Lester—the personal representative of the estate of Christopher Lester—was domiciled in West Virginia at the time of the attack, he may nonetheless maintain this action on behalf of the estate and its beneficiaries.

55 See *supra* Part V.D.

56 See *infra* Parts VI.F.2.a.iii, iv.

57 *See supra* Part VI.D. 1.b.

58 *See supra* Part VI.D. 1.b.

59 Though the precedent set forth by the federal court in the Southern District of New York is not binding on the state courts in New York, in light of the severity of the attacks involved in both cases, the court's opinion carries a great deal of weight in determining whether a presence requirement is necessary in cases involving intentional infliction of emotional distress claims arising out of terrorist attacks.

60 *See supra* Part VI.D. 1.b.

61 *See supra* Part VI.D. 1.b.

62 *See supra* Part VI.D. 1.b.

63 *See supra* Part VI.D. 1.b.

64 Though the Kansas courts have offered a different moniker for these two torts, the tort of Outrage stems from the same root as intentional infliction of emotional distress: Section 46 of the RESTATEMENT (SECOND) OF TORTS. *See Dotson v. McLaughlin*, 216 Kan. 201, 531 P.2d 1, 7–9 (1975).

65 *See supra* Part VI.D. 1.b.

ANNEX 42

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRAN HEISER, et al.,

Plaintiffs,

v.

ISLAMIC REPUBLIC OF IRAN,
et al.,

Defendants.

Civil Action Nos. 00-2329

01-2104

Washington, D.C.

Thursday, December 18, 2003

1:00 p.m.

DAY 14

TRANSCRIPT OF TRIAL

BEFORE THE HONORABLE DEBORAH A. ROBINSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs:

HANK WALTHER, ESQ.

SHALE STILLER, ESQ.

MELISSA L. MACKIEWICZ, ESQ.

ELIZABETH R. DEWEY, ESQ.

LOUIS J. ROULEAU, ESQ.

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333 Constitution Avenue, N.W.

Washington, D.C. 20001

202-216-0313

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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P R O C E E D I N G S

THE DEPUTY CLERK: Civil Action numbers 00-2329 and 01-2104, Fran Heiser, et al., versus the Islamic Republic of Iran, et al. Mr. Hank Walther, Shale Stiller, Luis Rouleau, Melissa Mackiewicz, and Elizabeth Dewey all representing plaintiffs.

THE COURT: Good morning.

MR. STILLER: Good morning.

THE COURT: Mr. Walther, are you ready to proceed?

MR. WALTHER: We are.

THE COURT: Let me ask you to direct your second witness to wait outside while the first witness testifies, please.

MR. WALTHER: I believe he is already outside.

THE COURT: Very well. You may call your first witness.

MR. WALTHER: Plaintiffs call Director Louis Freeh.

THE COURT: I've been reminded, sir, that you were sworn on the second day of trial. Your testimony remains under oath, and the oath will not be administered again this afternoon.

(The witness resumes the stand.)

DIRECT EXAMINATION - Continued

BY MR. WALTHER:

Q. Good afternoon, Director Freeh.

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- 1 A. Good afternoon.
- 2 Q. Would you please state and spell your name for the record?
- 3 A. Louis J. Freeh. F-R-E-E-H.
- 4 Q. Where are you currently employed?
- 5 A. MBNA Bank.
- 6 Q. Before beginning work at MBNA, were you employed by the
- 7 FBI?
- 8 A. Yes. I was the FBI director from 1993 to June of 2001.
- 9 Q. And prior becoming director of the FBI, did you have any
- 10 earlier experience in law enforcement?
- 11 A. Yes. I was an FBI agent from 1975 to 1981, and I was an
- 12 Assistant U.S. Attorney from 1981 to 1983.
- 13 Q. Did you ever serve as a federal judge?
- 14 A. Yes. Two years. 1991 to 1993. New York Southern.
- 15 Q. Did you hold any positions within the United States
- 16 Attorney's Office; Director Freeh?
- 17 A. I was Assistant U.S. Attorney. I was head of the organized
- 18 crime unit. I was an Associate U.S. Attorney and then Deputy
- 19 U.S. Attorney.
- 20 Q. Is it safe to say that collectively you spent about 25
- 21 years in law enforcement?
- 22 A. That's correct.
- 23 Q. What were your general responsibilities as director of the
- 24 FBI?
- 25 A. Well, functioning basically as the chief executive officer

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1 of the agency, overseeing all of the budgetary matters,
2 investigative matters, congressional relations, public
3 relations, basically the function of the chief executive
4 officer.

5 Q. At any time during the years you served as director of the
6 FBI, were you involved in an investigation of the bombing of the
7 Khobar Towers in Saudi Arabia?

8 A. Yes, I was.

9 Q. Approximately when did you become involved in this
10 investigation?

11 A. Right immediately after the bombing in June of 1996. It
12 was a major terrorist attack against the United States, and I
13 became directly involved in terms of making assignments and
14 decisions and making sure that the case was staffed and would be
15 investigated thoroughly.

16 Q. And, actually, how did you get involved then?

17 A. Well, the first thing I did is I traveled to Saudi Arabia.
18 I had not been there before, and although the FBI had offices in
19 19 foreign countries, we had not yet established an office in
20 Riyadh.

21 So the purpose of my visit was to speak to the king at the
22 time, King Fahd, the Crown Prince, the Minister of the Interior,
23 and our counterparts to not only be briefed by them but to make
24 sure they were cooperating and facilitating our investigation.

25 Q. And did they cooperate and facilitate the investigation?

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1 A. Yes, they did. We sent immediately a large number of FBI
2 agents and technicians and analysts and linguists to Dharhan,
3 which is in the eastern part of the kingdom where the bombing
4 occurred, and they immediately took control over the Khobar
5 Towers site.

6 We worked very closely with the Air Force as well as the
7 Saudi authorities to -- process, would be the term -- that
8 particular area, and that involves a very intricate process of
9 collecting forensic evidence, talking to available witnesses,
10 and all of the pieces of an investigation that must be done
11 simultaneously and without compromising the other things that
12 are being done.

13 Q. Approximately how many agents or employees of the FBI were
14 sent to Saudi Arabia?

15 A. Immediately, there were over a hundred FBI personnel,
16 again, consisting of agents, forensic experts. Some were there
17 for administrative support, security purposes. Some were there
18 to facilitate the liaison, but most of them were there
19 principally as investigators.

20 Q. You've previously stated in testimony before Congress that
21 the FBI conducted the Khobar Towers bombing investigation as a
22 "full-scale criminal investigation." Is that a true and correct
23 statement?

24 A. Yes. My instructions from the President and the Secretary
25 of State and the National Security Advisor at the time were to

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1 conduct an intensive full-blown FBI field forensic criminal
2 investigation and to attempt to identify subjects who were
3 responsible and to proceed to charges if that could be
4 established.

5 Q. And that's how the FBI ultimately proceeded with the
6 investigation?

7 A. Yes.

8 Q. Was the FBI's chief of counterterrorism, Dale Watson,
9 responsible for parts of the day-to-day investigation?

10 A. Yes, he was. On a day-to-day basis, he was the direct
11 supervisor of the investigation. He was located back here at
12 FBI headquarters, and we would speak at least once a day,
13 sometimes several times per day, depending on the events and how
14 the investigation was proceeding.

15 Q. And beyond what you've already described with respect to
16 your role in assisting in the investigation in Saudi Arabia,
17 were you directly involved in the investigation in any other
18 ways?

19 A. Well, I was directly involved in terms of, you know,
20 keeping the liaison necessary with the Saudi authorities to
21 facilitate the investigation as it proceeded beyond the first
22 initial stages.

23 We would make decisions -- we meaning Mr. Watson, myself,
24 some of the other FBI executives, the attorney general,
25 sometimes the national security advisor -- as to the next steps

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1 that we were going to take either on the diplomatic front with
2 respect to our discussions with the Saudis or on the forensic or
3 investigative step. So I was very heavily involved in the
4 investigation as it developed.

5 Q. To the extent you recall your first visit to the
6 Khobar Towers bombing site, could you describe what you saw?

7 A. Well, I mean, it was a very horrific scene and a very sad
8 scene. The building that suffered the brunt of the attack,
9 Building 131, was basically cut in half. The front of the
10 building was missing. There was a huge pile of rubble.

11 There were human remains which were being recovered as I
12 was visiting the site. The temperature was in the 110,
13 120-degree area, so the people who were working and processing
14 the scene were working under very difficult circumstances.

15 There were hundreds of wounded airmen and women; and I got
16 there probably about 40 hours after the attack, and I spent some
17 time with them. We visited several of them in the hospital, and
18 it was just a very tragic and horrific scene and quite inspiring
19 in the sense that the bravery of those airmen and women under
20 those circumstances is a very strong memory for me.

21 Q. Director, I'm going to display a picture which has
22 previously been marked Exhibit 271. It should appear on the
23 monitor in front of you. Is this an accurate picture of what
24 you saw when you arrived at Khobar Towers 40 hours after the
25 bombing?

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1 A. Yes. You can't really discern it from this exhibit, but
2 the hole, the crater there, was about 30 feet deep. It had
3 quite a bit of water in it by the time I got there, and it was a
4 huge footprint from an explosive device that we estimated had
5 about 5,000 pounds of explosives.

6 Q. And is this the crater you're referring to?

7 A. Yes.

8 Q. In the course of the FBI's investigation, Director Freeh,
9 did FBI agents prepare interview reports and case reports
10 detailing their findings?

11 A. Yes. A number of reports were prepared. One standard
12 report is what we call the FD-302. That's a report of
13 investigative action. Many of those were written and sent to me
14 for review.

15 There were also many memorandums, many telexes that the
16 agents on scene ~~would communicate back to us~~, which I also
17 reviewed, and various memoranda that would be prepared in the
18 course of the investigation.

19 Q. And you've previously stated in an article that you wrote
20 that "The FBI's investigation of the Khobar attack was
21 extraordinarily persistent; indeed, relentless." Is this a true
22 and correct statement?

23 A. Yes.

24 Q. Could you explain how the FBI began its investigation and
25 how it proceeded?

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1 A. Well, initially, we were limited really to the immediate
2 vicinity of Khobar Tower 131 and the Dhahran air facility,
3 because that of course was under U.S. usage at the time.

4 So, initially, the agents were not permitted to do what we
5 would do in a domestic situation, which would be to go out into
6 neighborhoods, interview people, seek to contact people. We
7 didn't do that there, nor did we do that in any foreign country
8 because we're not authorized to act as investigators.

9 So the crime scene work, the interviews of the American
10 airmen and women on the facility, all those things were done in
11 the normal course.

12 Where the investigation stopped, from our point of view, at
13 least temporarily, was the inability to really talk to Saudi
14 witnesses and to do the logical kinds of investigations that
15 would be required to be done but which you would need
16 jurisdiction to be active in that national jurisdiction, which
17 we were not.

18 So a large part of the investigation came down to getting
19 the Saudi government to assist us not only in providing
20 information but giving us access to witnesses, access to
21 different locations, access to records. And a large part of
22 what I did in the period following the immediate processing of
23 the Khobar Towers area was to press the Saudis to give us that
24 particular access.

25 Q. At some point in the FBI investigation, did you determine

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1 that the cause of the damage to Building 131 and the 19 deaths
2 of the airmen killed were the result of a terrorist bombing?

3 A. Yes. The bombing clearly was the cause of the destruction
4 and the death. The explosive device was contained in a truck, a
5 sewer container type truck. It was a fertilizer explosive,
6 which was the basis of the expert analysis, and we also
7 determined that it was an act of terrorism.

8 Q. I believe you mentioned earlier that the bomb was
9 approximately how large?

10 A. We estimated it to be about 5,000 pounds.

11 Q. What type of assistance did the Saudi government and the
12 Saudi antiterrorist police provide to the FBI?

13 A. Well, initially, of course they facilitated the immediate
14 work which was done in the vicinity of Building 131.

15 Eventually, they provided information with respect to people
16 that they were interviewing. They provided records to us.

17 They allowed our agents at a certain point to visit some
18 other locations, particularly one location which was in a rural
19 area outside of Dhahran where I believe the explosive device was
20 fabricated and loaded onto the truck, and they accompanied us on
21 those visits and allowed us to take samples and do forensic
22 testing.

23 Q. And did the FBI obtain valuable evidence through the
24 assistance of the Saudis?

25 A. Yes.

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1 Q. At some point in the investigation, did the FBI obtain
2 direct access to six Saudi nationals who were being detained in
3 Saudi Arabia?

4 A. Yes, we did.

5 Q. And did you consider this an important breakthrough in the
6 case?

7 A. We had been working for several years -- as it turned out,
8 about two and a half years -- to get direct access to six
9 individuals who were detained by the Saudis and who were
10 described by the Saudis to us as participants in the actual
11 attack.

12 And for a long period of time, we pressed to have access to
13 them, and eventually we were allowed -- FBI agents were allowed
14 to interview them one on one, meaning just FBI agents and just
15 the detainees without any Saudi authorities being present.

16 Q. And the FBI ~~had a chance to interview~~ all six of them
17 individually; is that correct?

18 A. Yes. They were interviewed individually. Prior to the
19 interviews, we had access to the statements that they had given
20 to the Saudi authorities, which were in a written form, and we
21 had the advantage of having that documentation before we
22 actually interviewed them.

23 Q. And did the FBI learn information from these six
24 individuals about whether any foreign governments were
25 involved --

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1 THE COURT: Let me ask you to rephrase your question,
2 Mr. Walther, so that it is not leading.

3 MR. WALTHER: Your Honor, the difficult position that
4 places us in is that the Department of Justice has indicated
5 that there are only certain things that the FBI witnesses,
6 Director Freeh and Mr. Watson, can testify to, and part of the
7 difficulty is, if we ask general questions that are broad and
8 not leading in any way, the Department of Justice may very well
9 object because part of these broad answers could include
10 classified information.

11 So in an attempt to accommodate the Justice Department and
12 not get them involved in this, we've attempted to tailor our
13 questioning of both Director Freeh and Mr. Watson to matters
14 that they can actually discuss in public in court.

15 THE COURT: Well, I will direct you to proceed by
16 nonleading questions. Certainly, if director Freeh or
17 Agent Watson believe that there is information which is
18 responsive which they are precluded from testifying about, I
19 imagine that they will certainly say so.

20 MR. WALTHER: Your Honor, for the record, we'd like to
21 object to that. You know, we invited the government of Iran to
22 come here today and to object to our questions and to be a part
23 of these proceedings.

24 THE COURT: The court has sua sponte directed you to
25 proceed through nonleading questions. Indeed, the court gave

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1 counsel that instruction earlier in the week and last week, as
2 well.

3 MR. WALTHER: Very well, Your Honor.

4 BY MR. WALTHER:

5 Q. Based upon matters that are contained in the public record,
6 Director Freeh, what type of information did the FBI learn from
7 the six suspects who were detained in Saudi Arabia?

8 A. Well, we learned a great deal of information which was the
9 basis for the indictment in June of 2001. First of all, they
10 admitted to us that they were members of the Saudi Hizbollah
11 organization which we considered and of course our state
12 department considers a terrorist organization.

13 They also admitted complicity in the attack, which of
14 course was very important in terms of the indictment. Beyond
15 that, they implicated senior Iranian officials in the funding,
16 planning, and sponsorship of the attack, and one of the
17 witnesses in particular described this connection in great
18 detail.

19 Q. How did you learn that these six suspects had provided this
20 information to the FBI?

21 A. I learned it immediately from the agents on the scene who
22 communicated with Mr. Watson and with myself; and within a few
23 days after the debriefing, they came back to Washington and I
24 was able to sit down and speak to them directly.

25 Q. Did the six suspects make any reference in greater detail

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1 to the government of Iran or to particular agents within the
2 government of Iran?

3 A. The information we learned based on those interviews was
4 that the attack was organized and sponsored by the IRGC, which
5 is one of the Iranian intelligence and security services, and
6 that there was participation in the planning, in the funding of
7 that attack by the MOIS, which is the Ministry of Intelligence
8 and Security, as well as senior elements of the government that
9 they provided the funding, they provided the training, they
10 provided the travel, as well as the other support that was
11 necessary to organize the attack.

12 Q. Director, when you refer to the IRGC, are you referring to
13 the Iranian Revolutionary Guard Corps?

14 A. Yes.

15 Q. And when you're referring to MOIS, are you referring to the
16 Ministry of Information and Security?

17 A. Yes.

18 Q. So, to clarify just for the record, the six individuals who
19 were detained in Saudi Arabia and who are responsible for the
20 bombing of the Khobar Towers admitted to the FBI that the
21 government of Iran and specifically MOIS and IRGC were directly
22 involved in the planning and execution of the Khobar Towers
23 bombing?

24 A. Yes.

25 Q. Did you believe that these admissions were reliable?

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1 A. Well, we did, for a number of reasons. One, they had
2 previously made those statements to Saudi Ministry of Interior
3 officials with whom we had seen the reports. The Saudi
4 officials at a very senior level, including their ambassador
5 here, had advised me of that prior to our actually doing the
6 interviews ourselves.

7 The interviews were done, actually, in two different
8 phases. In one phase, FBI agents were permitted to observe
9 interviews, and during the course of those observations they
10 heard the same admissions that we had talked about a minute ago.

11 And then FBI agents ultimately were allowed to interview
12 each of the witnesses separately. There was a lot of
13 cross-corroboration between their statements, and the demeanor
14 as well as the details that were provided persuaded me, and I
15 believe the agents who interviewed them, that they were reliable
16 in terms of the information that they did provide.

17 Q. Without providing any detail in answering this question,
18 did the FBI obtain any further evidence further supporting the
19 statements of these six individuals that the government of Iran,
20 the MOIS, and the IRGC were involve in the Khobar Towers
21 attacks?

22 A. Yes.

23 Q. Director, approximately how long did the FBI's
24 investigation last?

25 A. It actually lasted up to and including the approximate time

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1 of the indictment, so from June of 1996 really up to and through
2 2001, June.

3 Q. And approximately when did you receive access to these six
4 Saudis?

5 A. Over a period of time. Five of them we received access to,
6 I believe it was 1999, and the sixth one who turned out to be we
7 thought the most detailed of the witnesses, wasn't until 2000.

8 Q. After dispatching hundreds of agents to Saudi Arabia to
9 collect evidence, spending years as you've testified
10 investigating the bombing, and then reviewing physical and
11 testimonial evidence, did you personally reach a conclusion
12 regarding who was responsible for the bombing of Khobar Towers?

13 A. Yes.

14 Q. And what was that conclusion?

15 A. Well, my own conclusion, again not speaking for the FBI
16 at this point, ~~was that the attack was planned~~, funded, and
17 sponsored by senior leadership in the government of the Republic
18 of Iran, that the IRGC principally had the responsibility of
19 putting that plan into operation, and it was implicated with the
20 use of the Saudi Hizbollah organization and its members.

21 They were the actual members on the ground that performed
22 the attack. But the training, the funding, all the facilitation
23 was done, my opinion, my conclusion, by the IRGC with directions
24 from the senior officials of the republic.

25 MR. WALTHER: Your Honor, may I have a moment?

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1 THE COURT: Yes. In fact, to facilitate your
2 discussions, if you'd like to take a brief recess, we can do
3 that at this point. We'll take a brief recess.

4 MR. WALTHER: Okay, Your Honor.

5 (Recess from 1:27 p.m. to 1:36 p.m.)

6 THE COURT: Now, Mr. Walther, do you have further
7 questions?

8 THE WITNESS: We do, Your Honor.

9 THE COURT: You may proceed.

10 BY MR. WALTHER:

11 Q. Director, may I ask you to turn your attention to the
12 Exhibit marked 23 in the book in front of you?

13 A. Yes.

14 Q. And can you tell me what this is?

15 A. This is a statement that I wrote in connection with my
16 appearance before the joint intelligence committees in October
17 of 2002.

18 Q. Have you reviewed this document in preparing for your
19 testimony today?

20 A. Yes.

21 Q. And is the information contained in this document true and
22 correct to the best of your knowledge?

23 A. Yes, it is.

24 MR. WALTHER: Your Honor, at this time we would move
25 to readmit Exhibit No. 23 into evidence.

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1 THE COURT: Exhibit 23 will again be admitted.

2 (Plaintiff Exhibit No. 23

3 received into evidence.)

4 BY MR. WALTHER:

5 Q. Director Freeh, could I now turn your attention to what has
6 previously been marked Exhibit 25?

7 A. Yes.

8 Q. And could you please tell me what this is?

9 A. That's an article that I wrote and was published in *The*
10 *Wall Street Journal*.

11 Q. Have you reviewed this document in preparing for your
12 testimony today?

13 A. Yes.

14 Q. And is the information contained in this document true and
15 correct to the best of your knowledge?

16 A. Yes.

17 MR. WALTHER: Your Honor, at this time we would like
18 to move to admit Exhibit 25.

19 THE COURT: Exhibit 25 will also be admitted.

20 (Plaintiff Exhibit No. 25

21 received into evidence.)

22 MR. WALTHER: And, Your Honor, plaintiffs have no
23 further questions.

24 THE COURT: Thank you, Mr. Walther.

25 Now, Director Freeh, I have a few follow-up questions.

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1 Near the beginning of your testimony, you stated that the FBI
2 agents initially were not authorized to act as investigators and
3 that, at least as of that time, in your words, that is where the
4 investigation stopped. At what point did that change?

5 THE WITNESS: Actually, they weren't allowed to act as
6 investigators, Your Honor, outside the boundary of the air base.
7 Within the air base they were functioning fully as
8 investigators.

9 When they were permitted to do further investigative
10 activity outside the U.S.-occupied Dharhan Air Station, that
11 came to pass over the course, I'd say, of the next six months,
12 they were permitted on a very selective basis by the Saudis to
13 go outside of that compound to visit locations as well as to
14 speak to people.

15 THE COURT: And was it during that period that the six
16 witnesses that you ~~described~~ were interviewed?

17 THE WITNESS: No. Actually, that didn't occur until
18 several years later. The five of those witnesses were arrested
19 very soon after the attack, we were to learn later. A sixth one
20 was in a different country and was not taken into Saudi custody
21 until several years later, but our interviews did not take place
22 until 1999. So there was a three-year period between that.

23 THE COURT: At the time of those interviews, what was
24 the posture of the FBI agents with respect to the nature of the
25 investigation that was undertaken or ongoing?

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1 THE WITNESS: Yes. They were working as investigative
2 agents, and our agreement with the Saudi government was that
3 they would make reports of those interviews and that we would
4 attempt to use that evidence in furtherance of a criminal
5 process back in the United States.

6 So they were functioning as full investigators with the
7 understanding by our host government that they would be using
8 this information not for intelligence but for a criminal
9 procedure.

10 THE COURT: In the United States?

11 THE WITNESS: In the United States.

12 THE COURT: Now, you also testified, Director Freeh,
13 that the six individuals -- or that a determination was made
14 that these individuals you've identified as the six individuals
15 were determined to be participants in the bombing. How was that
16 determination made and by whom?

17 THE WITNESS: It was made principally, Your Honor, by
18 their admission and by their descriptions of their particular
19 roles. There were three vehicles, for instance, that were used
20 during the course of the attack -- a tanker truck which
21 contained the explosive device, a Caprice and a Datsun -- and
22 these six witnesses not only put themselves in the respective
23 vehicles, but they corroborated each other with respect to where
24 they were on those particular -- at ten o'clock that night when
25 the attack occurred.

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1 They also supplied very detailed information about their
2 training, the preparation of the explosive device at a farm
3 located at Qatif, which is in the Dhahran area. Some of them
4 talked about hiding explosives, some of them talked about
5 currying money, so it was an admission and a description by them
6 themselves of what their roles were.

7 THE COURT: You also testified that a determination
8 was made that the statements and the information provided by the
9 six individuals was reliable. On what basis did you make that
10 determination regarding the reliability of the information
11 provided by the six individuals?

12 THE WITNESS: Yes. The information that they provided
13 to the FBI was consistent with the statements and admissions
14 they had previously made to Saudi authorities which we were able
15 to see in written form.

16 As I said ~~before, the admissions as they made them~~ and as
17 they described their roles were consistent. They corroborated
18 each other. There wasn't contradiction in any material part of
19 their descriptions.

20 The demeanor, the circumstances under which they were
21 interviewed, in the opinion of the interviewing agents, because
22 the first question I asked them when they came back was, "Do you
23 think they were telling us the truth?" and "Do you think that
24 they were honestly and voluntarily making these statements?"

25 And their assessment was they were indeed being candid,

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1 being freely -- they were freely admitting their respective
2 roles.

3 And then I guess the third area of reliance and
4 corroboration is, you know, other information that we had been
5 receiving which was consistent with their admissions both to us
6 and to the Saudis. Many of the things that they said we were
7 able to corroborate. They would tell us about an event that
8 happened in a particular location; and then we would go to that
9 location, and in many cases we were able to corroborate what
10 they told us.

11 How they purchased the truck, for instance, was
12 corroborated in a manner consistent with their admissions. So
13 my conclusion was that their statements about their admission
14 were reliable.

15 THE COURT: On what do you base your opinion regarding
16 the involvement of, quote, senior Iranian officials and the MOIS
17 in the events at Khobar Towers?

18 THE WITNESS: All of the detainees, Your Honor,
19 testified about being trained by Iranians, being recruited by
20 Iranians into the Saudi Hizbollah. That was a general
21 description.

22 One of the witnesses in particular, and this was the
23 witness who was taken into Saudi custody several years after the
24 actual event, his role was a much more senior role, and he
25 described being at meetings, identifying the Iranian officials

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1 who were present at those meetings with him, their directions to
2 him with respect to selecting a target.

3 THE COURT: Did he identify the senior Iranian
4 officials?

5 THE WITNESS: Yes, he did.

6 THE COURT: Are you able to identify the senior
7 Iranian officials?

8 THE WITNESS: I don't think I am, Your Honor, at this
9 point, but I will say that they were the senior leadership of
10 not only the two agencies I testified about, MOIS and IRGC, but
11 the government itself.

12 THE COURT: I will ask you the same question regarding
13 the MOIS; that is, on what do you base your opinion regarding
14 the involvement of the MOIS in the events?

15 THE WITNESS: Right. This particular witness that I
16 mentioned -- ~~let's call him witness No. 6~~ -- he identified the
17 leader of the director of MOIS as being present at one of these
18 meetings and giving him particular direction.

19 THE COURT: Was that person identified?

20 THE WITNESS: Yes.

21 THE COURT: Are you able to identify that person?

22 THE WITNESS: Yeah. The problem I'm having,
23 Your Honor, is this was all in the context of the grand jury
24 presentation. It's not recited in the indictment, obviously, so
25 it may be within the 6(e) coverage of that. I'm not sure that I

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1 can at least today tell you who those people are except that --

2 THE COURT: You can continue, then.

3 THE WITNESS: I can say we did corroborate that that
4 person who was named to us was in fact the head of the agency at
5 the relevant time.

6 THE COURT: By the agency, do you mean the MOIS?

7 THE WITNESS: Yes.

8 THE COURT: Very well. You may continue.

9 THE WITNESS: He also -- this witness in particular
10 described funding and dollars which he received, passports which
11 he received from IRGC officials, their directions to select a
12 target, and then to train and surveille the target.

13 During the course of surveillances, several of the
14 witnesses, not only No. 6, told us that they would prepare
15 surveillance reports of Khobar Towers and send those to IRGC
16 officials for their review.

17 So it was, in my view and my opinion and my own conclusion,
18 you know, certainly a very complex and long-term plan which was
19 implemented at the direction of these senior agencies, IRGC and
20 MOIS.

21 THE COURT: In using the acronym IRGC, do you mean to
22 make a distinction between MOIS and IRGC, and senior Iranian
23 officials and IRGC?

24 THE WITNESS: Yes. There was participation by senior
25 representatives, in some cases the leadership of all three

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1 organizations, and they are distinct organizations.

2 The MOIS is their civilian security service. The IRGC is
3 the military branch which conducts military operations and has
4 been the liaison with the various Hizbollah groups in the region
5 for many, many years.

6 THE COURT: To the extent that you've just made a
7 distinction between the three entities, what distinction is
8 there in the role of the three, according to the information
9 that you received from the six witnesses?

10 THE WITNESS: Yes. The target selection and the
11 authorization to conduct the attack, based on this witness's
12 descriptions, was an agreed-upon course of action by civilian
13 members of the government, senior members of the Iranian
14 government, as well as the leadership of the IRGC and the MOIS.

15 So the authorization to proceed, the selection of the
16 targets, was done ~~collectively~~ by all three elements. The
17 actual preparation and carrying out of the attack, according to
18 the witness, was a function that was delegated to the IRGC.

19 THE COURT: What was the characterization of the
20 relationship of those three entities to the entity known as
21 Saudi Hizbollah?

22 THE WITNESS: They are the sponsors of that
23 organization, and with respect to the military operations that
24 the Saudi Hizbollah conducted, particularly in this case, the
25 direction of those operations and the funding as well as the

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1 recruitment of participants, that was the responsibility of the
2 IRGC.

3 The IRGC, in my opinion, would not be operating on its own
4 without the approval of senior civilian officials in government
5 which this witness, No. 6, stated was the case at the meetings
6 that he himself attended.

7 THE COURT: What is the basis of your opinion
8 regarding timing of the training, the funding, and the
9 decision to implement the events which led to the bombing
10 of the Khobar Towers?

11 THE WITNESS: The decision to attack Khobar Towers was
12 made months before the actual events of June 25, 1996. In fact,
13 based on the interview of these witnesses, it was determined
14 that the attack was actually planned to occur at an earlier
15 point in time.

16 However, ~~one of the co-conspirators~~, who is one of the
17 named defendants in the indictment, was arrested coming over the
18 Jordanian border with a carload full of explosives.

19 It was a coincidental stop; it wasn't an informed stop. It
20 was what they call a cold stop by the Saudi authorities. That
21 arrest basically postponed the plan to attack Khobar Towers
22 prior to June 25 of 1996.

23 They had to then develop another cell because they felt --
24 the Iranians, in my view, felt that that cell had been
25 compromised. So another cell had to be developed, new

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1 surveillances had to occur, and the preplanning period was
2 elongated by several months. But the actual target selection
3 and the planning was put into play well into 1995, as early as
4 1995.

5 THE COURT: And on what do you base your opinion that
6 senior Iranian officials, MOIS, IRGC, and ultimately Saudi
7 Hizbollah, were responsible for the funding and training which
8 led to the bombing?

9 THE WITNESS: Well, again, the --

10 THE COURT: And the other decisions as well.

11 THE WITNESS: Yes. One, we based a lot of this on the
12 statements which we felt to be reliable by a witness who
13 actually participated in these meetings and who received the
14 direction immediately from the senior officials in those three
15 areas, those three agencies that I described.

16 THE COURT: Was that witness one of the six witnesses
17 to whom you referred?

18 THE WITNESS: Yes. One of the six witnesses. I also
19 know and I base my opinion on the fact that the Hizbollah
20 organizations have been specifically and almost exclusively
21 sponsored by the Iranian government, and the IRGC is the arm of
22 the Iranian government through which the sponsorship, the
23 funding, and the training of Hizbollah organizations -- not just
24 in the Kingdom of Saudi Arabia, but in other countries -- is
25 maintained and carried out.

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1 Also, the explosive device, as well as the fabrication of
2 the explosive device, would require a great degree of
3 sophistication, and the operation would require an extensive
4 amount of funding, in my opinion.

5 The Saudi Hizbollah organization, in my opinion, would not
6 have the sophistication, the training, or the funding to plan,
7 train for, and carry out such a complicated attack.

8 THE COURT: What, then, is the basis of your opinion
9 that the source of funding was the government of Iran through
10 the IRGC and the MOIS and not some other source?

11 THE WITNESS: Well, specifically, witness No. 6
12 testified -- or I shouldn't say testified because he spoke to
13 FBI agents, but the information he gave the FBI agents was that
14 he received specifically dollars, U.S. dollars, in a very large
15 amount for purposes of carrying out the attack, that those
16 dollars came from the IRGC with the specific direction that they
17 be used to implement and carry out the attack. So we had his
18 direct evidence on that particular point.

19 THE COURT: Are you able to identify any of the six
20 witnesses?

21 THE WITNESS: They're all named in the indictment,
22 Your Honor. I think I certainly can talk about some of them.
23 As I said, my understanding and the agreement with the
24 government of Saudi Arabia was that not only would we use this
25 information if we were able to return an indictment but we would

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1 also use the testimony of these witnesses, and we had actually
2 extensive discussions.

3 I had discussions with the Saudi officials about a Rule 15
4 type of deposition where those six detainees could provide
5 testimony which we could use in a criminal proceeding here in
6 the United States if we went through the Rule 15 requirement.

7 So I think I probably -- I think I can name the six, but I
8 probably ought to get some clarification on that. Again, it was
9 that testimony that was the basis as well as other testimony in
10 the actual grand jury proceedings.

11 I'm not sure if I can identify the witnesses to you. I
12 know who they are. They're listed on the front page of the
13 indictment. I'm not sure I can tell you who they are, though.

14 THE COURT: Very well. Thank you, Director Freeh.
15 One final question and then, Mr. Walther, if you or your
16 co-counsel have follow-up questions, you may certainly ask them.

17 Was any entity or any individual affiliated with any other
18 entity implicated by either any of the six witnesses to whom you
19 referred or any other witnesses that agents of the FBI
20 interviewed?

21 THE WITNESS: You mean an entity other than one of the
22 agencies I've identified here?

23 THE COURT: Yes.

24 THE WITNESS: No. In other words, was there a
25 separate source of the -- I'm not sure I understand your

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1 question. I apologize.

2 THE COURT: Did any of the six individuals implicate
3 any person or entity other than a senior Iranian official, an
4 official of the MOIS, or an official of the IRGC?

5 THE WITNESS: No, they did not.

6 THE COURT: Very well. Thank you. Mr. Walther?

7 MR. WALTHER: Your Honor, can we have one brief
8 moment?

9 THE COURT: Certainly. Would you like a brief recess?

10 MR. WALTHER: I don't think that's necessary.

11 (Counsel conferring.)

12 THE COURT: Counsel, we'll take a five-minute recess.

13 MR. WALTHER: We've completed, Your Honor.

14 THE COURT: Very well. Do you have additional
15 questions, Mr. Walther?

16 MR. WALTHER: No, Your Honor. For the record, we
17 wanted to have a conversation with the Department of Justice and
18 the FBI who are here today to make determinations of what's
19 publicly available and what's not, and ultimately decide what
20 Director Freeh and Mr. Watson can and cannot testify to.

21 It's our understanding that the specific names of those six
22 individuals, although they are contained in the indictment, are
23 not public. So Director Freeh cannot testify as to that.

24 THE COURT: Are there other questions you wish to ask?

25 MR. WALTHER: No, Your Honor.

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1 THE COURT: Very well. Director Freeh, thank you.
2 You may step down.

3 THE WITNESS: Thank you, Your Honor.

4 (The witness steps down.)

5 THE COURT: Mr. Walther, you may call your next
6 witness.

7 MR. WALTHER: Thank you, Your Honor. Plaintiffs call
8 Dale Watson. I believe he's right outside.

9 **DALE L. WATSON, WITNESS FOR THE PLAINTIFFS, SWORN**

10 THE COURT: Good afternoon.

11 THE WITNESS: Good afternoon.

12 DIRECT EXAMINATION

13 BY MR. WALTHER:

14 Q. Good afternoon, Mr. Watson.

15 A. Good afternoon.

16 Q. Could you please state and spell your name for the record?

17 A. Sure. Dale, D-A-L-E. L. Watson, W-A-T-S-O-N.

18 Q. And, Mr. Watson, where are you currently employed?

19 A. I'm currently employed with Booz Allen Hamilton, a
20 consulting firm in Northern Virginia.

21 Q. And prior to working there, were you employed by the FBI?

22 A. Yes, I was.

23 Q. Throughout your career, approximately how many years did
24 you spend working for the FBI?

25 A. Twenty-four and a half.

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1 Q. And of those 24 and a half years, how many years did you
2 spend working in the field of counterterrorism and
3 counterintelligence?

4 A. Approximately 18.

5 Q. Approximately 18. Could you briefly describe the positions
6 that you held within the FBI that were related to
7 counterterrorism and counterintelligence?

8 A. Sure. Field investigator in New York City working
9 foreign counterintelligence from '82 to '85; FBI headquarters
10 supervisor '85 to 1988 in foreign counterintelligence; '88 to
11 1991 field supervisor at Washington field office in foreign
12 counterintelligence -- excuse me.

13 In '91 I was unit chief assigned to FBI headquarters, grade
14 15 at that time, responsible for the Iran Hizbollah unit; and
15 then I did a two-year assignment in Kansas City, '94 to early
16 1996, as a special agent in charge that was involved -- deeply
17 involved in the Oklahoma City bombing case.

18 1996 I was assigned as a deputy chief of the
19 counterterrorist center at the CIA until January of 1997 when I
20 assumed the position of section chief for all of international
21 terrorism for the FBI. I held that position until approximately
22 August of 1998 when I was promoted to deputy assistant director
23 in charge of all the counterterrorism for the FBI.

24 And then Director Freeh reorganized the FBI in 1999 due to
25 the terrorism expansion of the work. I was the assistant

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1 director in charge of all of counterterrorism in international
2 as well as special events and infrastructure protection, et
3 cetera.

4 And in December of '01, I was promoted to executive
5 assistant director, one of the four positions in the FBI
6 responsible for not only all of counterterrorism but also all of
7 counterintelligence for the FBI.

8 Q. Did you mention, Mr. Watson, at one point you were chief of
9 the Iran Hizbollah unit within the FBI?

10 A. That is correct.

11 Q. And did you become familiar with the MOIS and IRGC during
12 your time as chief of the Iran unit?

13 A. Yes, I did.

14 Q. And could you briefly explain the relationship between
15 MOIS, IRGC, and the government of Iran?

16 A. Sure. ~~They are government entities~~ within the government
17 of Iran. The MOIS is equated to their intelligence service,
18 assign officers throughout the world. The IRGC was formed up
19 during the Iraqi-Iran war as a method to assist in that effort
20 and the war effort as well as push the regime's agenda as it
21 pertained to the Islamic revolution and the aspects of terrorism
22 associated with that.

23 Q. And, to the best of your knowledge, from the time you
24 became chief of the Iran unit until you left the FBI in 2001 --
25 is that correct?

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1 A. Excuse me. 2002, October.

2 Q. I'm sorry. From the time you were chief of the Iran unit
3 until 2002 when you left the FBI, is it your understanding that
4 both MOIS and IRGC were agencies of the government of Iran?

5 A. Absolutely correct.

6 Q. In your years with the FBI and the CIA, have you been
7 involved in any terrorism investigations?

8 A. Yes, I have.

9 Q. Could you explain which investigations you've been involved
10 in?

11 A. Going back to -- there have been many, but since 1996, all
12 of them, basically. But prior to '96 I was involved in the TWA
13 47 investigation wherein Robert Stephen was murdered, the Beirut
14 barracks bombing, the kidnappings of American diplomats and
15 American citizens in Beirut, the East Africa bombing cases, the
16 U.S.S. Cole, Oklahoma City bombing case, World Trade Center 1,
17 the aftermath of that where they tried to blow up the landmarks
18 and tunnels in New York City, the millennium threat when
19 Mr. Osam came across the border during the period of the
20 millennium, numerous kidnappings down in Columbia as a result of
21 the FARC activity, the taking of hostages during the December
22 time frame in Lima, Peru. Just a few. Just a few.

23 Q. So you've had your fair share of terrorism investigations?

24 A. Yes, I have.

25 Q. Approximately when did you become involved in the

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1 Khobar Towers investigation?

2 A. As I mentioned previously, I was assigned as a deputy chief
3 over at counterterrorism center for the CIA in '96, in June of
4 '96, so I was aware of it at that time. Was involved at that
5 point in time from then on, from the actual bombing time until
6 today.

7 Q. And is it correct that you became involved in the FBI's
8 investigation as of January of 1997?

9 A. That was correct. I was involved with that even during the
10 time I was over at the other government agency, but deeply
11 involved starting in January of '97 would be the most accurate
12 answer.

13 Q. And limiting now our questioning to your time at the FBI,
14 how did you become involved in the Khobar Towers investigation
15 in the FBI?

16 A. When I rotated ~~over there in late~~ December '96, early
17 January '97, the case was going as a very detailed and complex
18 investigation. At that time as a section chief, I was
19 responsible for that and was deeply involved working with not
20 only our headquarters and our counterparts within the U.S.
21 government but foreign liaison services, as well, and our
22 Washington field office of the FBI.

23 Q. And at this time were you the person within the Federal
24 Bureau of Investigation responsible for overseeing and
25 coordinating the Khobar Towers investigation?

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1 A. Overall, certainly, along with Director Freeh.

2 Q. Mr. Watson, Director Freeh has testified or has stated in
3 prior statements that the FBI conducted the Khobar Towers
4 bombing investigation as a "full-scale criminal investigation."
5 As the individual who is responsible for the day-to-day
6 investigation of the Khobar Towers bombing, do you agree with
7 that statement?

8 A. I agree with that statement.

9 Q. Director Freeh has also previously stated that "The FBI's
10 investigation of the Khobar Towers attack was extraordinarily
11 persistent; indeed, relentless." Again, as the individual
12 responsible for the day-to-day investigation, would you agree
13 with that statement?

14 A. I agree with that statement and also make the addition to
15 that, that not only was it a very complex case, it was a very
16 difficult case to investigate, and there was a tremendous amount
17 of time and effort put into this investigation.

18 Q. Why was it such a difficult case to investigate?

19 A. It was difficult because of the location of the site, for
20 one, outside of the United States. It was not a typical crime
21 that was committed inside the United States.

22 I had to deal with foreign agencies and foreign services,
23 and just the displacement of that and the difficulty of
24 obtaining evidence, et cetera. So it was very difficult and
25 complex, probably the most of all the cases I've been involved

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1 in.

2 Q. So of all of your terrorism investigations, you think this
3 was the most complex?

4 A. This was the most difficult.

5 Q. What was the FBI's response to the Khobar Towers bombing?

6 A. Initially, it was get to the area, conduct a crime scene
7 investigation, forensic, et cetera. After that, you know,
8 worked its way through, it was commit resources, time, effort,
9 and continue to pursue and identify and bring to justice
10 individuals responsible for this act of terror.

11 Q. Do you know approximately how many agents were involved in
12 the investigation or employees of the FBI?

13 A. From June when it occurred until I left, in and out, very
14 easily initially probably 250 agents, and then it probably
15 backed down a little from that because there was not a crime
16 scene to process ~~at the time.~~

17 But probably, at any one given time, I would say probably
18 30 or 40 would probably be a conservative guesstimation, and
19 then as time went on, it would peak when certain things came up.
20 So the answer to your question is the FBI was committed to this.
21 We committed absolutely all the necessary resources we needed to
22 put on this.

23 Q. Did you ever personally travel to Saudi Arabia in
24 connection with your investigation into the Khobar Towers
25 bombing?

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1 A. Yes, I did.

2 Q. And how many trips did you make?

3 A. I don't know the exact number, but probably more than a
4 half a dozen. Probably eight.

5 Q. And when you would go over to Saudi Arabia, what was the
6 purpose of your trip?

7 A. Most of my trips were I accompanied Director Freeh.
8 There were times when I traveled by myself to meet with Saudi
9 officials to try to move this investigation seeking their
10 assistance and help.

11 Q. When you were not in Saudi Arabia investigating the
12 bombing, what was your role in the investigation here in the
13 United States?

14 A. It was mainly to continue to follow and obtain resources,
15 review what items of information and evidence had come in, and
16 continue to keep ~~focused on this investigation~~, and as
17 Director Freeh told the families, we were very dedicated to
18 this. We were not going to let this just dwindle away and not
19 be resolved.

20 Q. When you refer to reviewing evidence and information,
21 did those include reports prepared by agents on the ground in
22 Saudi Arabia?

23 A. Yes, they did.

24 Q. Did those reports involve interviews and the collection of
25 forensic evidence?

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1 A. Over the course of the investigation, it did.

2 Q. Mr. Watson, do you recall your first visit to the
3 Khobar Towers bombing site?

4 A. To the actual site, I never went to the actual site, but I
5 was in Riyadh. I did not personally go to the crime scene area
6 after the blast. I was over at the agency at the time.

7 Q. Why was it that you were traveling to Riyadh at the time
8 rather than Dharhan?

9 A. The investigation hinged upon getting cooperation from the
10 Saudi government through their service called the Mubahith. And
11 there were a lot of efforts being placed in that to try to get
12 access to witnesses, try to obtain information that I had
13 already obtained outside the scope of what we knew about.

14 So it was a relationship building, but it was also an
15 effort on our part to continue to keep this focused and continue
16 to keep this moving along, and we were seeking their cooperation
17 and help.

18 Q. Who are the Mubahith?

19 A. It's the Ministry of Interior. It's their internal police
20 service would be a good way to describe it.

21 Q. At some point in the FBI 's investigation of the bombing,
22 did you conclude that the damage caused to Building 131 of the
23 Khobar Towers complex and the deaths of 19 airmen were caused as
24 a result of a terrorist bombing?

25 A. Yes, I did.

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1 Q. At some point did the government of Saudi Arabia cooperate
2 with your investigation?

3 A. Yes, they did. And it was a long and drawn-out process,
4 but in the end, they were cooperative and helpful.

5 Q. And did the Mubahith that you referred to earlier, at some
6 point also cooperate with your investigation?

7 A. That's part of the Saudi government. Yes, they did.

8 Q. Could you describe what type of evidence the FBI reviewed
9 in the course of its investigation?

10 A. Obviously, at the scene of the blast there was evidence
11 associated with that crime and the mechanisms and devices et
12 cetera. There were statements made by individuals that the FBI
13 has gained access to that's reflected to in the indictment. I
14 reviewed those, some of the physical evidence, and there were a
15 lot of other types of information that I'm not at liberty to
16 discuss.

17 Q. Would reports of FBI agents be included as part of the
18 evidence that you would review?

19 A. They're referred to as FD-302s, report of interviews, yes.

20 Q. Now, at some point in the investigation, did the FBI obtain
21 direct access to six Saudi nationals who were being detained in
22 Saudi Arabia?

23 A. That is correct.

24 Q. And did you consider this an important breakthrough in the
25 case?

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1 A. It was a tremendous breakthrough in the case which did not
2 come about without a lot of hard work.

3 Q. Why was that such an important breakthrough?

4 A. Mainly because it was in direct conflict to law that we
5 would -- law enforcement, FBI would have access to, direct
6 access to Saudi citizens who were in custody. It's very similar
7 to the U.S. government's position of allowing foreign officers
8 or police officers to come to the United States to interview
9 U.S. citizens. I mean, they were very protective of that and
10 careful about under what rules and circumstances.

11 Q. Did you learn that these six individuals who were in
12 custody were six individuals responsible for the Khobar Towers
13 bombing?

14 THE COURT: Let me ask you to -- I remind you to
15 proceed by nonleading questions, Mr. Walther.

16 MR. WALTHER: ~~Okay.~~

17 BY MR. WALTHER:

18 Q. Mr. Watson, what was the significance of obtaining access
19 to these six individuals detained in Saudi Arabia?

20 A. We knew that they had firsthand information about who
21 committed the Khobar Towers bombing, and so it was crucial for
22 us to obtain direct access to them.

23 Q. And limiting your response to information that's publicly
24 available --

25 A. Sure.

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1 Q. -- including what Director Freeh has stated in his
2 testimony before Congress, what information did these
3 individuals provide to you?

4 A. Within the limits of what I might add here on the
5 indictment, I think it's pretty clear what they provided.
6 They provided information about how they were recruited in Saudi
7 Hizbollah, their activities of going to different ones, going to
8 Iran, going to Lebanon to receive training, smuggling explosives
9 into the kingdom through Syria and Jordan and actually discuss
10 the actual mechanics or the procedures of how they carried out
11 the bombing and talked about other events that were not directly
12 related to Khobar Towers but made reference to other events so
13 noted in the indictment.

14 Q. What type of information did these individuals provide the
15 FBI with respect to the role of outside governmental
16 institutions in the bombing?

17 A. As related in the indictment, it was the information
18 obtained from those interviews as well as other information not
19 revealed in the indictment clearly pointed to the fact that
20 there was Iran MOIS and IRGC involvement in the bombing.

21 Q. Director Freeh has previously stated in a *Wall Street*
22 *Journal* article in referring to these individuals that "They
23 directly implicated the IRGC, MOIS, and senior Iranian
24 government officials in the planning and execution of this
25 attack." Is this a true and correct statement, Mr. Watson?

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1 A. I've read that. Yes, it is, in my opinion.

2 Q. And when you refer to the IRGC, who are you referring to?

3 A. Iranian Revolutionary Guard Corps, which we discussed
4 earlier.

5 Q. And the MOIS?

6 A. And the MOIS is the Ministry of Intelligence and Security
7 for the Iranian government.

8 Q. Mr. Watson, is it your testimony today that the six
9 individuals detained in Saudi Arabia who were responsible for
10 the Khobar Towers bombing --

11 THE COURT: Nonleading questions, Mr. Walther.

12 BY MR. WALTHER:

13 Q. Was the information you learned from these six individuals
14 the result of their confessions or things directly provided to
15 the FBI?

16 A. Yes, they were.

17 Q. Do you believe these confessions were reliable?

18 A. I believe those confessions were reliable. In addition
19 to -- well, not in addition, but their statements made as
20 reflected in the indictment supported my opinion of the facts of
21 the case.

22 Q. And was it based upon these confessions that you reached
23 the conclusion that you mentioned earlier?

24 THE COURT: Let me ask you to rephrase your question,
25 Mr. Walther.

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1 BY MR. WALTHER:

2 Q. What role did these confessions play in you reaching or
3 supporting your conclusion that Iran, IRGC, and MOIS were all
4 responsible for the bombing?

5 A. The confessions alone would have been enough, but there was
6 a lot of additional information outside those confessions that
7 absolutely supported my opinion and my belief that Iran was
8 responsible. But a large portion of the conclusions that I came
9 to were a result of this direct interview as well as a lot of
10 other parts of the puzzle.

11 Q. Could you describe the types of other information that was
12 available that supported that conclusion?

13 A. Based upon my instructions from the Department of Justice,
14 I cannot get into that specific information. So if you look at
15 what the indictment says and the way it's laid out, it's the
16 basis of drawing ~~that conclusion~~. One could draw that
17 conclusion.

18 Q. Okay. Mr. Watson, I'm going to ask you a few questions now
19 about Iran's role in the bombing based on the indictment that
20 you referred to earlier.

21 A. Sure.

22 Q. Which for your reference is marked as Exhibit No. 22 in the
23 book in front of you.

24 THE COURT: The indictment is certainly available
25 should you need to review it to refresh your recollection.

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1 THE WITNESS: Sure.

2 THE COURT: That was the purpose for which you wished
3 to remind Mr. Watson that the indictment is there on the stand?

4 MR. WALTHER: Certainly, Your Honor.

5 THE COURT: Very well.

6 BY MR. WALTHER:

7 Q. Now, Mr. Watson, are you familiar with the indictment
8 handed down in the Eastern District in Virginia against the 13
9 individuals for their involvement in the Khobar Towers bombing?

10 A. Yes, I am.

11 THE COURT: Mr. Walther, let me remind to you ask
12 direct questions of Mr. Watson, please. He may certainly review
13 the indictment if it's necessary to do so to enable to refresh
14 his recollection. I will not permit the reading of the
15 indictment since the indictment itself is not evidence of any
16 matter alleged therein.

17 BY MR. WALTHER:

18 Q. All right. Mr. Watson, based on the judge's order, I'll
19 ask you not to review the indictment unless you need to refresh
20 your recollection for any reason.

21 A. Okay. That's fair.

22 Q. Mr. Watson, paragraph 9 of the indictment states that two
23 of the Khobar terrorists --

24 THE COURT: Mr. Walther, I have indicated that I will
25 not permit you to read the indictment. If there are direct

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1 questions you wish to ask regarding relevant allegations, you
2 may certainly do so.

3 The indictment itself is not evidence and would not form
4 the basis of any question to the witness which assumes that an
5 allegation in the indictment is in fact true since the
6 indictment is but a charging document.

7 MR. WALTHER: Well, Your Honor, as you indicated
8 before, the indictment itself is not evidence; and in order to
9 make things contained in the indictment evidentiary, Mr. Watson
10 can provide us with information supporting certain things
11 contained in the indictment, and I think the way to reach that
12 information is through the indictment itself.

13 THE COURT: I have already ruled that you are
14 precluded from doing so.

15 (Counsel conferring.)

16 THE COURT: Counsel, do you wish a brief recess?

17 MR. WALTHER: Just a moment to confer.

18 THE COURT: Very well. You may have a brief recess.
19 You may remain seated.

20 (Recess from 2:11 p.m. to 2:30 p.m.)

21 MR. WALTHER: Your Honor, we checked during the break;
22 and the indictment has been admitted into evidence, but we will
23 not refer to it directly, pursuant to your wishes.

24 THE COURT: Certainly the indictment was admitted on
25 the second day of trial as one of the four exhibits admitted

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1 after Director Freeh's brief appearance on that date to
2 authenticate them. While the court admitted the indictment
3 contemplating, as you indicated on the second day of trial, that
4 Director Freeh would return and that Agent Watson would also
5 appear and the court contemplated that the indictment and other
6 exhibits might be utilized during the testimony, the court did
7 admit them.

8 The court never suggested, nor could the court find, that
9 the indictment, although it is, quote, in evidence, closed
10 quote, constitutes evidence of any matter alleged therein,
11 because as we all know, that is simply not correct.

12 It is a charging document, and the court's expectation was
13 that the indictment, like *The Wall Street Journal* article and
14 the statement prepared prior to Director Freeh's testimony
15 before Congress, might well be utilized as Director Freeh did
16 for the purpose of refreshing recollection or to identify
17 documents that were used to prepare for this testimony today to
18 refresh recollection.

19 For these reasons, I will direct that you not use the
20 allegations as the predicate or preface to any question thereby
21 suggesting that any of the facts alleged in the indictment have
22 been proven, since they have not. Now let's proceed.

23 BY MR. WALTHER:

24 Q. Mr. Watson, do you recall that there was an indictment in
25 this case?

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1 A. Yes, I do.

2 Q. And do you recall that certain individuals claimed to be
3 involved in the planning of the Khobar Towers attack,
4 specifically individuals affiliated with the government of Iran?

5 A. Yes, I do. I recall that.

6 Q. And based upon your role in the FBI's investigation into
7 the Khobar Towers bombing, were individuals within the
8 government of Iran, specifically the MOIS and IRGC, involved in
9 the planning of the Khobar Towers attack?

10 A. Yes. As reflected in the indictment.

11 Q. Mr. Watson, do you also recall that there were allegations
12 that certain individuals affiliated with the government of Iran,
13 and specifically the IRGC and the MOIS, were involved in the
14 execution of the Khobar Towers bombing?

15 A. Yes.

16 Q. And based upon your role in overseeing the Khobar Towers
17 investigation, is that a true and correct statement?

18 A. In my opinion, it is.

19 Q. Mr. Watson, do you also recall that there were allegations
20 that certain individuals within the government of Iran,
21 including the agencies MOIS and IRGC, were directly involved in
22 the funding of the terrorist attack on Khobar Towers?

23 THE COURT: Do you mean allegations or evidence,
24 Mr. Walther?

25 MR. WALTHER: Allegations, Your Honor.

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1 THE WITNESS: Yes.

2 BY MR. WALTHER:

3 Q. And based upon your role in the Khobar Towers
4 investigation, do you believe that is a true and correct
5 statement?

6 A. Yes, I do, in my opinion.

7 Q. Mr. Watson, there have also been allegations that
8 individuals within the government of Iran, and again,
9 specifically the MOIS --

10 THE COURT: Mr. Walther, what allegations are you
11 referring to?

12 MR. WALTHER: Your Honor, allegations that have been
13 made in the course of the Khobar Towers investigation.

14 THE COURT: Let me ask -- let me remind you that the
15 court's requirement is that you ask nonleading questions,
16 please, so that if there is information you expect to elicit
17 from Agent Watson that you do so by direct questions which do
18 not assume facts which may or may not have been established in
19 this proceeding or any other forum.

20 MR. WALTHER: Certainly, Your Honor.

21 BY MR. WALTHER:

22 Q. Mr. Watson, did you in the course of your role in the
23 Khobar Towers investigation reach a conclusion with respect to
24 who was involved in assisting in the travel for certain
25 individuals involved in the Khobar Towers bombing?

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1 A. Yes, I did.

2 Q. And who did you conclude was involved in facilitating the
3 travel of these individuals?

4 A. It was the government of Iran sponsored by the MOIS and
5 IRGC.

6 Q. Now, finally, Mr. Watson, based upon the information you
7 learned in conducting the Khobar Towers investigation and
8 receiving reports from your agents, and based upon your 24 and a
9 half years' experience in the field of counterterrorism, did you
10 conclude that the government of Iran --

11 THE COURT: Nonleading question, Mr. Walther.

12 BY MR. WALTHER:

13 Q. Based upon the information that you learned in the conduct
14 of the Khobar Towers investigation, based upon your 24 and a
15 half years' experience in the field of counterterrorism, did you
16 reach a conclusion with respect to who was involved in funding,
17 sponsoring, and directing the Khobar Towers bombing?

18 A. Yes, I did. And based upon that, I base that upon what is
19 reflected in -- Your Honor, the indictment, I know it's not
20 evidence.

21 I base that upon the interviews that are so reflected in
22 the indictment that indicated individuals responsible for that
23 during conversations with the FBI that indicated certain things
24 about the involvement of Iran and the IRGC which was clearly
25 documented and shown.

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1 I believe that to be the facts. I also believe that based
2 upon these statements that were obtained directly by the FBI in
3 Saudi Arabia, I believe sincerely that Saudi Hizbollah carried
4 out this act supported by Lebanese Hizbollah and with tie-ins
5 directly to the government of Iran.

6 If you don't accept that as a basic premise of facts, then
7 what you look on the secondary side would be, well, Saudi
8 Hizbollah did that, and traditionally and historically, and it's
9 been written about in many places, public sources, Hizbollah is
10 the Party of God supported financially, militarily by the
11 government of Iran.

12 Not all of Hizbollah is a terrorist organization. Their
13 military wing has been clearly documented in public documents,
14 supports Iran -- I mean, supports Hizbollah. And through that
15 support you have Lebanese Hizbollah, you have Saudi Hizbollah, I
16 mean you have ~~Hizbollah~~ throughout the Middle East.

17 So that was part of my conclusions, but the direct
18 conversation by these individuals that I believe are true
19 supports the fact that they admitted they were Saudi Hizbollah,
20 and so, carrying that forward with other facts, the facts that
21 they admitted inside the charging document in the criminal
22 procedures in the indictment that they traveled to Iran to
23 study, they studied courses there.

24 They met at the shrine in Syria where they allege that
25 fellow Iranian officers were present, and the list becomes, as

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1 you can read in this, it's obvious to me. There's no question
2 about that.

3 THE WITNESS: Your Honor, I hope I stayed within your
4 parameter and didn't refer to the indictment.

5 THE COURT: My parameters govern Mr. Walther's
6 questions, not your answers.

7 BY MR. WALTHER:

8 Q. Just to clarify, when you refer to these interviews
9 discussed in the indictment, are you referring to the interviews
10 of the six Saudi individuals that you discussed earlier in your
11 testimony?

12 A. Yes. That is correct. I am limited to discussing what
13 those revealed in this document. They were, in my opinion, and
14 I know this, there were other factors that are not represented
15 here but led me to conclude, not an FBI conclusion but now as a
16 private citizen, ~~my opinion is this was~~ Saudi Hizbollah
17 supported by Lebanese Hizbollah, certainly clearly approved and
18 funded by the Iranians.

19 MR. WALTHER: I have no further questions, Your Honor.

20 THE COURT: Thank you, Mr. Walther. Sir, I do have a
21 few questions, and then if Mr. Walther wishes to ask further
22 questions after I ask these few questions, you may.

23 THE WITNESS: Sure.

24 THE COURT: At the outset, sir, you referred to a
25 forensic investigation which was one of the initial actions

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1 undertaken by the FBI. Can you further describe that forensic
2 investigation, please?

3 THE WITNESS: Yes, ma'am, I can. The forensic
4 investigation would have been traditionally what the FBI does at
5 a bombing scene. East Africa, U.S.S. Cole -- I forgot to
6 mention I was involved in that -- the Pentagon, World Trade
7 Center, what that consists of is initially examining the crime
8 scene.

9 You're looking for fragments of bombs -- you know, how the
10 device was built, how big the crater was to determine the size
11 of the blast; you're looking for physical evidence that you can
12 use in collecting that properly, which we did in order to
13 proceed with the criminal investigation at some point.

14 It was also interviews. It was interviews of individuals
15 that survived the attack. It was looking at a lot of -- without
16 going into a lot of specific details, and I don't think the
17 department here would approve that -- looking at a traditional
18 crime scene. So it was soup to nuts at a crime scene.

19 THE COURT: You identified several types of evidence
20 or categories of evidence that you reviewed which you indicated
21 formed the basis of some of the opinions about which you
22 testified. You referred to evidence at the scene, statements of
23 witnesses, physical evidence, and as a fourth category, evidence
24 you are not able to discuss.

25 THE WITNESS: Yes, ma'am.

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1 THE COURT: To what extent did that fourth category --
2 that is, evidence you are unable to discuss -- form a basis of
3 any of the opinions that you've expressed?

4 THE WITNESS: It supported that opinion to a degree or
5 percentage -- let me think about that for a second, Your Honor.

6 THE COURT: You may.

7 THE WITNESS: That certainly helped in the formulation
8 of who's responsible for this, and that fourth category is not
9 only -- since this type of information not related to a criminal
10 case. I hope I've answered that correctly so you understand
11 without saying exactly what that was. And then there was other
12 information that was not contained in this document that
13 supported that conclusion.

14 THE COURT: Are you able to estimate -- are you able
15 to apportion by a percentage the amount of information or
16 evidence you are ~~unable to discuss~~ as the basis upon which you
17 reach the opinions that you've expressed?

18 THE WITNESS: Your Honor, I'll need your help on this,
19 but I will say looking at this indictment, comparing it to other
20 indictments in criminal matters where there are other
21 information and facts not recorded in an indictment would
22 probably been about the right percentage.

23 Did I make myself clear on that? Not everything's known
24 about this case in this indictment, and it's typical when you
25 have an indictment, you know -- you know this better than I

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1 do -- that everything you know about the case is not in your
2 charging indictment. It's enough to establish probable cause --
3 Well, I don't need to go into that. Obviously, you know that.

4 THE COURT: My question is a little different.

5 THE WITNESS: Okay.

6 THE COURT: I will attempt to state it more artfully
7 than I did earlier. Of those four categories of evidence that
8 you reviewed and considered in reaching the opinions that you've
9 expressed, to what extent did you consider this fourth category;
10 that is, other evidence you are not able to discuss? Did that
11 other evidence you are not able to discuss account for 70
12 percent of the basis, 30 percent of the basis?

13 THE WITNESS: That's a fair question. It's, I would
14 say, probably -- and this is just a guess -- probably 25
15 percent. Maybe 30.

16 THE COURT: The first category of evidence that you
17 identified was evidence at the scene. Is that the evidence
18 garnered during the forensic investigation about which you
19 testified?

20 THE WITNESS: That's the forensics part of it. It is
21 also witness information, statements made. So it's not
22 actually, you know, the physical evidence. It's also statements
23 involved and information collected, not physical evidence
24 collected.

25 THE COURT: Do you include in the category of witness

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1 statements, your second category, statements taken at the base
2 and the housing complex as well as statements on land not
3 controlled by the United States?

4 THE WITNESS: That would be an accurate statement.

5 THE COURT: Did you say an accurate statement?

6 THE WITNESS: Accurate. Yes, ma'am. There would be
7 information obtained during that process that would support
8 what's been reported in the indictment.

9 THE COURT: With respect to the six witnesses that you
10 identified collectively, what determination did you make with
11 respect to the reliability of the information which was
12 reported?

13 THE WITNESS: I concluded that those interviews as
14 related in the indictment were accurate, and not only accurate
15 from my opinion of that, but also from the category of
16 information not contained in here that supported what they were
17 saying.

18 THE COURT: Can you be more specific? In other words,
19 what formed the basis of your opinion and what was the other
20 evidence that led you to conclude that the statements were
21 reliable?

22 THE WITNESS: Your Honor, I could, but it's not
23 contained in that. I could maybe draw an analogy, and I don't
24 know if you want me to do that or not. It would be --

25 THE COURT: If you wish to answer the question with an

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1 analogy, you may. There may be a follow-up question.

2 THE WITNESS: Okay, sure.

3 THE COURT: But we'll hear the analysis.

4 THE WITNESS: Okay. For instance, what if someone
5 saw -- they saw you outside the 7-Eleven last night at the time
6 it was robbed, and you were -- well, not you. We'll take
7 Mr. Walther.

8 (Laughter)

9 I'd rather use him than Your Honor.

10 (Laughter)

11 The analogy would be we'd take a statement from three or
12 four individuals, and they say basically the same thing. And
13 the analogy would be there happened to be someone else not
14 associated with the ones that we took the statement from that
15 said I saw Mr. Walthers there. I saw him in a car. I saw him
16 do A, B, C.

17 And if we elected to just list do we believe what the three
18 or four statements said, while sure, with other investigative
19 matters and other supporting documents would draw a conclusion
20 that those were accurate statements.

21 So that's part of what -- and I really don't want to go
22 outside of the indictment. That's part of the process that I
23 went through in verifying in my mind that these were accurate
24 statements.

25 THE COURT: You testified, sir, that the evidence

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1 showed that the government of Iran, the Saudi Hizbollah, and the
2 Lebanese Hizbollah were all involved in the planning, execution,
3 funding, facilitation of travel, sponsorship, and direction of
4 the events which led to the bombing of the Khobar Towers.

5 What did the evidence show with respect to the involvement
6 of each of those entities? When I say each of those entities, I
7 mean of course the ones that you identified, the government of
8 Iran, Saudi Hizbollah, Lebanese Hizbollah.

9 THE WITNESS: Again, I can't go outside of what I'm
10 limited to talk about. Another simple analogy might be -- I
11 don't know if that's helpful or not. I'd be happy to try to
12 relate that along those lines.

13 THE COURT: If you believe that that is the extent of
14 the answer that you may give, then you may proceed by way of
15 analogy.

16 THE WITNESS: Maybe I can help you here, Your Honor,
17 and say that I understand that when you list something, just
18 because somebody said it doesn't make it true. And I know
19 that's probably where you're headed with this.

20 I will say that that's what we're taught in the FBI, is
21 that not necessarily what people say necessarily have to be
22 accurate. So if we're looking at what's inside the six
23 individuals, what you try to do, without giving away any
24 techniques or anything, is to verify -- can you verify or prove
25 independently of what these individuals say or whatever an

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1 individual says.

2 If an individual says I attended Georgetown University
3 School of Law and I was taught by professor so-and-so, fine. I
4 accept that, but at the same time I want to know if that
5 professor is at Georgetown and did he have a class at that time
6 and were there records kept of that.

7 So that would lead me in my professional opinion to
8 believe, well, maybe at this point he was in that class or she
9 was in that class attending that.

10 It's not just the face value that somebody says A, B, and
11 C, it's -- and I know you're familiar with this -- it's the
12 collection and analysis of all of that together. My opinion --
13 and I'm not speaking for the FBI -- my opinion was those facts
14 were correct.

15 THE COURT: To the extent that you've expressed an
16 opinion regarding the involvement of the government of Iran, of
17 Saudi Hizbollah, and of Lebanese Hizbollah, what is your opinion
18 with respect to the specific role that each of those entities
19 played in the planning, execution, funding, or other actions
20 related to the events at Khobar Towers?

21 THE WITNESS: If you look at what I'm at liberty to
22 talk about, if you look at how Hizbollah operates traditionally
23 and what's been reported in public records and through a lot of
24 documents, Hizbollah does not unilaterally take action without
25 approval. They kill more Americans than any terrorist

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1 organization prior to 9/11 than any other terrorist
2 organization.

3 It must be sanctioned, it must be ordered, and it must be
4 approved and somebody has to fund it. So, my opinion, Lebanese
5 Hizbollah falls under the umbrella of where Hizbollah gets its
6 control and money, which is well documented in the public
7 sector, is from Iran. I saw nothing to contradict that basic
8 idea in this investigation.

9 THE COURT: To what extent was there evidence
10 regarding the planning, execution, funding, sponsorship, and
11 direction of this particular event rather than evidence with
12 regard to the manner in which Hizbollah operates traditionally?
13 In your words.

14 THE WITNESS: Specifically outside of what they
15 traditionally do?

16 THE COURT: Yes.

17 THE WITNESS: I saw nothing that led me to believe
18 that this was not a traditional Hizbollah operation. I think
19 that was your question. Did I see anything that led me to
20 believe that this might have been a rogue operation by
21 individuals in Saudi Hizbollah? No, I did not. Did I come to
22 the conclusion or personal opinion that this was a traditional
23 Hizbollah terrorist operation? Yes, I did.

24 THE COURT: And on what was that opinion based?

25 THE WITNESS: By the manner of which -- how it was

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1 planned so identified in this document and how it was carried
2 out. And if you look in the indictment, in March of '96 they
3 were stopped with 38 kilograms of explosives. Did not stop
4 anything that Hizbollah wanted to do, which the operation had
5 already been planned and approved.

6 THE COURT: Thank you, Agent Watson. Mr. Walther, do
7 you have follow-up questions?

8 MR. WALTHER: Just a few, Your Honor.

9 THE COURT: Please proceed.

10 MR. WALTHER: Thank you.

11 BY MR. WALTHER:

12 Q. Mr. Watson, could you just clarify your opinion with
13 respect to the role of Lebanese Hizbollah versus Saudi Hizbollah
14 in this bombing?

15 A. Sure. Lebanese Hizbollah is well established, a long-time
16 terrorist organization who supports other Hizbollah
17 organizations and terrorist organizations throughout the
18 Middle East. Probably the pillar, so to speak, of Hizbollah.

19 Q. And Saudi Hizbollah?

20 A. Saudi Hizbollah is not authorized to be legal inside
21 Saudi Arabia as opposed to Hizbollah in Lebanon. They have
22 members in parliament, et cetera, in the government of Lebanon.
23 Saudi Hizbollah is an outlaw group so identified by the
24 government of Saudi Arabia which operates strictly within the
25 shadows. It's illegal to be a Saudi Hizbollah member in

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1 Saudi Arabia.

2 Q. And based on the information that you obtained in the
3 course of your investigation, is it correct -- is it your
4 opinion --

5 THE COURT: Let me remind you that the court expects
6 nonleading questions.

7 BY MR. WALTHER:

8 Q. Could you clarify for the court your opinion with respect
9 to Saudi Hizbollah's role in the Khobar Towers bombing?

10 A. It carried it out. There's no question about it. They
11 recruited the individual Saudi citizens. They had support from
12 Lebanese Hizbollah to be trained. That's where the explosives
13 came from, from Lebanon, so Saudi Hizbollah and the members so
14 charged in this were the actors and players that actually did
15 this act.

16 Q. Based on your knowledge, but excluding knowledge of the
17 classified information you referred to earlier as category 4,
18 would you conclude -- would you reach the same conclusions?

19 THE COURT: Let me ask you to rephrase that question,
20 Mr. Walther.

21 BY MR. WALTHER:

22 Q. Would your opinions that you've articulated today change if
23 you were to exclude the information you learned in what you
24 referred to as category 4, information contained -- you can't
25 discuss today?

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1 A. No, it would not. And again, it would not, due to the fact
2 of what's in the indictment and the information provided by
3 those individuals and my historical knowledge and public record
4 in the public sector of about what Hizbollah is and how it's
5 funded.

6 If you believe that these individuals were members of
7 Saudi Hizbollah, then you have to accept the fact that Iran was
8 a sponsor of Hizbollah and funding and all that, and that
9 equates to direct involvement with Khobar Towers in my opinion.

10 MR. WALTHER: Thank you, Mr. Watson. No further
11 questions, Your Honor.

12 THE COURT: Very well. Thank you very much,
13 Mr. Walther. Mr. Watson, thank you, sir. You may step down.

14 THE WITNESS: Thank you.

15 (The witness steps down.)
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19 **REDACTED**
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Annex 42

ANNEX 43

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William Buckley:

The spy who never came in from the cold

By Gordon Thomas

Wednesday, October 25, 2006

On Friday morning March 16, 1984, William Buckley, the CIA Station Chief in Lebanon, began his three hundred and forty-third day in Beirut. He was alone in his tenth floor apartment in the al-Manara apartment building in the western suburb of the city. Beyond the windows of his living room were views of the Chouf Mountains and the Mediterranean Sea. It was going to be one of those sublime days which compensated for what Lebanon had become for the few foreigners still living here: a dangerous and volatile hell hole.

Below, stretching into the distance, were a hundred and more spiralling mosque minarets. From them loudspeakers would soon summon the faithful to their first prayers.

Despite its size -- four bedrooms, dining room, living room, maid's cubicle -- Buckley had insisted on keeping house himself; he hated the idea of anyone snooping through his personal belongings. Evidence of his failure to be tidy was all around him: dishes scattered casually about the living area and the laundry bag over-flowing.

Undoubtedly he had much else to preoccupy him. His attempts to cultivate informants and gain information about Lebanon's disparate political factions had met with mixed success. Part of the reason, he believed, was he still found it difficult to communicate in arabic.

Early on in Beirut, Buckley had made contact with the senior Mossad *katsa*, a field agent, in the city.

a few days before this March morning, the two men had met in the George Washington caf   on Beirut seafront. They were developing plans to rescue the foreign hostages already held captive by the Hezbollah in Beirut. a team of Green Berets would be flown from the United States to Tel aviv and sail with Israeli Special Forces on gunboats which would drop them off the coast of Beirut. The craft would wait off-shore while the team hid in the sand dunes waiting for the "go" signal.

That would come when other Mossad agents had infiltrated into the city to place bombs outside the homes of known Islamic terrorists. The ensuing panic would be the signal for the force in the dunes to make its way into the city and join Buckley.

Dangerous and daring though the plan was, Buckley believed its element of surprise would ensure success. Besides, he had carried out similar operations in Vietnam to snatch Vietcong leaders from their redoubts. The previous day, March 15, 1984, the plan had been green lighted in an "eyes only" coded signal to Buckley from CIA's William Casey.

That Friday morning of March 16, 1984, almost certainly Bill Buckley followed a routine which had become part of his life.

First he placed a classical album on the stereo at the side of his bed and carried one of the speakers on its extension flex to the door of the bathroom. Shaved and showered, he dressed, selecting a short-sleeved shirt, silk tie and a grey, light-weight suit.

The clothes were another of his unbreakable habits. For the past thirty years he had bought them from Brooks Brothers in New York. He bought four suits every year, two light-weight, two medium-worsted. He remained a size 38. His ties came from the classical range of plain or muted stripes.

Having a low tolerance for silence, he moved the speaker from the bedroom to the kitchen and prepared a breakfast of orange juice, cereal, toast and coffee. He had enjoyed an identical start to the day for as long as he could remember.

The meal over and the crockery stacked in the dishwasher, he replaced the classical record with one of Dean Martin singing.

He had met the crooner during one of his spells at Langley when he had spent a weekend at Las Vegas. One Martin's song also had a more personal memory for Buckley. It was a reminder of the one woman he had established a personal relationship with. Her name was Candace Hammond and she lived in the small hamlet of Farmer in North Carolina. He had spoken to her on the phone a few days ago. He'd ended the call by saying he hoped to be home soon and then she could cook him a "good old-fashioned Southern-fried chicken," Candace would recall.

Listening to Martin singing *Return to Me*, Buckley prepared sandwiches, something he had done every morning in Beirut. He disliked the food at the embassy canteen almost as much as the curious stares he attracted from other diplomatic staff. He suspected they regarded him as a dinosaur, an old work-horse heading for retirement. Let them think that. With his direct communication to William Casey he was only a step away from the Oval Office. Casey had said as much. "anything you turn up, Bill, goes straight on to the President's desk," was how the Director had put it.

Sandwich-making over, Buckley returned to the living room. It contained the only clues to his personal life. On one wall was a framed copy of a French World War One victory poster. Candace had given it to him. They had met when he had returned from Vietnam and quickly became lovers. Over the years, she had written him scores of letters. Sunday was her day for writing. He had seldom written back, preferring to make phone calls from various parts of the world. Proof of her love was the inscription she had written across the framed portrait of her on a table in the living room: "To Bill. My fearless warrior and wonderful lover. Candace."

In a few months he would be fifty-eight years old. But Candace had been the only woman he had ever come close to loving. To demonstrate that, he insisted on taking with him everywhere the ever-growing bundle of letters Candace had written.

They went into the bottom of the briefcase he fetched from the safe in his bedroom. Known as a "burn bag", it was intended at a twist of the key clockwise, the usual way of opening or closing a bag, to incinerate the contents by triggering flames from a ring of gas jets built into the base. after the letters, Buckley placed a number of files marked "Top Secret", "Secret" or "Confidential" in the bag. The sandwiches went on top.

Buckley locked the case by turning the key anti-clockwise, then attached the bag to his wrist by a bracelet fixed to a steel chain secured to the bag's handle.

He dead-locked the apartment door behind him and walked across the hall to the elevator. It stopped at a floor below. a man entered. He was young, well dressed and carried a leather briefcase. a few floors further down the elevator paused again. This time a woman tenant whom Buckley knew joined them. He exchanged polite greetings with her. The man did not speak.

at the ground floor the woman stepped out, wishing Buckley to "have a nice day", no doubt proud of her grasp of american idiom. The two men rode down to the basement garage where Buckley kept his car. Normally his embassy driver would have been waiting but this morning Buckley had decided to drive himself to his appointments. He had told no one at the embassy of this violation of security; it was an unbreakable rule that no american official nowadays travelled alone in the city.

as he walked towards his car, Buckley's first inkling of trouble may well have been the fierce blow from the man's briefcase to the back of his head, powerful enough to leave traces of blood and hair on the hide. The attacker dropped his bag. When it was later recovered, it was found to contain several rocks. From somewhere inside the garage a white Renault drove up. There were two men in the car, the driver and his companion in the rear. He may well have assisted Buckley's assailant to get him and the burn bag into the back of the car. With Buckley half-sprawled on the floor and the other two men squatting on top, the Renault roared out of the garage, its rear door flapping open dangerously.

The woman who had exchanged pleasantries with the Cia station chief moments before was standing at a bus stop near the garage exit. She glimpsed what had happened and started to scream for help.

Bill Buckley was not only an important and totally reliable source for me in the intelligence world, but also became a good and trusted friend. The idea of having a friend who operates in the nether regions of our society does not always sit well with the purists of our world. They regard men like Bill Buckley as belonging to a world they want no part of.

Bill was highly educated and articulate and was a gifted host. He could easily have found himself a secure place on Wall Street or some other niche in the East Coast Establishment. Instead he chose to work for the Central Intelligence agency. He saw it as a real opportunity to satisfy two powerful driving forces in his psyche, a need to serve his country in a way that would satisfy that second force by giving him a life of excitement and the essential sense of danger that permeated so much of what he did. He was an authentic man's man who regularly managed to seduce women with his old-fashioned charm and a style that the Great Gatsby would have admired.

Physically he was not exactly handsome. The angles of his face did not quite coalesce to provide a striking whole. His chin would jut at unexpected moments and his eyes were a little too close set, giving him a look of theatrical menace. To really appreciate his best physical side you had to catch him in motion, crumbling a roll for his soup or using his finger to make a point.

as I came to know him, I realized that Bill cultivated his little eccentricities and displayed them like badges of honour. He liked ties whose patterns never seemed to match his shirt or jacket. There was the long leather topcoat he wore for a while so that he looked like an extra in a wartime movie. His greatest concern was to ensure his shoes always gleamed. He could not pass a shoeshine stand without stopping for an application of further gloss.

We began to meet on a regular basis. Usually Bill would turn up with two or three staff from the embassy. The conversation was as good as the food. One night he arrived with William Colby, a quiet and self-contained man with the inquisitorial manner of a foot soldier in the Society of Jesus. He asked few questions but listened a great deal. Later Bill told me that Colby had parachuted into German-occupied France in 1944. after the war he had gone on fighting the Fascists in Italy as an early member of the Cia.

Bill had a waspish way with words. He once said the only real way to write about intelligence matters was to listen for "the murmurs in the mush". It was his shorthand for learning about a deadly skirmish in an alley with no name; the collective hold-your-breath when an agent or network is blown; a covert operation that could have undone years of overt political bridge building; a snippet of mundane information that completed a particular intelligence jigsaw. Later, as we came to know one another better, he convinced me that secret intelligence is the key to fully understanding international relations, global politics and terrorism.

Eventually I came to know a great deal about Bill and his own life and times.

William Buckley was kidnapped shortly after eight o'clock in the morning, Beirut time, on March 16, 1984. Several hours passed before senior Embassy officials concluded he had been abducted.

a priority signal was sent to the State Department and the Central Intelligence agency. It was still early morning in Washington.

at State, news of what had happened was given to Chip Beck who had served with Buckley in Beirut. He was "too stunned to take it in. I was having a hard time emotionally," he said later.

at Langley the signal had been delivered to Cia Director William Casey's office on the seventh floor. Years later he would recall how: "I just sat there and read the thing two, three times. Bill had been a prime asset. For three decades, on three continents, he had served the Cia and this nation with unfailing loyalty and without question. He was one of the bravest men I ever met. He was can-do, go-anywhere. He was street savvy in a way few agents were. So how the hell had this happened?"

an ashen-faced Casey asked that question of anyone who could possibly provide the answer. Receiving none, he shouted in frustration, "Find him! I want him found. I don't care what it takes, I want him found!"

So began an operation like no other the Cia had organised. Claire George, the agency's deputy director, was ordered to "turn the Middle East upside down". a special in-agency committee chaired by Casey was set up to monitor the search. The National Security agency, NSa, was ordered to provide high-resolution satellite photos of known terrorist hideouts in Beirut and the Beka'a Valley.

The intelligence services of Israel, Germany, France and the United Kingdom were asked to help. Every CIA station in the Middle East was ordered to treat the hunt for Buckley as a top priority. A joint FBI/CIA team flew to Beirut. Shortly afterwards they were joined by NSA technicians, each a specialist in ground communications. They were to use their equipment to probe deep beneath the rubble of West Beirut where satellites could not penetrate.

In Langley, psychiatrists, psychologists, behavioural scientists and analysts were mobilised to try and assess how Buckley would withstand being kidnapped and to get a fix on the mindset of his captors. The task was put in charge of Dr Jerrold Post. The fastidious, soberly-dressed psychiatrist also held a senior teaching post at the capital's George Washington University.

The joint CIA/FBI team sent to Beirut established that embassy security had not been compromised. In their first reports back to Langley, the team painted a picture of the missing agent as idiosyncratic. He had spent time cleaning mud from the inside of his car's mudguards with a toothbrush. He kept his apartment untidy. He brought his own food to work.

The judgement infuriated Casey. He knew Buckley; they had travelled together widely through the CIA's global fiefdom. He said later, "Buckley may have had unusual traits, but he was not a has-been."

Yet, despite the Director's support, the feeling grew in Langley that Buckley was an "oddball", someone who had "goofed up".

Reconstructing what had happened, the CIA/FBI team concluded that the white Renault, with maximum acceleration, roared through the Muslim quarter and was waved past several Hezbollah checkpoints before reaching a well-prepared safe house.

Buckley was manhandled out of the car and into the house. The team was equally certain one of the kidnappers had unclipped the briefcase from Buckley's wrist and found the key in his pocket. They could only guess if the terrorist had been able to open the burn bag correctly.

The team was quickly satisfied the Hezbollah had kidnapped Buckley, and that most likely he remained somewhere in the sprawl of West Beirut, between what remained of the heavily-shelled port in the north and the Hotel Sands to the south, near the international airport. There were simply not enough Green Berets to go in to rescue Buckley from probably the most hostile area on earth.

Former State Department employee, Chip Beck, recalled that within the CIA there was also a "mood that Buckley knew too much and that he could blow away a lot of people if he was forced to talk. A lot of agents were watching to see what the agency would do to get him back. There was a feeling that if Casey couldn't rescue Buckley, then no agent was safe."

In Langley, some of those agents remembered what had happened to Tucker Gougemann, one of Buckley's closest friends in the CIA. They had served together in Vietnam. When the Vietcong had swept into Saigon, Gougemann had stayed behind in the hope of bringing out his Vietnamese wife and their small child. Within days he had been arrested. Within a month he was dead from torture. It was eighteen months before the Vietcong had turned over his body to the American Red Cross.

Within the agency, Buckley had never tired of saying that more should have been done to rescue Gougemann. His claim had won him no friends within the CIA hierarchy.

Doctors at Langley continued to assess how Buckley would react to captivity. The CIA specialists concluded Buckley's reactions would follow an almost immutable pattern.

"Even while Buckley was reeling under the blow from the briefcase, he would experience a feeling of disbelief, an instinctive denial that what was happening was actually occurring to him. That may have remained until his arrival at the hiding place his captors had prepared," said Dr Jerrold Post.

Desperate denial -- the only immediate psychological defence response open to Buckley -- would be replaced by a sudden and shattering reality. Dr Post told me Buckley's reactions could have included "frozen fright" and, most disturbing of all a need to talk to his kidnappers -- if only to try and convince them he should be freed.

For Buckley's captors that period was also one of critical importance. They would begin to feed back to him information they had earlier gleaned from Buckley, creating a feeling his captors were all-knowing and therefore all-powerful and that to resist them would be pointless.

The CIA doctors suggested of Buckley: a man bowed down by despair, suddenly aged, his face haggard, slowed up physically and mentally, his voice monotonous and every word and movement a fearful burden. He would feel constantly exhausted and any sleep would leave him unrefreshed. He would become most depressed in the small hours -- and then be at his most vulnerable, when his ability to resist every slight pressure would be at its lowest. Self-accusation would be at its most destructive and his lack of hope at its peak.

Buckley's mental agony could be accompanied by other symptoms: loss of appetite and constipation, followed by a growing feeling the only solution for him was suicide. No one could guess how long that feeling would last but at some point would come another shattering self-discovery. Not only was resistance manifestly impossible, but so was escape. That would be the point when he might regard cooperating with his captors.

The doctors continued to make their first cautious predictions. If his captors were sufficiently clever, they would recognise that Buckley's mood changes were part of a continuously carving-out and refilling of that inner void created by his kidnapping. Under their manipulation, his guilt could be re-directed away from himself so that he would come to believe that what was important was not so much what he had *done* -- failed to avoid being kidnapped -- but what he had *been*: a hated "Western Imperialist".

On Monday morning, May 7, 1984, the United States embassy in Athens received a video posted in the city. The wrapping, with its boldly printed name and address, was carefully undone and placed to one side. The VHS tape was a cheap German make commonly available throughout the Middle East. One of the mail room staff inserted the cassette in a video player. When the ambassador reviewed the tape, it was couriered to Langley.

In Casey's office, the director and senior staff began to view the video. It showed William Buckley undergoing torture. The absence of sound made it all the more shocking. The camera zoomed in and out of Buckley's nude and damaged body. He held before his genitalia a document marked "MOST SECRET". It was proof the burn-bag had failed.

Casey later remembered how "I was close to tears. It was the most obscene thing I had ever witnessed. Bill was barely recognisable as the man I had known for years. They had done more than ruin his body. His eyes made it clear his mind had been played with. It was horrific, mediaeval and barbarous".

The tape was handed over to technicians. They enlarged frames to try and establish the background against which Buckley had been filmed. They decided it was rough-plastered stone, suggesting the filming had taken place in a cellar. The wrapping paper was the kind Mediterranean shopkeepers used to wrap groceries. The handwriting suggested the writer was semi-literate.

The agency's pharmacologists took over. They concluded Buckley showed symptoms of being drugged; his eyes were dull and his lips slack. His gaze was of a person deprived of daylight for some time. He continuously blinked as if he had great difficulty in adjusting to what appeared to be not a very powerful photo-flood used to illuminate him for filming. They were certain Buckley had spent long periods being hooded. Buckley bore chafe marks on his wrists and neck suggesting he had been tethered with a rope or chain. A careful study of every inch of visible skin revealed puncture marks indicating he had been injected at various points. x

The second video arrived twenty-three days later. This time it was posted to the United States Embassy on Via Veneto in Rome. The tape was air-couriered to Washington.

The video had been shot against a similar background as the first one. It revealed Buckley continued to be horrifically treated. There was sound on the tape. Buckley's voice was slurred and his manner noticeably more egocentric as if not only the world beyond the camera, but his immediate surroundings, held increasingly less interest for him.

The pharmacologists found it impossible to decide which drugs had been used. any of a dozen of those powerful agents could have made him appear sedated and stupefied. His voice was fuzzy and he appeared often unable to shape words. His hands shook and his legs beat a tattoo on the floor as he mumbled pathetic pleas to be exchanged under a guarantee the United States would remove "all of its influences" from Lebanon and would persuade Israel to do the same.

Specialists tried to decide how long Buckley could survive. His last agency medical records showed he was physically fit. But no one could say how his defence mechanisms would respond to anxiety attacks, nightmares, and the overwhelming sense of helplessness. While drugs would have an enormous impact on Buckley's mood and behaviour, they might leave no permanent damage if he was recovered soon enough. The possibility gave added impetus to the plans beginning to take shape elsewhere within the Cia, in the Pentagon, the State Department and, ultimately, the White House. Casey repeatedly told colleagues they should see Buckley's release as the agency's personal crusade. "It is partly a matter of esprit de corps -- we look after our own," was the Director's constant refrain.

During his first weeks in captivity, William Buckley was hidden in a succession of cellars in West Beirut, each soon filled with the stench of his body waste, misery and, no doubt, fear.

On Friday, October 26, 1984, two hundred and twenty-four days since Buckley was kidnapped, a third video arrived at the Cia. The tape was even more harrowing than its predecessors. Buckley was close to a gibbering wretch. His words were often incoherent; he slobbered and drooled and, most unnerving of all, he would suddenly scream in terror, his eyes rolling helplessly and his body shaking. From time to time he held up documents, which had been in his burn-bag, to the camera. Then delivered a pathetic defence of his captor's right to self-determination in Lebanon.

Specialists reviewed the tape to try and decide whether he was already resigned to inevitable death. The specialists wondered if he had put aside the normal Christian abhorrence to suicide and overcome the memory of his formative years when, as a devout Catholic boy, he had listened to his priest speak of the Hell which faced those who took their own lives. Would he remember he had been told his work permitted suicide as the ultimate means to protect the Cia's secrets?

There was no indication the ruined figure on the video remembered that as he pleaded to live in exchange for the patently impossible demands of his captors.

The specialists tried to estimate the level of anxiety in Buckley's voice. It was clear he could no longer confront the sheer terror of his situation. Its magnitude had overwhelmed him. For hours the specialists considered whether his words showed "true guilt" or "neurotic guilt". They used a language no outsider could readily comprehend as they tried to make distinctions over how much in his case "the human order of being is disturbed", and how far he might have experienced "existential guilt arising from a specific act", in his case revealing secrets to his captors. They returned to consider whether Buckley not only accepted but yearned for the inevitability of death.

William Buckley's kidnapping was into its second year by the spring of 1985.

The Cia consensus was that he would be blindfolded and chained at the ankles and wrists and kept in a cell little bigger than a coffin.

He would, if he was lucky, be fed twice a day: early in the morning and some time after dark. He would not know the time because his watch, like all his personal belongings, would have been taken from him.

From close study of the video other clues had emerged. His loss of weight was marked between the first and last tape, perhaps as much as thirty pounds. His drugging was evident.

How had he spent those long, dreadful hours in isolation? One way could have been to try and remember some of his training exercises, designed to help him if captured. There was the one where he had to try and recall as many passages as possible from the Bible, from his favourite books, or dialogue from a film. anything at all to link him with the past, to remind him there was a world to return to, his psychologist/instructor had said.

Had Buckley managed to do this? Had he been able to decipher time, the passing of an hour, a half day, a day, a week, a month even?

In training he had shown himself able to calculate the hours. But a week? a month? Had he learned to cope with silence in the stifling darkness of his cell-coffin? again, there was a way. He had been taught to recall conversations and play back in his mind both sides, his and the person he had spoken to. again he had shown a certain aptitude for that in training. But no matter how realistic that was, it would still not match the reality of captivity.

Over the past two years, speculation had died -- just as some people in Langley thought it would be best if Buckley was dead rather than he should have to go on enduring.

When his name was mentioned and his fate speculated upon, colleagues reminded each other that everything possible had been done to retrieve him. "Short of sending in the Marines to fight their way street-by-street through West Beirut, there was nothing else we could have done," was a commonly-held view.

Only in William Casey's suite on the seventh floor of Langley had hope refused to be extinguished. He had rejected the proposal made a year after Buckley had been kidnapped that his name should be officially added to the list of Cia agents killed or missing on duty. Their fate was commemorated by small stars carved into the marble walls in the Cia main lobby. Before Buckley had vanished, there had been over fifty such stars, each representing an officer who had lost his or her life in the service of the agency. Since then a further half dozen had been added. But Casey had mumbled it was too soon to include Buckley among the display.

The director stubbornly clung to the hope Buckley was being kept alive for a trade off. The idea had taken root in his mind when the Israeli ambassador in Washington had told Casey that a number of Israel's own prisoners, who had been captured in various wars with its arab neighbours, were being kept alive in Syria and Iran as barter for future exchanges.

Encouraged Casey had sat, often late into the night, at his desk going over all the reports on the hunt for Buckley. Reading the files, it had not been hard for Casey to imagine Buckley chained in some dungeon deep beneath the rubble of West Beirut. No satellite camera, however powerful, would be able to penetrate that far down. By now Buckley would be emaciated and probably kept in total darkness.

The focus of the search had remained on Lebanon. But in Friday prayers the priests in the mosques had given up referring to *Buck-lee*. His name, once on the lips of almost everyone in West Beirut, was now rarely heard.

Reports from foreign diplomats in the city all said the same thing: while the other Beirut hostages still clung to life in the bowels of the infamous "Beirut Hilton" -- a series of cells scooped out deep beneath the rubble of West Beirut -- of Buckley there was not even a whisper.

There had been a rumour that Buckley had been transferred to a Hezbollah redoubt out in the Beka'a Valley. another rumour said he had been secretly flown to Tehran for interrogation.

Finally there were no more rumours to track down. Even the newspapers, which had once routinely recycled old stories about the kidnapping, had no new spin to put on it.

Yet William Casey still would not allow himself to give up. Everything that made him what he was -- his quality of mind, his healthy scepticism and detachment -- convinced him that Buckley was better off alive than dead for his captors. as long as he lived, Buckley had a value for them.

x

By april 1985, Casey became increasingly attracted to the idea of using Israel to recover William Buckley. It had been done before, notably after the 1965 Suez War. Mossad's chief, Meir amit, had written to Egypt's then president, Gamal abdul Nasser, asking him to exchange two Israeli spies in return for hundreds of Egyptian prisoners-of-war captured in the Six Day War. Initially Nasser had refused. Finally he had asked that the POWs be freed first. amit had agreed. The Egyptians were taken by trucks to the edge of the Sinai Desert where they were transferred to Egyptian buses. Two days later the two Israeli spies were back in Tel aviv.

Casey knew there had been other occasions when similar swaps had been organized by Mossad chiefs. and none of them was more astute than Mossad's present Director General, Nahum admoni.

While Casey knew that admoni had a deep-seated suspicion of US intentions in the Middle East, his own personal relationship with the Mossad chief was cordial.

Late in april 1985, Casey flew to Tel aviv. admoni had been at the airport to meet him.

Once Casey had settled into his Tel aviv seafront hotel, he told admoni the purpose of his visit: to see if Israel would go along with a deal to swap Buckley for arab prisoners held in Israeli prisons.

Casey was to recall admoni said it was a "no go area". With that avenue firmly closed, Casey had asked if it was possible for Mossad to find out if Buckley was dead?

Over the next few days, admoni had introduced Casey to some of the key Mossad operatives with up-to-date knowledge of Lebanon. They had included David Kimche who until recently had been in charge of Mossad's .♦♦Lebanese account'. He had no doubt: Buckley was dead. Rafi Eitan, a former Director of Operations for Mossad, held a similar view. So did admoni.

"Buckley's over and done with," admoni said as he drove Casey back to the airport to fly back to Washington.

The news Casey had gone on what had turned out to be a fruitless mission had brought to the surface questions which had been simmering for some time in Langley.

The impression had gotten around that Casey regarded Buckley as more important than just an agent gone missing. People started to ask more pointedly what was so special about Buckley that the Director, beset with a hundred and more urgent and important matters, appeared to be making Buckley his special case?

There were those who recalled it had been the same when Dulles ran the Cia. In those days Buckley, gung-ho from the Korean War, had been treated like a favourite son by Dulles, given access that at the time even senior men had envied.

Others remembered the way Buckley had been allowed to operate in Vietnam. He had come and gone more or less as he pleased and set his own agenda. In the end others in the Cia had been badly burned over what america had done in that war. But Buckley had come out without so much as a stain on his character. In the closed world of Langley, that alone was enough to raise eyebrows.

a Cia officer agreed to talk to me on the understanding he would not be identified, said: "The blunt truth is that Buckley wasn't liked, not liked at all. There were people who hated him at the Cia, who were glad that he went to Beirut. Now that he has vanished in that sink hole, why the hell should they go looking for him?"

More certain, a number of factors had come together to settle Buckley's fate. He understood, better than anyone, that to survive within the agency you had to cope with the office politics, the battles for turf, the back-stabbing. His way of dealing with any of that was to fight back -- hard. It had not made him popular but then, as he used to say: "I'm not running for Miss Langley Pageant Queen." He had also acquired a record of success that was almost unmatched by any agent in the history of the agency. That had led some people to envy him.

Difficult, ruthless, short-tempered, yes, Buckley was all those things, and he made no apology for being so. Shortly before going to Beirut he had expressed his attitude to me: "I try and do my work well, but I also understand that gratitude is not part of doing it."

By late May 1985, William Casey had finally given up hope of getting Buckley back. Oliver North, the former Marine, was the lynchpin of a plan to recover all the US hostages held in Lebanon. He was working closely with amiram Nir, an Israeli counter-terrorism expert. Nir's sources had told him the decision over Buckley's fate had been made at a meeting of the Hezbollah leadership. Nir had told North that his contacts had no other information to offer, except they were certain Buckley was now dead.

No one knows for certain when William Buckley did die. The likeliest date is sometime during the night of June 3, 1985, the 444th day of his captivity.

David Jacobson, who had been the director of the Beirut University Hospital and had been kidnapped some months before and incarcerated in the "Beirut Hilton", believed Buckley was in a nearby cell on that night. When he was released some 17 months later, Jacobson had tried to recall what he had heard in the stifling darkness of that June night.

"The man was an american. Of that I have no doubt. But he was in a very bad way, delirious and coughing. It was hard for me to make out what he was saying because I myself was hooded. Then, in the end there was just this long silence. after a while I heard the guards shouting in arabic and then what sounded like a body being dragged away," Jacobson told me.

In October 1985, confirmation that Buckley was dead came in an announcement by the Hezbollah. accompanying it was a photograph of his corpse, together with copies of some of the once secret documents from Buckley's burn bag. The announcement added that the body would not be handed over to the United States for burial.

Casey went to the White House to break the news to President Reagan. afterwards the two men had sat for a while in silence in the Oval Office. Finally the President said: "The sooner we get all those other hostages out of Beirut, the better. Do whatever it has to take, Bill."

The arms-sales-for-hostages deal which became known as Irangate had gone into overdrive. But what followed was for another day.

Bill Buckley had served the Cia for thirty years, joining at a time when the agency had been part of the american dream of creating a new world. He had died at a time when the agency had become increasingly a bureaucracy that was driven by a belief that technocracy and qualitative analysis were the twin gods who ruled over Langley. In that world Buckley had become an outsider. Buckley's vision of america was that its strength was in being deliberately separate from the world. The america he wanted was one of Midwestern virtues that had largely gone and the all-embracing Christianity of his youth no longer was there.

Despite being a through-and-through professional, his ideals were no longer those of his paymasters. To them there was something of a past long gone about Bill Buckley; he was like a mediaeval knight left alone on a battlefield that had moved on. ari Ben-Menashe, the former Israeli intelligence officer who had briefly known Buckley, saw him "as someone who still clung to his sword while the rest of us were using laser guns, but he was a decent man who was a faithful servant of the agency and his country."

In the intervening years since the Hezbollah announcement, there were conflicting reports that Buckley's body had been burnt or had been buried under the foundations of one of the new hotels going up along Beirut's seafront to once more attract tourists to a city which still styled itself as the Paris of the Near Orient. When none of these reports could be verified, whispers ran through the alleys of West Beirut that the americans would pay big money for the *Buck-lee* corpse.

Early in October 2002, two young arabs drove a battered van out of West Beirut heading for the Beka'a Valley. They reached the spot they were looking for some hours later. It was marked on a piece of paper for which they had paid a substantial sum. The man who had sold them the paper had boasted he had been one of the guards who had watched *Buck-lee* die and had brought him to this spot for burial.

One using a pick, the other a shovel, the youths began to dig. By late afternoon they had excavated a sizeable hole but had not come across even a bone. When darkness came, they dug on using the headlights of the van. Finally they gave up, realising they had been the victims of a con-man.

almost certainly, if he had been alive, that would have brought a smile to the lips of William Buckley.

ANNEX 44

154 F.Supp.2d 27
United States District Court,
District of Columbia.

Joseph M. JENCO, Personal Representative of the Estate of Lawrence M. Jenco, et al., Plaintiffs,
v.
ISLAMIC REPUBLIC OF IRAN, and the Iranian Ministry of Information and Finance, Defendants.

No. CIV A 00-549 RCL.

|
Aug. 2, 2001.

Synopsis

Kidnap and torture victim and his family members brought action against Islamic Republic of Iran and the Iranian Ministry of Information and Security (MOIS), which substantially funded and controlled fundamentalist group which kidnapped and tortured victim. Upon entry of default judgment, the District Court, Lamberth, J., held that: (1) defendants were not immune under Foreign Sovereign Immunities Act (FSIA); (2) victim and his siblings had claims for intentional infliction of emotional distress, but his 22 nieces and nephews could not recover; (3) victim was entitled to compensatory damages of \$5,640,000; (4) each sibling was entitled to compensatory damages of \$1.5 million for their emotional distress; and (5) \$300 million was an appropriate amount of punitive damages.

Judgment in accordance with opinion.

Attorneys and Law Firms

*28 Steven Perles, Thomas Fortune Fay, Washington, DC, for plaintiffs.

MEMORANDUM OPINION

LAMBERTH, District Judge.

*29 On March 15, 2000, the plaintiffs¹ filed a multi-count complaint alleging that the defendants were responsible for Lawrence M. Jenco's kidnapping, detention, and torture over a 1 1/2 year period. The defendants, despite being properly served with process, failed to answer this charge in any way. Thus, the Court entered the defendants' default on January 5, 2001.

Notwithstanding this entry of default, a default judgment against a foreign state may not be entered until the plaintiffs have "establishe[d] [their] claim or right to relief by evidence that is satisfactory to the Court." 28 U.S.C. § 1608(e). Thus, the Court held a bench trial to receive evidence from the plaintiffs. Again, the defendants failed to appear.

Based on the evidence presented to the Court, and the law applicable to this case, the Court finds a default judgment merited. Further, the Court awards appropriate compensatory relief. Finally, the Court finds that the Estate of Fr. Jenco is entitled to punitive damages.

I. FINDINGS OF FACT

A. Father Jenco's Experience²

In early 1985, Lawrence M. Jenco, an ordained priest in the Catholic church, was working in Beirut, Lebanon as the Director of Catholic Relief Services. On the morning of January 8, he was abducted by five armed men and imprisoned for the next for 564 days. After his release, he returned to the United States and served as a parish priest until his death on July 19, 1996.

From the moment he was abducted, Father Jenco was treated little better than a caged animal. He was chained, beaten, and almost constantly blindfolded. His access to toilet facilities was extremely limited, if permitted at all. He was routinely required to urinate in a cup and maintain the urine in his cell. His food and clothing were spare, as was even the most basic medical care

He also withstood repeated psychological torture. Most notably, at one point, his captors held a gun to his head and told him that he was about to die. The captors pulled the trigger and laughed as Father Jenco reacted to the small click of the unloaded gun. At other times, the captors misled Fr. Jenco into thinking he was going home. They told him to dress up in his good clothes, took pictures of him, and then said “ha, ha, we're just kidding.” Fr. Jenco Interview, Plaintiffs' Exhibit 21, at 93.

Even after his release and return to the United States, Fr. Jenco continued to suffer the effects of his captivity. For a *30 long period after his return, Father Jenco remained underweight and quite weak. Father Jenco's nephew, David Mihelich, testified that his uncle's disposition was noticeably milder, and indeed never returned to its pre-captivity state. As well, Christopher Morales, a Special Agent with the United States Secret Service, became a close friend of Jenco's after interviewing him about his experience in Lebanon. Agent Morales testified that he witnessed Father Jenco have three separate “flashbacks”, that is, moments where Jenco appeared to be aloof of his surroundings and somewhat possessed and disturbed by different images or experiences. *See* Feb. 15, 2001 Tr. at 10–13.

In sum, the last 11 years of Fr. Jenco's life were indelibly marred by his kidnapping and torture. With that established, the Court turns to the next issue: who were his captors?

B. Father Jenco's Captors and Their Connections to the Iranian Government

The testimony of numerous witnesses at trial convinces the Court that Father Jenco's captors were members of the Islamic group Hizbollah and that Hizbollah was funded and controlled by the Iranian government and the Iranian Ministry of Information and Security.

1. Fr. Jenco's Captors

Based on the evidence presented at trial, it is clear that Fr. Jenco was kidnapped and detained by the Islamic fundamentalist group Hizbollah. This conclusion is supported by the testimony of several witnesses. For example, Jenco's co-hostage, Terry Anderson, testified that their captors were “very, very pro-Iranian,” and that Iranian Revolutionary Guards were involved in the kidnapping and detention of the hostages. *See* Tr. at 116. Anderson further testified that he and his co-hostages knew that they were being held in Hizbollah territory, and at one point, were even held at Hizbollah headquarters. *See* Tr. at 116. Moreover, several years after his release, Anderson interviewed the secretary general of Hizbollah who as much as admitted to the kidnappings. *See* Tr. at 118. Thomas Sutherland, another co-hostage of Jenco's, also testified as to the identity of his captors. The captors, according to Sutherland, were clearly part of an Islamic Jihad group, who, when the death of the Ayatollah Khomeini was reported, wept quite openly. *See* Tr. at 238.

Perhaps that most persuasive evidence that Jenco's captors were members of Hizbollah came from Ambassador Robert Oakley and Dr. Patrick Clawson. Oakley, a former advisor to the National Security Council on Middle East affairs, testified bluntly on this subject. Consider the following colloquy from trial:

Q. Is there any doubt in your mind [Ambassador Oakley] that through that period of 1985 through 1991 that the Hizbollah, backed by Iran, financially and otherwise, was holding Tom Sutherland as a hostage?

A. No, there [is] none.

See Tr. at 21. Dr. Patrick Clawson, an experienced researcher and writer on Iranian politics, testified similarly. When asked by the Court whether Sutherland, Jenco's co-hostage, was "initially seized by Hizbollah ... and held by them throughout the time?", Clawson responded "Yes, your Honor." Tr. at 58.

Further support for the conclusion that Fr. Jenco was captured and detained by Hizbollah is provided by precedent. For instance, in *Anderson v. The Islamic Republic of Iran*, 90 F.Supp.2d 107, 113 (D.D.C.2000), the Court found that Terry Anderson, Sutherland's co-hostage for almost *31 his entire captivity, was captured by Hizbollah and that "Iran provided Hizbollah³ with funding, direction and training for its terrorist activities in Lebanon, including the kidnapping and torture of Terry Anderson." See also *Cicippio v. The Islamic Republic of Iran*, 18 F.Supp.2d 62, 68 (D.D.C.1998) (finding that Hizbollah was responsible for the kidnapping and detention of David Jacobson, a co-hostage of Sutherland, Anderson, and Jenco).

2. Hizbollah's Connection to the Iranian Government

In addition to finding that Fr. Jenco was seized by Hizbollah, the Court also finds that The Islamic Republic of Iran and the Iranian MOIS provided support, guidance, and resources to Hizbollah. The most persuasive testimony on this issue came from Jenco's experts: Ambassador Oakley, Robert McFarlane, and Dr. Clawson. Ambassador Oakley testified that "radical elements highly placed within the government of Iran are giving operational policy advice to terrorists in Iran, specifically terrorists operating under the name Islamic Jihad or Hizbollah." Tr. at 19. Similarly, Robert McFarlane, former National Security Advisor, testified that Hizbollah was a "terrorist group ... formed in the early 1980s under the sponsorship of the government of Iran." Tr. at 29; see also Tr. at 31 (opining that Hizbollah was formed with the "volunteering of [Iranian] financial support" as well as "Iranian personnel"). As well, Dr. Clawson testified that the Iranian government and the Iranian MOIS were behind the formation and funding of Hizbollah, and that Hizbollah is very much under the control of the Iranian government. See Tr. at 41–42. Finally, Middle East expert Dr. Reuven Paz testified that almost all of Hizbollah's activities—whether social, religious, or terrorist—were funded by the Iranian government. Dr. Paz added that the Iranian government also provides Hizbollah substantial non-financial support, such as arms and ammunition. See Videotape Testimony of Ruven Paz, Feb. 7, 2001.

C. The Pain and Suffering of Father Jenco's Family

While Father Jenco was being held prisoner, his many siblings and relatives banded together and fought for his release. The family made a practice of meeting every Monday night to discuss what steps they could take to help secure his release. Family members took on various responsibilities, such as communicating with the public, dealing with the media, maintaining contact with the State Department, and raising money to cover the various costs of such a massive effort.

Andrew Mihelich and John Jenco, both nephews of Fr. Jenco, testified that, because of their massive dedication to free Fr. Jenco, the whole family, in effect, became a hostage in one way or another. As a result, many of the traditional family events, such as birthdays, graduations, or religious holidays were overshadowed-or overlooked altogether-on account of the campaign to free Fr. Jenco. Apart from the campaign, the family felt the very personal loss of not having their beloved relative at many family milestones, such as weddings, births, and baptisms. On the whole, according to John Jenco, the family spent the 19 months of Fr. Jenco's captivity on an emotional roller coaster, never knowing how close or far Fr. Jenco was to being released, not to mention returning home unharmed.

*32 Jenco relatives also testified as to the specific effects that the captivity had of Fr. Jenco's brother, John Jenco. John Jenco Jr. testified that, from the first day of captivity to the last day of his own life, John Jenco Sr. was distraught in a way he had never been before. He was able to celebrate the return of Fr. Jenco, but was never fully able, according to John Jenco Jr., become himself again. Similarly, Joseph Jenco testified that the stress of the captivity on Verna Mae Mihelich likely was a factor in her premature death.

II. CONCLUSIONS OF LAW

Based on the events described above, the plaintiffs make the following allegations:

- (1) The estate of Fr. Jenco alleges battery, assault, and false imprisonment.
- (2) All plaintiffs allege the intentional infliction of emotional distress.

Given these claims, the Court is faced with the following three questions, which it answers in the order presented:

- (1) Are The Islamic Republic of Iran and the Iranian MOIS, immune under the Foreign Sovereign Immunities Act from the alleged claims?;
- (2) Are the Islamic Republic of Iran and the Iranian Ministry of Information and Security (if not immune) liable under the claims alleged?; and
- (3) If the defendants are found liable, to what damages are the plaintiffs entitled?

A. Foreign Sovereign Immunity⁴

The Foreign Sovereign Immunities Act (“FSIA”) grants foreign states and their agents immunity from liability in United States courts. *See* 28 U.S.C. § 1602 *et seq.* In 1998, however, Congress specifically suspended this immunity for personal injuries “caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources ... for such an act.”⁵ 28 U.S.C. § 1605(a)(7). The injurious act (or the provision of resources in support thereof), to give rise to liability, must be committed by “an official, employee, or agent of a foreign state, while acting within the scope of his or her office.” 28 U.S.C. 1605(a)(7).

The Court finds that, based on the evidence presented at trial and recounted above, Lawrence M. Jenco was taken hostage and tortured within the meaning of 28 U.S.C. § 1605(a)(7). That Fr. Jenco was taken hostage and detained for 19 months is, of course, patently undeniable. With respect to torture, the Court finds that the deprivation of adequate food, light, toilet facilities, and medical care for 564 days amounts to torture within the meaning of section 1605(a)(7).⁶

***33** The Court next finds that, based on the evidence presented at trial and recounted above, Fr. Jenco was kidnapped by the Islamic fundamentalist group Hizbollah and that the Islamic Republic of Iran and the Iranian MOIS provided “material support or resources” to Hizbollah within the meaning of 28 U.S.C. § 1605(a)(7). This conclusion is squarely buttressed by precedent.⁷

In summary, the Court finds that Fr. Lawrence Jenco was taken hostage and tortured by the Islamic fundamentalist group Hizbollah. The Court further finds that the defendants, The Islamic Republic of Iran and the Iranian MOIS, “provi[ded] ... material support or resources ... for [these] acts.” 28 U.S.C. § 1605(a)(7). The Court also finds that the provision of resources was an act committed by “an official, employee, or agent of a foreign state, while acting within the scope of his or her office.” 28 U.S.C. 1605(a)(7). Based on these findings, the Court therefore concludes that the defendants are not immune from liability in this Court.

B. Liability

Under 28 U.S.C. § 1606, a “foreign state ... not entitled to immunity ... shall be liable in the same manner and to the same extent as a private individual under like circumstances.” Applying standard rules of liability, the Court finds the defendants liable on most, but not all, counts alleged in the plaintiffs' complaint. In making this conclusion, the Court applies federal common law. *See Flatow v. The Islamic Republic of Iran*, 999 F.Supp. 1, 14–15 (D.D.C.1998) (choosing federal common law after a federal choice of law analysis).

1. Battery

According to the Restatement (Second) of Torts, a defendant has committed battery if “he acts intending to cause a harmful or offensive contact with [a] person”, and a “harmful contact with the person ... directly or indirectly results.” Restatement (Second) of Torts, § 13 (1965); *see also Sphere Drake Ins. P.L.C. v. D'Errico*, 246 F.3d 682, 2001 WL 135670, at *2 (10th Cir.2001); *United Nat. Ins. Co. v. Penuche's, Inc.*, 128 F.3d 28, 32 (1st Cir.1997).

Based upon the evidence presented in open court, the Court finds that Lawrence M. Jenco suffered harmful contact, and that that contact was the result of intentional acts attributable to both the Islamic Republic of Iran and the Iranian MOIS. Thomas Sutherland and Terry Anderson testified as to the typical treatment of *34 hostages, which included beatings and rough treatment. These acts, which were intentionally committed by Jenco's captors, are attributable to the defendants because the defendants substantially funded and controlled Hizbollah. *See* Section I.B.2 and note 7, *supra*. As such, the defendants are liable under the tort doctrines of *respondeat superior* and joint and several liability. *See Flatow*, 999 F.Supp. at 26–27 (finding The Islamic Republic of Iran and the Iranian MOIS liable under the doctrines of *respondeat superior* and joint and several liability).

Thus, finding that Lawrence Jenco did indeed suffer a harmful contact, and that the acts causing such contact were attributable to the defendants, the Court finds the defendants liable for the battery of Jenco.

2. Assault

According to the Restatement (Second) of Torts, a defendant has committed an assault if “he acts intending to cause a harmful or offensive contact with [a] person, or an imminent apprehension of such a contact” and the person is “thereby put in such imminent apprehension.” Restatement (Second) of Torts, § 21 (1965); *see also Truman v. U.S.*, 26 F.3d 592, 596 (5th Cir.1994); *Manning v. Grimsley*, 643 F.2d 20, 22 (1st Cir.1981).

Based upon the evidence presented in open court, the Court finds that Lawrence Jenco was put in an imminent apprehension of harmful or offensive conduct, and that the apprehension was the result of intentional acts attributable to both the Islamic Republic of Iran and the Iranian MOIS. The most notable instance of such conduct is the mock execution which the Hizbollah captors administered to Jenco. Such behavior has long been regarded as an archetypal assault. *See Keeton et al., Prosser & Keeton on Torts*, § 11, at 46 (5th ed.1984).

These acts, which were intentionally committed by Jenco's captors, are attributable to the defendants because the defendants substantially funded and controlled Hizbollah. *See* Section I.B.2 and note 7, *supra*. As such, the defendants are liable under the tort doctrines of *respondeat superior* and joint and several liability. *See Flatow*, 999 F.Supp. at 26–27 (finding The Islamic Republic of Iran and the Iranian MOIS liable under the doctrines of *respondeat superior* and joint and several liability).

3. False Imprisonment

According to the Restatement (Second) of Torts, “[a]n actor is subject to liability to another for false imprisonment if

- (a) he acts intending to confine [a person] within boundaries fixed by the actor, and
- (b) his act directly or indirectly results in such a confinement of the other, and
- (c) the other is conscious of the confinement or is harmed by it.

Restatement (Second) of Torts, § 35 (1965); *King v. Crossland Sav. Bank*, 111 F.3d 251, 255 (2nd Cir.1997); *Richardson v. U.S. Dept. of Interior*, 740 F.Supp. 15, 26 (D.D.C.1990).

There is no question in the Court's mind, or anyone else's for that matter, that Lawrence Jenco was falsely imprisoned by Hizbollah for 564 days. Further, as explained above, *see* Section I.B.2 and note 7, *supra*, these acts are attributable to the defendants because the defendants substantially funded and controlled Hizbollah. As such, the defendants are liable under the

tort doctrines of *respondeat superior* and joint and several liability. See *Flatow*, 999 F.Supp. at 26–27 (finding The Islamic Republic of Iran and the Iranian MOIS liable under the doctrines of *respondeat superior* and joint and several liability). *35

4. Intentional Infliction of Emotional Distress

According to the Restatement (Second) of Torts, “one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress.” Restatement (Second) of Torts, § 46 (1986); see also *Holbrook v. Lobdell–Emery Mfg. Co.*, 219 F.3d 598, 600 (7th Cir.2000); *Ross v. Saint Augustine's College*, 103 F.3d 338, 343 (4th Cir.1996).

With respect to Fr. Jenco himself, the Court has little hesitation concluding that he suffered severe emotional distress at the hands of his captors, Hizbollah. The conduct of Hizbollah, in taking someone hostage for 564 days quite easily qualifies as extreme and outrageous. Further, there was substantial testimony as to the extreme stress of captivity, which even continued once Father Jenco was freed. See Feb. 15, 2001, Tr. at 5. Finally, as explained above, see Section I.B.2 and note 7, *supra*., these acts are attributable to the defendants because the defendants substantially funded and controlled Hizbollah. As such, the defendants are liable under the tort doctrines of *respondeat superior* and joint and several liability. See *Flatow*, 999 F.Supp. at 26–27 (finding The Islamic Republic of Iran and the Iranian MOIS liable under the doctrines of *respondeat superior* and joint and several liability).

With respect to the Fr. Jenco's six siblings, the Court finds that the defendants are liable for their emotional distress. First, there is significant evidence of emotional distress among the siblings. Joseph Jenco, Fr. Jenco's brother testified as to the great strain the captivity imposed on himself as well as his brothers and sisters. See Feb. 15, 2001, Tr. at 4–5, 19. As well, other witnesses testified as to the stressful and extensive publicity campaign, Tr. at 18–19, 30–32; the stress of false alarms that Fr. Jenco had been killed or freed, Tr. at 1; and constant fear that the campaign to free Fr. Jenco might also end up hurting him and the other hostages. Tr. at 27.

Second, the Court finds that the defendants either intended such distress to result, or acted in callous disregard of the risk that such distress would result. As the Court reasoned in *Sutherland v. The Islamic Republic of Iran*, 151 F.Supp.2d 27, 50 (D.D.C.2001), “when an organization takes someone hostage, it is implicitly intending to cause emotional distress among the members of that hostage's immediate family.” Thus, consistent with the reasoning in *Sutherland*, and the authority cited therein, the Court finds that Fr. Jenco's siblings suffered the tort of intentional infliction of emotional distress.

With regard to the emotional distress claims of Fr. Jenco's 22 nieces and nephews, the Court finds that they may not recover. In deciding emotional distress claims under federal common law, the Court has, for the most part, followed the Restatement (Second) of Torts. Section 46 of the Restatement (Second), entitled “Outrageous Conduct Causing Severe Emotional Distress”, states:

Where [extreme and outrageous] conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress

(a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or

(b) to any other person who is present at the time if such distress results in bodily harm.

*36 Restatement (Second) of Torts § 46 (1965). In *Sutherland*, the Court parted somewhat from the Restatement by permitting Thomas Sutherland's wife, Jean Sutherland, to recover for the severe distress she suffered during and after her husband's 6 1/2 years of captivity. Although she was in Beirut for most of the 6 1/2 years, it cannot be said that she was actually “present” at her husband's exposure to extreme and outrageous conduct. Nonetheless, the Court permitted her recovery because the defendants' intent to distress her was quite implicit in the nature of the defendants' conduct. In this respect, the holding was squarely on point with the analysis of the leading and most recent tort treatise:

If the defendants' conduct is sufficiently outrageous and intended to inflict severe emotional harm upon a person which is not present, no essential reason of logic or policy prevents liability.

Dan B. Dobbs, *The Law of Torts* § 307, at 834 (2000).

Nonetheless, that treatise itself admits that some lines must be drawn, if, for example, “millions of people who are not present ... watch the torture or murder of the President on television.” *Id.* In hostage cases, this Court finds that the line is best drawn according to the plaintiff's relationship with the victim of the outrageous conduct. That is, to collect for intentional infliction of emotional distress in cases such as this one, the plaintiff need not be present at the place of outrageous conduct, but must be a member of the victim's immediate family.⁸

The Court draws the line with respect to family relationship (and not presence) for two reasons. First, hostage cases are unique in that they implicitly involve a physical separation of the plaintiff from the victim of the outrageous conduct. As a matter of fact, a plaintiff's lack of presence is the *exact source* of his emotional distress. Thus, if the Court were to limit recovery in hostage cases using a “presence” test, plaintiffs would never recover despite there being extremely strong evidence of significant emotional suffering.

Second, comparing the presence test to the family relationship test, courts have been more willing to stretch the boundaries of presence than family relationship. Thus, while presence has often been found where the plaintiff merely had “substantially contemporaneous knowledge”, see *Nancy P. v. D'Amato*, 401 Mass. 516, 517 N.E.2d 824 (1988) (equating presence with “substantial contemporaneous knowledge of the outrageous conduct”), family relationship has been found lacking in unmarried cohabitants and present in married but separated spouses. See *Elden v. Sheldon*, 46 Cal.3d 267, 250 Cal.Rptr. 254, 758 P.2d 582 (1988) (finding family relationship lacking among co-habitants); *Planned Parenthood, Inc. v. Vines*, 543 N.E.2d 654 (Ind.App.1989) (finding family relationship intact despite spousal separation).

Applying the family relationship test to the claims of Fr. Jenco's nieces and nephews, the Court finds that their claims must fail. In deciding as such, the Court bears in mind the tremendous impact that Fr. Jenco's detention had on his nieces and nephews. As mentioned above, Fr. Jenco was sorely missed in his role as friend, uncle, and priest. Moreover, the effort to free Fr. Jenco caused further suffering in the many family events that went un-celebrated, or even unnoticed. But the Court *37 also must bear in mind the realities of tort law and the necessity of limiting recovery to a definable scope of individuals.

* * * * *

Having found the defendants liable on the counts described above, the Court next proceeds to the calculation of damages.

C. Damages

The Foreign Sovereign Immunities Act specifically permits plaintiffs suing under section 1605(a)(7) to pursue “money damages which may include economic damages, solatium, pain, and suffering.” 28 U.S.C. § 1605 note. After reviewing the arguments presented by the plaintiffs, and the law applicable thereto, the Court makes the following conclusions regarding damages.

1. Compensatory Damages

(a) Fr. Jenco

The Estate of Lawrence M. Jenco seeks compensatory damages for his battery, false imprisonment, emotional distress, economic loss, and loss of consortium. Based on the testimony presented in open court, the Court finds Fr. Jenco entitled to \$5,640,000.

In setting Fr. Jenco's damages at \$5,640,000, the Court follows the formula which has evolved as a standard in hostage cases brought under section 1605(a)(7). This formula grants the former hostage roughly \$10,000 for each day of his captivity. Thus, Terry Anderson, a co-hostage of Fr Jenco's who was detained for 2,540 days was awarded \$ 24,540,000. *See Anderson*, 90 F.Supp.2d at 113. Similarly, Joseph Cicippio, who was held hostage by Hizbollah for 1,908 days, received \$20,000,000; Frank Reed, who was held hostage by Hizbollah for 1,330 days received \$16,000,000; and David Jacobson, who was held hostage by Hizbollah for 532 days received \$9,000,000. *See Cicippio*, 18 F.Supp.2d at 64, 70.

Any skepticism about the adequacy of this formula must overcome the steep presumption that Congress has tacitly approved its use. In all of the above cases, the formula was developed and applied *prior* to October 28, 2000. On that day, Congress enacted the Victims of Trafficking and Violence Protection Act of 2000. The Act obligated the United States Treasury to pay terrorist victims—including the hostages described above—the amount awarded them at trial. Congress must be presumed to have been aware of the damages formula, and its failure to alter or amend it in any way amounts to a tacit approval of the scheme. *See Flood v. Kuhn*, 407 U.S. 258, 283–284, 92 S.Ct. 2099, 32 L.Ed.2d 728 (1972) (declining to overturn prior precedent where Congress “by its positive inaction” has allowed prior decisions to stand). Thus, this Court finds \$5,640,000 to be an appropriate award for the Estate of Lawrence Jenco.

(b) Fr. Jenco's Siblings⁹

Fr. Jenco's four surviving siblings and the estates of his two deceased siblings seek damages for their emotional distress. Based on the testimony presented to the Court, the Court finds all siblings entitled to \$1.5 million each.¹⁰

*38 Out of the many cases brought by U.S. citizens against Iran for terrorist acts, only four have considered the issue of awarding damages to the victim's siblings. In each of those cases, the Court awarded damages to the siblings. In *Flatow v. The Islamic Republic of Iran*, 999 F.Supp. 1, 32 (D.D.C.1998), a case involving the bombing death of Alisa Flatow in Israel, this Court awarded \$2.5 million to each of Alisa's siblings. Similarly, in *Eisenfeld v. The Islamic Republic of Iran*, 2000 WL 1918779 (D.D.C.2000), another bombing case resulting in the deaths of two U.S. citizens, this Court awarded \$2.5 million to each of the victims siblings. Finally, in *Elahi v. The Islamic Republic of Iran*, 124 F.Supp.2d 97, 109–12 (D.D.C.2000), a case involving the assassination of a U.S. citizen, Judge Joyce Hens Green awarded each of the victim's siblings \$5 million. Particularly compelling to the Court in *Elahi* was the finding that, although only a sibling, the victim in fact fulfilled the role of father for his brothers, resulting in an extraordinarily close relationship.

In the case at hand, there has been extensive testimony as to the grief that Fr. Jenco's siblings suffered during, and to some extent after, his captivity. There has also been repeated testimony as to the family's special pride in having a Roman Catholic priest as a family member, as well as special enjoyment in having him perform sacraments for the family. These factors suggest that the siblings' damages in this case should approach the damages in *Elahi*, where there was demonstrative evidence of a very special relationship between the victim and his siblings.

This case however is distinguishable from *Elahi*, as well as *Flatow* and *Eisenfeld*, in that Fr. Jenco returned alive to be with his family for nearly a decade before his death. Without underestimating the grief suffered while Fr. Jenco was in captivity, or the grief that accompanied the change in his disposition after his return, it was surely a monumental relief to have him back home in Joliet. The Court has little doubt that the siblings in *Flatow*, *Eisenfeld*, and *Elahi* would pay substantial sums just to have a single day spent with their deceased sibling. Thus, the safe return of Fr. Jenco after his captivity cannot be underestimated.

2. Punitive Damages

The Court is finally faced with issue of whether punitive damages should be levied against the defendants. According to the Restatement (Second) of Torts, such damages are merited in cases involving “outrageous conduct.” *See* Restatement (Second) of Torts, § 908(1) (1965). In the case at hand, the Court has little hesitation finding that the depraved and uncivilized conduct of The Islamic Republic of Iran and the Iranian MOIS qualifies as outrageous conduct. As the Court found in *Sutherland v. The Islamic Republic of Iran*, the defendants' conduct

would seem to be the quintessential embodiment of outrageousness. They stole a human being from his family and—for [over a year]—blindfolded him, chained *39 him, beat him, and deprived him of adequate food, clothing, and medical care. In most places, it is unlawful to treat even a stray dog in such manner.

Sutherland, 151 F.Supp.2d at 51–52.

Thus, finding that punitive damages are merited, the Court proceeds to determine the appropriate amount. In determining the level of punitive damages to impose, a court is to look at four factors: “the character of the defendant's act; the nature and extent of harm to plaintiff that the defendant caused or intended to cause; the need for deterrence; and the wealth of the defendant.” *Flatow*, 999 F.Supp. at 32 (citing Restatement (Second) of Torts § 908(1)–(2) (1965)). With regard to the first factor, the Court has just noted the exceedingly heinous nature of the Iranian MOIS's acts. With regard to the second factor, the far-reaching and long-lasting damages caused by these acts were explained above in the Court's Finding of Facts.

With regard to deterrence, there is a mixture of opinion whether a monetary penalty from a United States court will have a deterrent effect on the Iranian MOIS's behavior. Some argue that the Iranian MOIS operates in an extrajudicial world, and that judicial penalties will therefore be ineffectual; others argue that the MOIS's extrajudicial behavior is exactly the reason to levy greater and greater penalties on the them. A third view was proffered by Dr. Clawson at trial: the failure to impose substantial punitive damages after several previous impositions might be construed by MOIS as a capitulation by the United States in the debate over the legitimacy of hostage-taking. As such, the failure to impose punitive damages might actually be construed as a condonation of MOIS's rogue behavior. *See* Tr. at 74.

Finally, with regard to the wealth of the defendants, the Court finds the defendants quite wealthy. As explained above, the Iranian MOIS has approximately 3000 employees and is the largest spy organization in the Middle East. As Dr. Clawson testified at trial, the Iranian government funnels most of its terrorist dollars, somewhere near \$100 million annually, through the Iranian MOIS. *See* Tr. at 61. This suggests that not only is the Iranian MOIS wealthy, but the Iranian government, its supporter, is at least as large and wealthy. Thus, at the very minimum, the defendants are undoubtedly in possession of many hundreds of millions dollars.

The Court, guided by Dr. Clawson's expert opinion as well as previous decisions on substantially similar cases, finds \$300,000,000 in punitive damages to be merited. That amount is thrice the annual funding provided by the Iranian government to MOIS. Not only is Dr. Clawson's expert opinion persuasive, the Court is not at all convinced that punitive damages are wholly ineffectual. Previous cases awarding punitive damages against MOIS have only been decided in the past three years. Since that time, there have been no reported hostage incidents involving Hizbollah and United States nationals. Further, it is doubtful that the full punitive effect of the prior damage awards have yet taken hold. The process of collecting an international debt is a long and laborious process, and it is therefore quite possible that the deterrent effect of the fines has yet to be fully felt.

Further, \$300 million is an amount consistent with the punitive damages levied several times in the past. *See Anderson*, 90 F.Supp.2d at 114 (awarding \$300 million in punitive damages against MOIS for the kidnapping and detention of Terry Anderson); *Flatow*, 999 F.Supp. at 34 (awarding \$225 million—three times Iran's *40 reported expenditure on terrorist activities—to the estate of a terrorist victim).

III. CONCLUSION

Today, the Court hopes to make whole, as much as legally possible, those hurt by the captivity of Fr. Jenco. Although judicial remedies will greatly support the plaintiffs' recovery, full recovery can only be attained by each plaintiff in his own way. Perhaps the words of Fr. Jenco himself are most appropriate on this issue. In an interview after his release, Fr. Jenco recalled his attempt at keeping a set of clothes clean so that he could wear them on the day of his release. He ultimately failed in this effort, but nonetheless garnered strength from it.

And those are the interesting things, clean things in life, you know, there's symbolism to it. That I was clinging to. After a while, I just gave it up, gave up the whole idea up. I was down to a button at the end. And I just threw it away and I said to God you can have the button, and that was kind of the break for me. To cling to nothing. And I've learned now not to cling to [any]thing.

Jenco Interview, June 24, 1988, at 93–94.

Thus, for the foregoing reasons, the Court finds that defendants shall be jointly and severally liable to the following entities for the following compensatory damages:

The Estate of Fr. Jenco	\$ 5,640,000
The Estate of John F. Jenco	\$ 1,500,000
The Estate of Verna Mae Mihelich	\$ 1,500,000
Joseph M. Jenco	\$ 1,500,000
Elizabeth J. Blair	\$ 1,500,000
Mary S. Francheschini	\$ 1,500,000
Richard G. Jenco	\$ 1,500,000

Further, the defendants shall be jointly and severally liable to estate of Lawrence M. Jenco for \$300,000,000 in punitive damages. A separate order consistent with this Opinion shall issue this date.

All Citations

154 F.Supp.2d 27

Footnotes

- When originally filed on March 15, 2000, the only named plaintiff in this case was the Estate of Lawrence M. Jenco. After trial, the plaintiff, pursuant to Federal Rule of Civil Procedure 15(b), amended the complaint to conform with the evidence presented at trial. The complaint was amended to include the brothers, sisters, nephews, and nieces of the decedent Lawrence Jenco. Further, since the trial, the plaintiffs have adduced additional evidence of the pain and suffering of the Fr. Jenco's relatives. The Court has considered this additional evidence in making its decision.
- As a co-hostage of, for example, Terry Anderson and Thomas Sutherland, Fr. Jenco's experience was substantially similar to their experiences. Thus, for further description of Fr. Jenco's experience, *see Anderson v. The Islamic Republic of Iran*, 90 F.Supp.2d 107, 113 (D.D.C.2000); *Sutherland v. The Islamic Republic of Iran*, 151 F.Supp.2d 27; *Cicippio v. The Islamic Republic of Iran*,

18 F.Supp.2d 62, 68 (D.D.C.1998). *See also* Fr. Lawrence M. Jenco, Bound to Forgive (1995); Plaintiffs' Exhibit 21 (post-captivity interview with Fr. Jenco); Terry Anderson, Den of Lions (1993); Thomas Sutherland & Jean Sutherland, At Your Own Risk (1996). There does not appear to be a consensus on the spelling of "Hizbollah", as it is often spelled "Hezbollah" as well.

In cases such as this one, courts have sometimes referred to the immunity issue as a jurisdictional issue. *See, e.g., Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97, 105 (D.D.C.2000). In FSIA cases, they are one in the same. As the Supreme Court explained: "Under the [FSIA], a foreign state is presumptively *immune* from the *jurisdiction* of United States courts; unless a specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state." *Saudi Arabia v. Nelson*, 507 U.S. 349, 355, 113 S.Ct. 1471, 123 L.Ed.2d 47 (1993) (emphasis added).

Although this statute was passed after the events described in this case, Congress explicitly made the statute applicable to pre-enactment conduct. *See* Pub.L. No. 104-132, § 221(c) (stating that the statute "shall apply to any cause of action arising before, on or after the date of enactment of this Act"). *See also Flatow*, 999 F.Supp. at 13.

From a statutory construction perspective, "torture", as used in the context of 28 U.S.C. 1605(a)(7), must have a meaning independent of "hostage taking". *See Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 698, 115 S.Ct. 2407, 132 L.Ed.2d 597 (1995). Thus, the pains normally attendant to being a hostage, most notably the loss of liberty and contact with loved ones, although clearly *tortuous* within the common meaning of the term, cannot qualify as torture under 28 U.S.C. 1605(a)(7).

In a case similar to this one, Judge Kotelly of this Court opined: "it is now the universally held view of the intelligence community that Iran was responsible for the formation, funding, training, and management of Hizbollah." *Higgins v. The Islamic Republic of Iran*, Civ. A. No. 99-377 (D.D.C.2000). As well, Judge Jackson declared in *Anderson* that the defendants "financed, organized, armed, and planned Hizbollah operations in Lebanon and elsewhere." *Anderson*, 90 F.Supp.2d at 112; *see also Flatow v. The Islamic Republic of Iran*, 999 F.Supp. 1, 18 (D.D.C.1998) (Lamberth, J.) (finding that The Islamic Republic of Iran and the Iranian MOIS were liable under the doctrine of *respondeat superior* for the terrorist acts of the Palestine Islamic Jihad, whose source of funding was the government of Iran); *Eisenfeld v. The Islamic Republic of Iran*, 2000 WL 1918779, 2000 U.S. Dist. LEXIS 9545 (D.D.C.2000) (stating that "there is no question that Hamas, [an organization quite similar and related to Hizbollah] received massive material and technical support from the ... Islamic Republic of Iran").

This Court defines one's immediate family as his spouse, parents, siblings, and children. This definition is consistent with the traditional understanding of one's immediate family. *See* Dan B. Dobbs, *The Law of Torts*, § 310 (2000) (addressing the scope of recovery in consortium claims).

Having denied the emotional distress claims of Fr. Jenco's nieces and nephews, the Court also denies any claim for solatium damages. The Flatow Amendment, 28 U.S.C. § 1605 note, clearly contemplates solatium recovery as a measure of *damages*, not as an independent cause of action.

Although two of the siblings died prior Fr. Jenco, and would therefore be thought to collect less damages than other siblings, a closer analysis reveals this to be incorrect.

Fr. Jenco was returned to his family in July 1986. His brother, John F. Jenco died nearly nine years later, on March 25, 1995. Similarly, Fr. Jenco's sister, Verna Mae Mihelich, died May 5, 1996. Finally, only a couple months later, on July 19, 1996, Fr. Jenco himself died. The Court finds that the substantial majority of suffering over Fr. Jenco's captivity occurred during his captivity and in the years immediately following his return. Thus, although two siblings are deceased, all of the siblings likely suffered similar amounts. To hold otherwise would be to hold that the remaining four siblings suffered a particularized grief after 1996 that was directly caused by the captivity and concurrently not related to Fr. Jenco's death. While this, of course, is possible, there has been very little (if any) testimony on this aspect of damages.

ANNEX 45

90 F.Supp.2d 107
United States District Court,
District of Columbia.

Terry A. ANDERSON, et al., Plaintiffs,
v.
THE ISLAMIC REPUBLIC OF IRAN, et al., Defendants.

No. C.A. 99–0698(TPJ).

|
March 24, 2000.

Synopsis

Family of American citizen who was kidnapped and tortured by terrorist organization and imprisoned as a hostage for 2,454 days brought action against Islamic Republic of Iran and its Ministry of Information and Security seeking damages under Foreign Sovereign Immunities Act (FSIA). The District Court, Jackson, J., held that: (1) court had subject matter jurisdiction over claims of Lebanese wife of American citizen; (2) American citizen was entitled to compensatory damages of \$24,540,000; (3) Iran was exempt from award of punitive damages but its Ministry of Information and Security was not; and (4) award of thrice Ministry's maximum annual budget for terrorist activities, or \$300 million, was an appropriate amount of punitive damages.

Judgment for plaintiffs.

Attorneys and Law Firms

***108** Stuart Henry Newberger, Crowell & Moring, L.L.P., Washington, DC, for Terry A. Anderson, as parents and natural guardians of Sulome T. Anderson, Madeleine Bassil, as parents and natural guardians of Sulome T. Anderson, plaintiffs.

DECISION AND ORDER

JACKSON, District Judge.

Terry Alan Anderson, an American journalist working in Beirut, Lebanon, was kidnapped at gunpoint from his parked automobile in West Beirut on March 16, 1985. He was imprisoned and held hostage in various dungeons in Beirut and vicinity, under execrable conditions, for nearly seven years. Released in early December, 1991, Anderson, his wife Madeleine ***109** (“Maddy”) Bassil (a Lebanese citizen), and their daughter, Sulome (who was born in New York State in June, 1985, while her father was a hostage) now bring this action against the Islamic Republic of Iran and its Ministry of Information and Security (“MOIS”) as the principals allegedly responsible for the multiple tortious injuries done to them by the terrorist organization they employed to that purpose. Jurisdiction is predicated upon 28 U.S.C. §§ 1330(b) and 1605(a)(7), the latter a 1996 amendment to the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602–1611.

Upon the evidence adduced at the *ex parte* non-jury trial before this Court February 15–16, 2000, from which the facts set forth below are found pursuant to Fed.R.Civ.P. 52(a), the Court concludes that judgments shall be given for plaintiffs.¹

I.

The evidence presented at the trial establishes that in March of 1985, Terry Anderson, a thirty-eight year-old ex-Marine and seasoned combat veteran, was chief correspondent for the Associated Press (“A.P.”) for the Middle East. He had been in Beirut since the Israeli invasion of Lebanon in 1982, and had acquired a considerable understanding of the country and its myriad warring factions. Anderson was highly respected by his professional peers as a knowledgeable, resourceful, and extraordinarily well-connected reporter. Major news organizations regarded his by-line stories for the A.P. as a primary source for their coverage of the region. Anderson's next assignment for the A.P. would likely have been as chief of a major bureau or an editor in New York.

While returning by automobile from an early Saturday morning tennis game on March 16, 1985, to the West Beirut apartment where he and Madeleine were living, Anderson stopped briefly to drop off his tennis partner. Anderson was quickly accosted by several young men, forced out of his car at gunpoint, and thrust onto the back-seat floor of his assailants' vehicle. They covered him with a blanket, drove him at high speeds through the streets of Beirut to the first of many places of confinement where he was shackled and blindfolded. Anderson was to remain in chains for all but the last two weeks of his captivity.

Anderson's ordeal was typical of that of his fellow hostages described in *Cicippio v. Islamic Republic of Iran*, *supra*, n. 1. At first, Anderson was roughed-up regularly, threatened with death if he tampered with his blindfold to look at his captors, and was fed only bread, occasionally a fragment of cheese, and water. Although chained and blindfolded, Anderson became aware over the ensuing weeks that other captives were being brought in to the same enclosure, but then walled off from one another with wooden partitions. (Anderson later learned that among his new companions—there were ultimately five altogether—were Father William Jenco and William Buckley.) All of the captives became ill as a result of the unsanitary conditions in which they were confined, and Buckley, untreated despite the gravity of his condition, eventually died of his illness.

After several months, Anderson was moved to another location and chained to a bolt in the floor, still blindfolded. Eventually, he became aware that his fellow prisoners nearby now included David Jacobsen, *110 Rev. Ben Weir, and Tom Sutherland (Dean of Agriculture at the American University). Over the next year, Rev. Weir and Fr. Jenco were released, Anderson surmises, as a result of covert arms-for-hostages negotiations between the United States and Iran. In the meantime, the hostages were acutely aware that this particular place of captivity was in the midst of a war zone. Ordnance exploded frequently in close proximity to the structure.

In time, the remaining hostages were transported by truck—wrapped from head to toe in plastic tape each time they were moved—to yet another prison, this time a filthy dungeon with darkened cells for each prisoner, equipped only with a mattress, a water bottle, and a second container to collect urine. All the prisoners developed diarrhea; yet, being chained to the floor, they were unable to escape their own excrement.

All told, Anderson estimates that he and his fellow captives were moved from cell to cell some twenty-five times. They were bound with tape each time, leaving only their nostrils exposed, then laid prone in the narrow compartments under the beds of trucks and driven around for hours while being forced to inhale the vehicles' exhaust fumes. With each transfer they were fearful that this time their destination might be the place of their executions. Once hostages arrived at a new prison, sometimes several of them would be confined together. On other occasions they would be alone or with new cellmates. Anderson recalls that only he and Tom Sutherland were confined together throughout.

For reasons he does not know, Anderson was rarely beaten, but other prisoners were, on a regular basis. Sutherland, in particular, was brutally and frequently beaten by the guards, and at one point attempted suicide. Anderson could only listen and observe, helpless to assist the victim. The guards were, however, uniformly anti-American and extremely hostile to all of the hostages, as well as indifferent to their prisoners' discomforts: chains, blindfolds, lack of sanitation, diet, or illness. They repeatedly taunted the hostages with assurances that they would be released shortly, which the hostages soon learned were lies.

As were his fellow hostages, Anderson was subject to periodic depressions which lasted many weeks. Deprived for most of the time of any knowledge of the outside world, given minimal information about his family (he was occasionally allowed to

watch their broadcast appeals for his release), and fearful that the ordeal would never end, or would end only by his death, Anderson survived day-to-day.

Over the last year-and-a-half of his captivity, Anderson's fellow hostages were being released one or two at a time; their captors were becoming increasingly aware that, whatever had been exchanged for hostages in the past when negotiations had been clandestine, they were no longer of significant value in trade, at least publicly, to anyone. Anderson was told from the outset that he would be the last to be released, as proved to be the case. He was, as he described it, a “poster child” for his captors—a prominent American journalist, helpless at the hands of the “Islamic jihad”—and they had ascribed a barter value to him far higher than anyone was willing to pay.

At the end, Anderson was confined to a cell with three others, including Sutherland, for about a year. One by one, at intervals of several months, they were released, Anderson last of all. During the final two weeks, Anderson's captors struck off his chains for the first time. The day of his release, he was driven, after dark but still blindfolded, to a roadside rendezvous with a Syrian army team. He removed his blindfold, he recalled, and saw the stars for the first time since his capture. The Syrians drove him to Damascus where he was reunited with his wife and daughter. Altogether, they had been apart 2,454 days—over six years and seven ^{*111} months. After a period of medical treatment for Terry Anderson at the U.S. Air Force hospital in Wiesbaden, Germany, and a period of rest and recuperation in the Caribbean, the Anderson family returned to the United States.

II.

As Terry Anderson was being seized from his car on the morning of March 16, 1985, Madeleine (“Maddy”) Bassil, lay asleep in their apartment in West Beirut. She was thirty-five years old and seven months pregnant with their first child. She became aware that something was wrong when she awoke late in the morning to find that Terry had not returned from his tennis game. Knowing that the practice of hostage-taking had become commonplace in Beirut in recent months, her first thought was to pray that Terry had had “an accident”—anything but kidnapped. A neighbor reluctantly told her otherwise, and it was confirmed the following night by a press release from Hezbollah.

Several weeks later, Maddy flew to Batavia, New York, to give birth to their daughter, in Terry's hometown with his family nearby. Sulome Theresa Anderson was born June 7, 1985. Four months later Maddy and her baby went to England to live with a sister for a time, and then she and the child took up residence in Cyprus, where they remained until Anderson was released. While in Cyprus, Maddy and Sulome visited the A.P. office in Nicosia often, sometimes to view photographs and videotapes of Anderson and the other hostages that his captors published from time to time, or to read the propaganda messages he was forced to send, and sometimes just to remind Sulome that she had a father, hopefully still alive somewhere, who might come home some day.²

Maddy was deeply depressed, but tried (unsuccessfully) to conceal it from Sulome. From time to time she would receive telephone calls from extortionists—none connected with Anderson's captors—who offered to procure Anderson's release for money, or in one case for a truckload of blue-jeans. On Sulome's birthdays she made videotapes of the child for broadcast on Lebanese television in hopes that Anderson would be allowed to watch. (He was.) As other hostages were released, the A.P. arranged for Maddy to meet with them, and from them she learned what life was like for Terry. The appearance of one former hostage, however, terrified Maddy and Sulome that Terry would be similarly debilitated when released.

Anderson, Madeleine and Sulome all testified to their difficulty adjusting to life together once they reunited in December of 1991. Ultimately, according to Anderson, it took five years for them to become a relatively normal family. Anderson discovered that the psychological damage he had sustained was far greater than he had suspected. Stoic endurance and concealment of all of his emotions had become a survival technique for him during his captivity, and he found the habit hard to break; intimate communication with his reunited family came slowly. Madeleine was, at first, terrified of this stranger from whom she had

been parted so long ago, and, having been both parents to Sulome for so many years, she found also it difficult to step aside from a paternal role.

Sulome, now a fourteen year-old ninth-grader, remembers her mother's loneliness and melancholy, and her own envy of friends who had fathers in residence during the period of her father's captivity. She also recalls her total dependence on her mother while young, and her anger and resentment at her father's assertions of *112 parental authority once the family was reunited.

Anderson never returned to the Associated Press, although he would have been welcomed back. He began a new career as a teacher of journalism, first at Columbia University in New York, and presently at the Scripps School of Journalism at Ohio University. The Anderson family now live in Athens, Ohio.

III.

The evidence is conclusive that Terry Anderson was kidnapped—and imprisoned under deplorable, inhumane conditions—by agents of the Islamic Republic of Iran, known by many names but most commonly as Hezbollah, or the “party of God.” Anderson himself could identify them as such, based upon his intimate familiarity with the warring factions in Lebanon during the 1980s. He had observed, prior to his captivity, Iranian troops in uniform training Hezbollah recruits in the Bekaa Valley. The mullahs who directed Hezbollah operations, Anderson knew, had received their religious instruction in Iran. While imprisoned, Anderson was once visited by an Iranian national who formally identified himself to Anderson as the liaison between Hezbollah and Iran. Anderson also became aware, at one point, that his place of confinement at the moment was a sub-basement of barracks occupied by troops of the Iranian Revolutionary Guard.

Ambassador Robert Oakley, a career U.S. Foreign Service officer now retired, who served in Beirut in the 1970s and went on to become Director of the State Department Office of Terrorism and a leading National Security Council adviser on issues of terrorism, positively identified the Iranian Ministry of Information and Security as responsible for causing the seizure of the hostages in Lebanon by Hezbollah. He was personally aware when, in exchange for a delivery of Hawk missiles to Teheran arranged by Col. Oliver North of the U.S. National Security Council, one hostage was released. Iran, he testified, has been officially designated as a state supporter of terrorism. It financed, organized, armed, and planned Hezbollah operations in Lebanon and elsewhere.

Dr. Patrick Clawson, director of research at a private public policy institute in Washington, D.C., who has studied and written about Iran for many years, testified that Hezbollah originated with Iranian sponsorship in 1982 following the Israeli invasion of Lebanon. Approximately 2000 Iranian troops from the Revolutionary Guard opened a training camp in the Bekaa Valley, armed and trained Shi'ite recruits, and financed both its terrorist operations and the various charitable activities that attracted the Lebanese Shia population to Hezbollah and retained its loyalty.

Hostage-taking, particularly of foreigners, was a principal activity of Hezbollah, he said. The motives were, among others, to secure release of its own operatives who were being held as terrorists by other governments; to discredit American and Israeli influence in the Middle East; and to dramatize to the world its willingness to take radical action in pursuit of its political objectives.

According to Dr. Clawson, the Iranian Ministry of Information and Security is an Iranian government agency, a reincarnation of a pre-revolutionary organization of similar name and function under the Shah, roughly comparable to the K.G.B. of the former Soviet Union. Together with the Revolutionary Guards, MOIS coordinates multiple terrorist activities throughout the Middle East, including those of Hezbollah. With approximately 30,000 employees, it is also the largest spy service in the Middle East. Dr. Clawson testified that the Ministry's expertise in finding sites for, and operating prisons in, undetectable locations was instrumental in enabling Hezbollah to conceal the hostages' places of confinement in and near Beirut so effectively as to thwart

any rescue attempts. Dr. Clawson estimates MOIS' annual budget *113 at between \$100 million and \$500 million, of which between \$50 million to \$100 million is expended in support of terrorist activities.

IV.

Plaintiffs Terry A. Anderson and Madeleine Bassil individually, and as the parents and natural guardians of Sulome T. Anderson, pray for an award of compensatory damages against the Islamic Republic of Iran and its Ministry of Information and Security.

Section 1605(a)(7) of the Foreign Sovereign Immunities Act of 1976 ("FSIA"), as amended, 28 U.S.C. §§ 1602 *et seq.*, provides a cause of action against a foreign state for anyone who suffered personal injury "that was caused by an act of torture, extrajudicial killing, aircraft sabotage, *hostage taking, or the provision of material support or resources ... for such an act*" 28 U.S.C. § 1605(a)(7) (emphasis added). Thus, the FSIA authorizes personal injury claims against a foreign state that provides material support or resources for acts of hostage-taking.

This Court has previously found Iran to be a state sponsor of terrorism under § 1605(a)(7). *See Flatow v. The Islamic Republic of Iran*, 999 F.Supp. 1 (D.D.C.1998). In *Cicippio v. The Islamic Republic of Iran*, 18 F.Supp.2d 62 (D.D.C.1998), the Court concluded that Iran had "openly provided 'material support or resources' to Hizbollah, [as the kidnappers of Joseph Cicippio, Frank Reed, and David Jacobsen] and that is sufficient grounds to impose liability under § 1605(a)(7)." *Id.* at 68. In the instant case the evidence once again discloses that Iran provided Hezbollah with funding, direction and training for its terrorist activities in Lebanon, including the kidnapping and torture of Terry Anderson, and his imprisonment as a hostage for 2,454 days. Iran falls within FSIA's definition of a state sponsor of terrorism and is thus liable for the injuries suffered by plaintiffs as a result of Hezbollah's terrorist acts.

Plaintiff Terry A. Anderson seeks compensatory damages for the following causes of action: battery, assault, false imprisonment, intentional infliction of emotional distress, and loss of consortium. Each of these causes of action is authorized under § 1605(a)(7) of the FSIA.

Plaintiff Madeleine Bassil, Terry Anderson's wife, seeks compensatory damages based on causes of action of intentional infliction of emotional distress, and loss of consortium and solatium. Ms. Bassil is a Lebanese national. Although Ms. Bassil is not a U.S. citizen, the FSIA confers subject matter jurisdiction over a claim under 28 U.S.C. § 1605(a)(7) if "*either the plaintiff or the victim [is] a United States national at the time of the incident.*" *Flatow*, 999 F.Supp. at 16 (emphasis added). Terry Anderson was a U.S. citizen at the time of his abduction. Thus, this Court has subject matter jurisdiction over his wife's claims.

Plaintiff Sulome Anderson, who is the minor daughter of Terry Anderson and Madeleine Bassil, seeks compensatory damages for loss of solatium.³ Employing essentially the same calculus as it did in *Cicippio*, *supra*, the Court will award compensatory damages to Terry Anderson in the amount of \$24,540,000; to Madeleine Bassil in the amount of \$10,000,000; and to Sulome Anderson in the amount of \$6,700,000.

V.

The plaintiffs also pray for an award of punitive damages against the defendant Ministry of Information and Security. The tortious conduct with which both *114 defendants are charged, savage and cruel by any civilized standards, would surely merit such an award. The FSIA, however, expressly exempts a foreign state from liability for punitive damages, 28 U.S.C. § 1606; *see Cicippio*, 18 F.Supp.2d at 69. An "agency or instrumentality" of a foreign state may, however, be liable for punitive damages. The term "agency or instrumentality" includes a separate legal person or entity, which is "an organ of a foreign state," or is owned by it. 28 U.S.C. § 1603(b). The MOIS is thus vulnerable to an award of punitive damages.

The purpose of punitive damages, as the name implies, is to punish wrongful conduct—to prevent its repetition by the offender and to deter others who might choose to emulate it. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974). The victim to whom the award is made thus stands as a surrogate for civilized society in general; the victim is made more than whole in order that others may be spared a similar injury.

Yet another reason to award punitive damages in this particular case is to vindicate the interest of society at-large in the collection and dissemination of complete and accurate information about world conflicts. Two eminent journalists—Dan Rather, anchor and managing editor of *CBS Evening News*, and Eugene Roberts, former managing editor and foreign correspondent of the *New York Times* and executive editor of the *Philadelphia Inquirer*—testified with respect to the extent to which acts of terrorism, and in particular the kidnapping and hostage-taking of foreign correspondents, inhibit the gathering and reporting of news. Other journalists, even those such as Terry Anderson, who are accustomed to working in war zones and are undaunted by transient physical danger, are forced to exercise uncustomary caution in the presence of the threat of potential kidnapping. Newsgathering becomes at once more difficult and more costly. News organizations reduce their staffs to a minimum when their personnel are exposed to such a threat. Those who remain are intimidated. As time passes, news coverage inevitably tends to become superficial, no matter the importance of the story.

It is never a simple task to calibrate an award of punitive damages to the gravity of the offense; at once sufficient to produce the desired effect, yet leaving the wrongdoer the wherewithal to continue its lawful pursuits. It is still more difficult in a case such as this, in which the likelihood that any award will ever be paid is minimal. Nevertheless, the Court concludes, on the basis of the testimony of Dr. Clawson, that an award of thrice the MOIS' maximum annual budget for terrorist activities, or \$300 million, is the closest approximation that it can make to an appropriate award and will cause judgment in that amount to be entered accordingly against MOIS in favor of the Anderson family.

It is, therefore, this 24th day of March, 2000,

ORDERED, that judgment be entered in favor of the plaintiffs against the Islamic Republic of Iran and its Ministry of Information and Security, jointly and severally, for compensatory damages as follows:

Terry A. Anderson: \$24,540,000

Madeleine Bassil: \$10,000,000

Sulome Anderson: \$6,700,000

IT IS FURTHER ORDERED, that judgment be entered in favor of plaintiffs, jointly and severally, against the defendant Iranian Ministry of Information and Security for punitive damages in the amount of \$300,000,000; and it is

FURTHER ORDERED, that the Clerk of Court forthwith enter judgments in accordance with the foregoing.

All Citations

90 F.Supp.2d 107

Footnotes

- 1 This case is the second in a series of cases brought in this Court by U.S. citizens and their kin who were seized and held hostage in Beirut in the 1980's by the Hezbollah (or Hizballah), a politico-paramilitary organization operating in Lebanon as an agent of the Iranian government. See *Cicippio v. Islamic Republic of Iran*, 18 F.Supp.2d 62 (D.D.C.1998).

As in *Cicippio*, where the sole defendant was the Islamic Republic of Iran, the defendants in the instant case were properly served with process pursuant to 28 U.S.C. § 1608(a)(4) as of August 11, 1999, and were declared in default on October 29, 1999, having failed to answer or otherwise respond to the complaint.

- 2 Throughout Anderson's captivity, the Associated Press supported Maddy and Sulome. Maddy received his salary and A.P. personnel assisted United Nations efforts to get Anderson released. The A.P. bureau chief in Cyprus alerted Maddy on December 1, 1991, to his imminent release, and the A.P. flew her and Sulome to Damascus to greet him.
- 3 Sulome Anderson, who was born in the United States during Terry Anderson's captivity, is a U.S. citizen. Although she was not yet born at the time of Terry Anderson's kidnapping, she has standing to maintain a cause of action for loss of solatium. *See Bonbrest v. Kotz*, 65 F.Supp. 138 (D.D.C.1946).

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ANNEX 46

124 F.Supp.2d 97
United States District Court,
District of Columbia.

Dariussh ELAHI, individually and as next-of-kin and representative of the Estate of Cyrus Elahi, Plaintiff,
v.
The ISLAMIC REPUBLIC OF IRAN and The Iranian Ministry of Information and Security, Defendants.

No. Civ.A. 99–2802(JHG).

|
Dec. 20, 2000.

Synopsis

Brother of naturalized United States citizen brought action against Islamic Republic of Iran and the Iranian Ministry of Information and Security for ordering the killing of citizen in an act of state-sponsored assassination. The District Court, Joyce Hens Green, J., held that: (1) brother was entitled to recover under Foreign Sovereign Immunities Act (FSIA), as amended by the Antiterrorism Act, and the Flatow Amendment, for both the economic and emotional losses that resulted from extrajudicial killing of citizen; (2) award of \$5,000,000 to each of the two brothers of victim would be appropriate as solatium damages; and (3) punitive damages of \$300,000,000 would be awarded against Iranian Ministry of Information and Security.

Judgment for plaintiff.

Attorneys and Law Firms

*99 Jonathan Richard Mook, Dimuro, Ginsberg & Lieberman, P.C., Alexandria, VA, Philip Jay Hirschkop, Alexandria, VA, Marianne R. Merritt, Alexandria, VA, for plaintiff.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JOYCE HENS GREEN, District Judge.

This is an action for wrongful death brought by Dariussh Elahi,¹ the brother of Cyrus Elahi, a United States national, who, before he was killed on October 23, 1990 in Paris, France, was a former university professor and a dissident of the Iranian regime. The Islamic Republic of Iran and the Iranian Ministry of Information and Security are named as defendants for ordering the killing of Cyrus Elahi in an act of state-sponsored assassination. Jurisdiction in this case is founded upon those provisions of the Foreign Sovereign Immunities Act of 1976 (“FSIA”), as amended, 28 U.S.C. §§ 1602–1611, that grant jurisdiction over foreign states and their officials and agents and that create federal causes of action for personal injury or death to American nationals resulting from state-sponsored terrorism.

Defendants have failed to enter an appearance in this lawsuit, notwithstanding the fact that service of process was made upon them in accordance with the statutory procedures. *See* 28 U.S.C. § 1608(a)(4).² On August 14, 2000, pursuant to 28 U.S.C. § 1608(e) and *100 Fed.R.Civ.P. 55(a), the Court entered an order of default against the defendants. Before the Court may enter a judgment by default in a specific monetary amount against the defendants, the FSIA provides that the plaintiff “establish [] his claim or right to relief by evidence that is satisfactory to the Court.” 28 U.S.C. § 1608(e).³ Accordingly, on November 8 and 9, 2000, the Court conducted a non-jury trial⁴ at which the plaintiff presented the testimony of seven witnesses: Kenneth Roger Timmerman, Executive Director, Foundation for Democracy; Ladan Boroumand, Ph.D.; Jacques S. Boedels, Armand,

Boedels & Associates; Dariush Elahi; Jerome S. Paige, Ph.D.; Patrick J. Clawson, Ph.D.; and Manouchehr Ganji, Secretary-General, Flag of Freedom Organization. Documentary evidence consisting of 106 exhibits also was introduced in support of plaintiff's claims. Because Iran has presented no defense, the Court will accept as true the plaintiff's uncontroverted evidence. *See Higgins v. Islamic Republic of Iran*, No. 99-377 (D.D.C. Sept. 21, 2000) (Kollar-Kotelly, J.); *cf. Alejandre v. Republic of Cuba*, 996 F.Supp. 1239, 1243 (S.D.Fla.1997) (accepting as true the plaintiff's "uncontroverted factual allegations").

This Court has engaged in a systematic review of the evidence presented by the plaintiff and the legal issues raised by plaintiff's claim for relief. Upon the evidence adduced at trial, from which the following facts are found pursuant to Fed.R.Civ.P. 52(a), the Court concludes that, as required by 28 U.S.C. § 1608(e), the plaintiff has "establish[ed] his claim or right to relief by evidence that is satisfactory to the court." Accordingly, judgment shall be rendered in favor of the plaintiff as more fully set forth below.

FINDINGS OF FACT

1. The defendant, the Islamic Republic of Iran ("Iran"), is a foreign state that was founded in 1979 by Ayatollah Khomeini following the overthrow of the prior government of the Shah of Iran. In 1989, after the death of Ayatollah Khomeini, Ali-Akbar Hashemi Rafsanjani became President and remained in that position into the 1990's. The current President of Iran is Mohammed Khatemi.

2. The United States Department of State has designated Iran as being a leading sponsor of terrorism for over a decade. Iran's direct support of terrorist activities has prompted the United States to suspend diplomatic relations, impose trade restrictions, and participate in the international embargo of the country. *See, e.g., Iran and Libya Sanctions Act of 1996*, Pub.L. 104-172, 10th Cong., 2d Sess. (Aug. 5, 1996), 110 Stat. 1541; 31 C.F.R. § 596.201 (prohibiting exports and sales to Iran). President Clinton recently reaffirmed and renewed sanctions against Iran when on March 15, 2000, he issued a Notice continuing the "national emergency" with respect to Iran "[b]ecause the actions and policies of the Government of Iran," including "its support for international terrorism," *101 continue to "threaten the security, foreign policy and economy of the United States." Exhibit 15.

3. Iran uses several different organizations to carry out its pattern of terrorist activities. One of these organizations is the defendant Ministry of Information and Security ("MOIS"), the Iranian intelligence service.⁵ With approximately 30,000 employees, MOIS is the largest intelligence agency in the Middle East and has an approximate annual budget of between \$100-\$400 million. *See Anderson*, 90 F.Supp.2d at 112-13 (finding MOIS's approximate annual budget between \$100-\$500 million). The United States Department of State has concluded that Iranian intelligence services facilitate and direct terrorist attacks, including attacks against regime opponents living abroad. Moreover, this policy is conducted with the "approval of the highest levels of the Iranian regime...."⁶ United States Department of State, *Patterns of Global Terrorism: 1991*, April 1992, at 30; Exhibit 3.

4. At the time of the events at issue in this case, the Iranian Minister of Intelligence and head of MOIS was Ayatollah Fallahian. As explained by Dr. Clawson, Minister Fallahian actively participated in the creation of MOIS and was the most important decision maker within the organization.

5. Individuals implicated in the killing of Cyrus Elahi confirmed, under oath, to French authorities that Minister Fallahian was involved in ordering the killings of Iranian dissidents in Paris. Exhibit 58, p. 4; Exhibit 59, p. 110. German prosecutorial authorities, moreover, have issued a warrant for Minister Fallahian's arrest for ordering the 1992 assassination of Iranian Kurdish dissidents in Germany. In a 1992 interview on Iranian television, Minister Fallahian discussed MOIS' success in eliminating opponents of the regime, stating: "[W]e track them abroad too.... Last year we succeeded in striking fundamental blows to their top members." Exhibit 74; Tr. 341 (Ganji); Exhibit 45; Exhibit 46.

6. Following the establishment of the Islamic Republic of Iran, a number of organizations were formed outside the country in opposition to the clerical government. Mr. Timmerman, an expert on the Iranian government's sponsorship of terrorism,

identified several of these opposition groups: the Flag of Freedom Organization, founded by Dr. Manoucher Ganji, the former Minister of Education in the Shah's regime, and his assistant, Cyrus Elahi; the Kurdish Democratic Party of Iran, which advocates a secular democracy for Kurds living in Northern Iran; the National Council of Resistance, which is dominated by the People's Mojahedin of Iran, an allegedly Marxist organization, based in Turkey and Iraq; the Constitutional Monarchist Organization; and the National Resistance Movement, organized by the exiled former Iranian Prime Minister Shahpour Bakhtiar, and his deputy Abdolrahman Boroumand, who, according to Kenneth Timmerman, were later both assassinated by agents of the Iranian government.

7. According to Dr. Clawson, the Iranian government sought to eliminate any effective opposition to the clerical regime by engaging in the widespread assassination *102 of dissidents both within Iran and abroad. Tr. 235 (Clawson). As explained by Mr. Timmerman, the Iranian government was concerned that Iranians living in exile would coalesce around a single opposition leader and become a threat to the regime. Mr. Timmerman described the pattern of terrorism and assassination undertaken by the Islamic Republic as being to “decapitate the opposition.” Tr. 39 (Timmerman).⁷

8. According to Dr. Clawson, the Iranian government's initial campaign of assassinations proved successful and, accordingly, the clerics consolidated their power in Iran. A renewed concentration of assassinations began in 1989 following the end of the Iran–Iraq war and the death of the Ayatollah Khomeini. At that time, Mr. Rafsanjani assumed the presidency of Iran and in order to solidify his power, the government “redoubled its activities” to eliminate opponents of the regime. Tr. 235 (Clawson). Dr. Clawson explained that based upon his research, he determined that “Mr. Rafsanjani devoted a lot of attention, a lot of resources” to directing these assassinations and evidence of direct Iranian involvement in those assassinations comes “from numerous accounts ... just how much priority Mr. Rafsanjani placed on this campaign.” Tr. 235 (Clawson). Dr. Clawson testified that there were a “great many killings” during this campaign, and Iran “assassinated some of the top leaders of the major [opposition] organizations.” Tr. 237, 240–41 (Clawson).

9. The scope of the terrorist activities launched against those organizations opposed to the current Iranian government and others has been worldwide. The testimony and documentary evidence introduced at trial, including reports by the United States and foreign governmental authorities, human rights groups, and the world press indicate that Iran and MOIS have authorized, sponsored, and directed the assassination of critics and opponents of the Iranian regime in countries throughout the world. Criminal investigations in both France and Germany and the decisions of the courts of those countries have found evidence of direct involvement by the government of Iran, MOIS, and Minister Fallahian in the killings of opponents of the Tehran regime. Exhibits 58, 59 (France); Exhibits 18, 46, 47, 48 (Germany). The Parliamentary Human Rights Group of the Palace of Westminster in Great Britain has documented the Iranian government's “use of terrorism as an adjunct to foreign policy.” Exhibit 17, p. 5. Amnesty International has issued reports describing Iran's use of torture, terrorism, and possible assassination as instruments of state policy. Reports in the world press have further documented the actions of the Iranian government in oppressing its political opponents.

10. The Flag of Freedom Organization (“FFO”) is an opposition group, founded by Dr. Manoucher Ganji, a former Professor of International Law at Tehran University and Minister of Education under the Shah's regime. The FFO is a democratic movement whose stated aims and purposes are the realization of the rights and freedoms of the Iranian people and the establishment of a pluralistic and parliamentary democracy in Iran. Through the operation of a radio station in Egypt and the distribution of videotapes and printed materials, the FFO provided news and information worldwide about events in Iran and the suppression of individual rights and free speech within that country. The *103 FFO also organized resistance networks within Iran and in Turkey, which borders on Iran and has a large Persian community. The Tehran regime was extremely concerned about the FFO's radio broadcasts into Iran, and sought to stop the transmission.

11. Dr. Ganji's key assistant in building in FFO was Cyrus Elahi, whom Dr. Ganji had known for many years. Dr. Elahi was born in Iran in 1943. He came to the United States in 1958 with his mother and three siblings to join his father who previously had emigrated to the United States to pursue his medical education. In 1961, Dr. Elahi and his siblings became naturalized

United States citizens. Cyrus Elahi attended school in the United States and received his undergraduate degree and his Ph.D. from American University in Washington, DC.

12. In the 1970's Dr. Elahi returned to Iran. Dr. Elahi became an assistant professor of political science at the National University in Tehran and, with Dr. Ganji, participated in a "think tank" that submitted reports on Iranian economic, social, and political developments to the wife of the Shah "in the hope of improving the situation." Tr. 274–75 (Ganji). When Dr. Ganji was named Minister of Education, Dr. Elahi became his close advisor.

13. Following the Khomeini revolution in 1979, both Dr. Ganji and Dr. Elahi went into hiding. A list of 200 individuals, including Dr. Ganji and Dr. Elahi, deemed to be opponents and enemies of the new regime and calling for their arrest, was posted in the mosques throughout Iran. According to Dr. Ganji, in addition to the posting of this list, a Fatwa (religious edict) has been issued calling for Dr. Ganji's death and both Dr. Ganji and Dr. Elahi understood that a similar edict was issued for Dr. Elahi's assassination.⁸

14. After the revolution, Dr. Elahi hid Dr. Ganji in his home and, then, assisted Dr. Ganji in fleeing Iran. After aiding Dr. Ganji in his escape, Dr. Elahi and his wife fled the country shortly thereafter. Both Dr. Ganji and Dr. Elahi settled in the United States. For several years, Dr. Elahi lived in Texas, California, and Michigan. At that time, Dr. Elahi's sister was attending the University of Michigan, and he became an associate professor of political science at Michigan State University, in part, to be close to her. Later, Dr. Elahi left his teaching position to join Dr. Ganji, who was then living in Dallas, Texas, to assist him in running an educational and cultural foundation.

15. In 1985, Dr. Ganji relocated to Paris to work with other Iranian exiles in seeking a free and democratic Iran. In mid-1986, Dr. Elahi joined Dr. Ganji in Paris and both of them established the Flag of Freedom Organization to actively promote the establishment of a pluralistic society in Iran.

16. In October 1990, French authorities informed Dr. Ganji that they had uncovered a plan to assassinate him, and, at their suggestion, he left Paris and went to Egypt. At the time, Dr. Elahi was in Munich, Germany. However, he returned to Paris and on the morning of October 23, 1990, as he was leaving his apartment building, Dr. Elahi was shot eight times and killed by an assassin using a gun with a silencer. Exhibit 59, p. 82. Although Dr. Elahi normally did not leave his apartment building unaccompanied, on the morning he was assassinated, he was delayed and missed the colleague whom he customarily would meet to accompany him to the FFO offices.

***104** 17. As the attorney for the Elahi family in France, Mr. Boedels reviewed the investigatory reports and the evidence compiled by Jean-Louis Bruguiere, Senior Examining Magistrate of the District Court of Paris. Exhibits 58, 59. Judge Bruguiere opened two files on the Elahi assassination, the first for his murder and the second for "association of wrongdoers," which is equivalent to a charge of conspiracy. Tr. 120 (Boedels). Judge Bruguiere's inquiry into Dr. Elahi's death implicated two Iranian nationals living in Paris, Mojtaba Mashadi and Hossein Yazdanseta.

18. According to the French indictment of Mr. Mashadi, handed down by the Appellate Court of Paris, Second Criminal Panel, a gun and a silencer were found on the premises of Dr. Elahi's apartment building.

19. Under interrogation, Mr. Yazdanseta confessed to having been part of a plot to assassinate Iranian political dissidents in Paris. Mr. Yazdanseta stated under oath to Judge Bruguiere that Mr. Mashadi had stated that he had been entrusted in Tehran with the organization of the assassination of Cyrus Elahi. Exhibit 58 at 11; Exhibit 59 at 96–99. According to Mr. Yazdanseta's sworn statement to Judge Bruguiere, he had a conversation with Mr. Mashadi in July or August of 1993 at Mr. Mashadi's home. During that conversation, Mr. Mashadi admitted that he was the organizer of the operation to assassinate Cyrus Elahi, that a gun and silencer had been given to him in Paris by Iranian contacts, and that he had enlisted a Mr. Ghorbanifar to assassinate Cyrus Elahi, but that Mr. Ghorbanifar had backed out at the last minute. Exhibit 59 at 97–99. According to Mr. Yazdanseta's sworn statement, the assassination was then carried out by another team of two or three men, but Mr. Mashadi had not given

him any more information how the assassination was carried out. In referring the indictment of Mojtaba Mashadi to the Court of Assize of Paris, the Appellate Court of Paris relied on, among other things, the fact that Mr. Yazdanseta stated under oath that Mr. Mashadi had confided to him that he had been put in charge of organizing the assassination of Cyrus Elahi. Exhibit 59 at 83.

20. Other witnesses testified that Mr. Mashadi was a MOIS agent in France and that he had traveled to Iran to meet with Minister Fallahian and Minister Fallahian had given orders to Mashadi to assassinate dissidents. Mr. Boedels testified to this Court that Mr. Ghorbanifar had stated under oath to Judge Bruguiere that Mr. Mashadi had told him that he had been to Iran and met with Minister Fallahian. According to the record of Mr. Ghorbanifar's testimony under oath to Judge Bruguiere, taken on April 11, 1995, Mr. Mashadi told Mr. Ghorbanifar that he had been to Tehran in November 1989 and met with Minister Fallahian and other members of MOIS. Mr. Mashadi told Mr. Ghorbanifar that he had been put in charge of organizing the assassination of Dr. Ganji and several other dissidents (but did not mention Dr. Elahi). This conversation took place upon Mr. Mashadi's return from Tehran. According to Mr. Ghorbanifar, Mr. Mashadi told him this in an attempt to gain his assistance in carrying out the assassination of Dr. Ganji. Instead, Mr. Ghorbanifar revealed the information to the French authorities, who alerted Dr. Ganji to the threat.

21. Mr. Ghorbanifar also testified to Judge Bruguiere that in 1989, he accompanied Mr. Mashadi to a meeting at the Orly airport. Also present at this meeting, according to Mr. Ghorbanifar, was Ali Ahani, the Iranian Ambassador; Mr. Anguizi, the manager of Iran Air; and a man identified as Bagher. Later, according to Mr. Ghorbanifar, Mr. Mashadi identified Bagher as an agent of Iran.

22. Mr. Farhad Ghiasvand, an acquaintance of Mr. Mashadi, gave two sworn statements to Judge Bruguiere. In the sworn statement dated June 23, 1994, Mr. Ghiasvand stated that he had met Mr. Mashadi in Tehran in 1989, and Mr. Mashadi ***105** had told him that he was working for MOIS, and he had contact with Minister Fallahian. Mr. Mashadi importuned Mr. Ghiasvand to assist him in assassinating a Iranian dissident in Paris. Exhibit 59 at 101. In the sworn statement dated January 10, 1994, Mr. Ghiasvand stated that Mr. Mashadi had identified Dr. Elahi as the target of the plot. Mr. Ghiasvand declined to participate. Exhibit 59 at 124. In both statements, Mr. Ghiasvand recounted that he had a further discussion with Mr. Mashadi in mid-1993, in which he reminded Mr. Mashadi of the prior conversation. According to Mr. Ghiasvand, Mr. Mashadi, threatened to "denounce [him] to the police" and denied the prior conversation. Exhibit 59 at 102, 124.

23. On December 29, 1993, Mr. Ali Reza Ghanaee Miandoab was questioned by the French police. Mr. Miandoab stated that in December 1992, Mojtaba Mashadi, whom he had known for about thirty years, had asked him whether he would assist in the assassination of an individual named Shafa and Dr. Ganji. Mr. Miandoab declined the request. According to Mr. Miandoab, Mr. Mashadi further stated that he was acting on behalf of the Iranian intelligence and that he had arranged for Mr. Ghorbanifar to kill Cyrus Elahi, but that he had backed out. Finally, Mr. Mashadi stated to Mr. Miandoab that Iranian intelligence agents, with whom he had contact in Iran, had been sent to Paris to carry out the assassination of Cyrus Elahi. Exhibit 59 at 108.

24. The evidence gathered by Judge Bruguiere strongly indicates that the original plot, as conceived by MOIS, was to assassinate a number of individuals opposed to the Tehran regime, including Dr. Ganji, Dr. Cyrus Elahi, and others. Tr. 130 (Boedels). According to Mr. Boedels, who testified to this Court, Mr. Mashadi importuned Mr. Yazdanseta and Mr. Ghorbanifar to carry out the plot. Mr. Mashadi offered Mr. Yazdanseta money to take the photograph of Dr. Ganji or Cyrus Elahi and told him that he would be paid an additional sum if he would kill the person so identified. Tr. 131 (Boedels). Mr. Mashadi also enlisted the assistance of Mr. Ghorbanifar. However, Mr. Ghorbanifar did not continue with the conspiracy. Instead, he contacted the French secret service and provided information to the French authorities. Mr. Ghorbanifar's revelations prompted the French authorities to warn Dr. Ganji that his assassination was imminent.

25. In addition to testimony obtained through the interrogation of Messrs. Mashadi, Yazdanseta, and Ghorbanifar, Judge Bruguiere also obtained answers to written questions of a high ranking Iranian defector, who had been detained by German authorities. This defector, Mr. Mesbahi, confirmed to Judge Bruguiere that the assassination of Dr. Elahi was organized and executed by Iranian government officials. Tr. 129 (Boedels); Exhibit 59 at 84.

26. Messrs. Mashadi and Yazdanseta were tried before the Paris Supreme Criminal Court, and, in September 1996, they were convicted of conspiracy to commit terrorist acts, including the planned assassinations of Dr. Ganji and Cyrus Elahi. Mr. Mashadi was sentenced to seven years' imprisonment and Mr. Yazdanseta to three years' imprisonment. Tr. 121 (Boedels). These convictions have been upheld by the French appellate courts.

It stands uncontradicted that the murder of Dr. Elahi was an act of assassination undertaken and directed by agents of defendant MOIS at the behest of defendant Islamic Republic of Iran.

CONCLUSIONS OF LAW WITH RESPECT TO JURISDICTION AND LIABILITY

In the Antiterrorism and Effective Death Penalty Act of 1996 ("Antiterrorism Act"), Congress lifted the sovereign immunity of foreign states for acts of state sponsored terrorism. Pub.L. No. 104-132, Title II, § 221(a) (April 24, 1996), 110 Stat. 1241 *codified at* 28 U.S.C. § 1605(a)(7) *106 (West 1997 Supp.). The Antiterrorism Act specifically creates an exception to the immunity of those foreign nations officially designated by the Department of State as terrorist states when that nation commits a terrorist act, or provides material support and resources to an individual or entity that commits such an act, resulting in the death or personal injury of a United States national. 28 U.S.C. § 1607(a)(7).

The stated purpose of the Antiterrorism Act is to deter terrorist acts against U.S. nationals by foreign sovereigns or their agents and to provide for justice for victims of such terrorism. *See* 110 Stat. 1214 (1996). Thus, by enacting the statute, Congress manifested its intent that U.S. nationals who are "victims of terrorist states be given a judicial forum in which to seek redress." *Daliberti v. Republic of Iraq*, 97 F.Supp.2d 38, 50-51 (D.D.C.2000). As explained by Judge Friedman in *Daliberti*: "Those nations that operate in a manner inconsistent with international norms should not expect to be granted the privilege of immunity from suit, that is within the prerogative of Congress to grant or withhold." *Daliberti*, 97 F.Supp.2d at 52.

Because, as discussed below, this matter comes within the state sponsored terrorism exception to foreign sovereign immunity, this Court has original subject matter jurisdiction in this case. Pursuant to § 1330(a) of Title 28, the district courts "have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state ... as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity under sections 1605-1607 of this title or under any applicable international agreement." 28 U.S.C. § 1330(a). *See Argentine Republic v. Amerasia Shipping Corp.*, 488 U.S. 428, 434, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989).⁹

The Antiterrorism Act merely waived the sovereign immunity of state sponsors of terrorism. To create a cause of action for victims of terrorism, Congress enacted a separate piece of legislation. Civil Liability for Acts of State Sponsored Terrorism, Pub.L. No. 104-208, § 589, 110 Stat. 3009 (1996) (*codified at* 28 U.S.C. § 1605 note). The legislation provides a cause of action against a foreign state and its agents for any act which would give a court jurisdiction under 28 U.S.C. § 1605(a)(7). *See Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 12-13 (D.D.C.1998). This provision is commonly referred to as "Flatow Amendment."¹⁰

In order to establish subject matter jurisdiction and state a claim pursuant to the FSIA, as amended by the Antiterrorism Act, 28 U.S.C. § 1605(a)(7), and the Flatow Amendment, 28 U.S.C. § 1605 note, a claim must contain the following elements:

- (1) that personal injury or death resulted from an act of torture, extrajudicial killing, aircraft sabotage, or hostage taking; and
- *107 (2) the act was either perpetrated by a foreign state directly or by a non-state actor which receives material support or resources from the foreign state defendant; and
- (3) the act or provision of material support or resources is engaged in by an agent, official, or employee of the foreign state while acting within the scope of his or her office, agency, or employment; and

- (4) that the foreign state be designated as a state sponsor of terrorism either at the time the incident complained of occurred or was later so designated as a result of such act; and
- (5) if the incident complained of occurred within the foreign state defendant's territory, plaintiff has offered the defendants a reasonable opportunity to arbitrate the matter; and
- (6) either the plaintiff or the victim was a United States national at the time of the incident; and
- (7) similar conduct by United States agents, officials, or employees within the United States would be actionable.

28 U.S.C. § 1605(a)(7) and 28 U.S.C. § 1605 note. Each of these requirements is satisfied in this case, as detailed below or in other portions of this opinion. As earlier noted, the plaintiff has “established his claim or right to relief by evidence that is satisfactory to the Court.” 28 U.S.C. § 1608(e).

I. Extrajudicial Killing

The murder of Cyrus Elahi constitutes an extrajudicial killing. The state sponsored terrorism exception to immunity expressly adopts the definition of extrajudicial killing set forth in the Torture Victim Protection Act of 1991, Pub.L. No. 102–256, § 3(a), 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note). 28 U.S.C. § 1605(e)(1). That Act defines an extrajudicial killing as:

a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

Pub.L. No. 102–256, § 3(a). The murder of Cyrus Elahi fits within the definition of extrajudicial killing. First, the uncontroverted evidence introduced at trial demonstrated that the assassination of Cyrus Elahi was a deliberate act. Second, Cyrus Elahi was not afforded the judicial process contemplated by the statute. Third, as this Court stated over twenty years ago, assassination is “clearly contrary to the precepts of humanity as recognized in both national and international law.” *De Letelier*, 488 F.Supp. at 673. *See also Xuncax v. Gramajo*, 886 F.Supp. 162, 185 (D.Mass.1995) (“[E]very instrument and agreement that has attempted to define the scope of human rights has ‘recognized a right to life coupled with a right to due process to protect that right.’”) (citation omitted); *Forti v. Suarez–Mason*, 672 F.Supp. 1531, 1542 (N.D.Cal.1987) (“The proscription of summary execution or murder by the state appears to be universal, is readily definable, and is of course obligatory.”); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 702(c) (1986) (“A state violates international law if, as a matter of state policy, it practices, encourages, or condones ... the murder or causing the disappearance of individuals.”).

II. Foreign State Actor or Provision of Material Support

Based on the unconverted evidence introduced at trial, the Court is satisfied that the murder of Cyrus Elahi was perpetrated by agents of MOIS acting at the direction of, and in furtherance of the policies *108 of, the Islamic Republic of Iran.¹¹ As a result, both the Islamic Republic of Iran and MOIS may be held responsible under the FSIA for the consequences of their actions. Indeed, in cases where the involvement of the Iranian government in specific terrorist acts was much less direct and involved only the provision of support and resources to terrorist groups, liability was found to exist under the FSIA. *See Flatow*, 999 F.Supp. at 10 (holding Iran and MOIS liable for terrorist bombing by Islamic Jihad, which resulted in the death of an American citizen); *Eisenfeld*, 2000 WL 1918779, * 5–6, 2000 U.S. Dist. LEXIS 9545 at *14–16 (finding Iran and MOIS liable for the death of American citizen who was killed in terrorist bombing by Hamas because Hamas received material support from defendants).

III. State Sponsor of Terrorism

The Antiterrorism Act requires that the foreign state be designated as a state sponsor of terrorism pursuant to Section 6(j) of the Export Administration Act of 1979, 50 U.S.C.App. § 2405(j). 28 U.S.C. § 1605 note. The Export Administration Act calls upon the Secretary of State to make a determination that a foreign state has “repeatedly provided support for acts of international terrorism and to notify the relevant committees of both Houses of Congress, and to publish the determination in the Federal Register.” 50 U.S.C.App. § 2405(j).

The Islamic Republic of Iran has been designated a “state sponsor” of terrorism pursuant to these provisions of the Export Administration Act continuously since January 1984. *See Cicippio*, 18 F.Supp.2d at 68. *See also* 49 Fed.Reg. 47702 (Dec. 6, 1984). Iran continues to be designated a state sponsor of terrorism. 22 C.F.R. § 126.1(d); 31 C.F.R. § 596.201. *See also* U.S. DEPARTMENT OF STATE, PATTERNS OF GLOBAL TERRORISM, 1999 (April 1, 2000).

IV. United States National

The FSIA requires that either the claimant or the victim be a “national of the United States,” as the term is defined by the Immigration and Nationality Act, “when the act of state sponsored terrorism occurred.” 28 U.S.C. § 1605(a)(7)(B)(ii).¹² In this case, Cyrus Elahi was a nationalized United States citizen at the time he was assassinated by agents of the Islamic Republic of Iran and MOIS.¹³ The claimant here, Dariush Elahi, also is a naturalized United States citizen. Hence, Dariush Elahi, as Cyrus Elahi's next of kin and representative of Cyrus Elahi's estate, has properly brought this action under the FSIA.¹⁴

*109 CONCLUSIONS OF LAW WITH RESPECT TO DAMAGES

I. Count I—Wrongful Death

The FSIA, as amended, establishes a cause of action for wrongful death proximately caused by an act of state sponsored terrorism—in this case the extrajudicial killing of Cyrus Elahi. The statute provides, *inter alia*, that money damages, including economic damages, solatium, pain and suffering, and punitive damages are available in actions brought pursuant to the FSIA. 28 U.S.C. § 1605 note. Compensation may be awarded to a decedent's heirs-at-law for both the economic and emotional losses that result from the decedent's premature death due to acts of state sponsored terrorism.¹⁵ *See Flatow*, 999 F.Supp. at 27–28; *Eisenfeld*, 2000 wl 1918779, *6, 2000 U.S. Dist. LEXIS 9545 at *16; *Alejandro v. Republic of Cuba*, 996 F.Supp. 1239, 1249–50 (S.D.Fla.1997).

A. Economic Damages

The economic losses flowing from a person's untimely death include the loss of accretions to his estate. The evidence established that had Cyrus Elahi not been killed, he could have continued to pursue his work with the Flag of Freedom Organization, or he could have returned to the academic world to pursue a teaching career.

Which career path Cyrus Elahi would have chosen is not susceptible to precise determination. Accordingly, the plaintiff's economic expert, Jerome Paige, Ph.D., performed two separate calculations of lost income. The first calculation was based upon the assumption that Cyrus Elahi would have returned to academia had he not been assassinated. The second calculation assumed that Cyrus Elahi would have continued his work with the Flag of Freedom Organization. For each of these of these assumptions, Dr. Paige used a typical mean earnings approach for a similarly situated 47-year old male. According to Dr. Paige's calculations, Cyrus Elahi's lifetime earnings would have been \$725,359 had he continued working for the Flag of Freedom Organization and \$967,626 had he returned to the academic world. Tr. 197–198 (Paige); Exhibit 100.

Although the evidence demonstrated that Cyrus Elahi could have returned to his academic career, his true passion, and the one to which he fully devoted the last four years of his life, was his work for the Flag of Freedom Organization. Accordingly, for

purposes of calculating economic losses, the Court will assume that Dr. Elahi would have continued his work with the Flag of Freedom Organization and that the financial loss to his estate resulting from his untimely death is \$725,359, the lower of Dr. Paige's two calculations. An award of this amount, therefore, will be rendered to Cyrus Elahi's estate for lost accretions.

In addition to these economic losses, Dariush Elahi, as executor of Cyrus Elahi's estate, also incurred \$14,676 in funeral expenses, which includes the cost of the funeral in Paris, the burial plot in Maryland, the gravestone, and the cost of travel to and from Paris. The Court finds that these expenses were appropriately incurred and should be recovered as part of the compensatory damage award in this case.

B. Solatium

1. Legal Standards for Awarding Solatium Damages

The statutory provision creating the cause of action for state sponsored terrorism also permits solatium damages. 28 U.S.C. § 1605 note. A claim for solatium *110 refers to the “mental anguish, bereavement and grief resulting from the fact of decedent's death[.]” *Flatow*, 999 F.Supp. at 30. The loss of decedent's society and comfort is also encompassed within solatium. *Id.* at 31. Solatium may include a claim for loss of a sibling where the claimant proves a close emotional relationship with the decedent. *See Flatow*, 999 F.Supp. at 30.

The testimony in this case established that Cyrus Elahi was the eldest of four children and that he had two brothers, Dariush (the administrator of his estate) and a younger brother, and a sister. Cyrus Elahi's father was born in Iran, but came to the United States in 1948 to pursue his medical education. At the time, his wife and children remained in Iran. Later, in 1958, the family moved to the United States. In 1961, all of the children became naturalized U.S. citizens. Shortly thereafter, in 1962, Cyrus' mother and father divorced.

Following his parents' divorce, Cyrus, the eldest, took care of his younger siblings and, as described by his brother, Dariush, “assumed the role of a friend, advisor, confidante, father.” Cyrus Elahi also provided monetary support to the rest of the family, including his mother and siblings. He helped to pay for the college education of his siblings and, while Dariush was attending college at American University in Washington, D.C., where Cyrus also taught, Dariush lived with his brother, and Cyrus placed all of his money in a joint checking account for Dariush's use.

Because Dariush and Cyrus were closest in age, a special bond developed between them. Prior to going to Paris to join Dr. Ganji, Cyrus Elahi discussed with Dariush the anguish that he felt. Cyrus informed his brother that if he joined Dr. Ganji in Paris, this would be the end of his marriage. Cyrus gave some of his personal effects to his brother for safekeeping. After Cyrus Elahi joined Dr. Ganji in Paris, Cyrus continued to remain in contact with his brother and would visit him in the United State at least twice yearly. Dariush Elahi testified that his brother “would make it a point to come and visit me” because, at the time, Dariush was in the midst of his medical training and could not travel to Paris. Later, when his medical training was completed, Dariush visited his brother on several occasions in Paris and, shortly before his assassination, in Germany.

The grief and anguish Dariush experienced as a result of the death of his brother, Cyrus, which he relived during the hearing on this matter, was readily apparent during his testimony. He stated, “I believe I was closer to him than I was to my father at any time in my life.” Dariush Elahi also read into the record a statement written by his younger brother, who presently lives in California. That statement captures the strong, emotional feelings that the members of the Elahi family had for Cyrus Elahi and the exceptional loss they have experienced as a result of his death. Cyrus' younger brother wrote as follows:

As our parents were divorced when the children were young, Cyrus being the oldest child, adopted many of the father's responsibilities to his siblings. He encouraged all of us to be and do better. He financially and emotionally supported us.... He was always there for us.... These actions, combined with [his] optimistic nature, even in the face of sometimes sorry circumstances, carried us forward individually and as a family. Given all the strengths and all he did and how he loved us

[one] can only imagine what a wonderful brother and central hub to my family, including my mother, my father, and cousin (all of whom grew up together in the same household), Cyrus was to us. My mother was destroyed by Cyrus' assassination....

Not because he was my brother, but because of who he was, Cyrus was very special and inspiring. He left a long *111 trail of people who live—whose life he positively touched, and he had so much more to offer....

Testimony about the mental anguish and grief experienced as a result of the death of a loved one is sufficient to sustain a claim for solatium. See *Flatow*, 999 F.Supp. at 30. In this case, Dariush Elahi testified about his deep feelings for his brother and the extreme sorrow he and the Elahi family felt when they learned of their brother's violent death.

Moreover, as noted by Judge Lamberth in *Flatow*, the depth of a person's suffering may not be totally manifested on the stand. As noted in *Flatow*, “in the long term, the sudden death of a loved one may manifest itself as ‘a deep inner feeling of pain and anguish often borne in silence.’” *Flatow*, 999 F.Supp. at 31 (quoting *Connell v. Steel Haulers, Inc.*, 455 F.2d 688 (8th Cir.1972)).

Individuals can react very differently even under similar circumstances; while some sink into clinical depression and bitterness, others attempt to salvage something constructive from their personal tragedy. Such constructive behavior should not be considered as mitigating solatium, but rather as an equally compensable reaction, one in which courage to face their own mental anguish prevails in order to survive, and in some circumstances, to benefit another.

Id.

In this case, the deep loss experienced by the brother of Cyrus Elahi may linger for an extensive period of time because of the circumstances of their brother's death. “When death results from terrorism, the fact of death and the cause of death can become inextricably intertwined, thus interfering with the prospects for anguish to diminish over time.” *Flatow*, 999 F.Supp. at 31. As stated by the court in *Higgins v. The Islamic Republic of Iran*, No. 99–377, slip. op. at 14 (D.D.C. Sept. 21, 2000), “death as a result of terrorism, with its attendant horrific surrounding circumstances, prevents the anguish [felt by a relative of the deceased] from subsiding.”

2. Court's Award of Solatium Damages

Unlike a claim for lost wages, the amount to be awarded for the loss of solatium “cannot be defined through models and variables.” *Flatow*, 999 F.Supp. at 32. Nor can solatium damages be reduced to present value. As explained by Judge Lamberth, “[w]hile economic losses can be reduced to present value with simple equations to establish the amount of an annuity established today which would have matched the decedent's ostensible income stream, the scope and uncertainty of human emotion renders such a calculation wholly inappropriate.” *Id.* (citing *Drews v. Gobel Freight Lines, Inc.*, 144 Ill.2d 84, 161 Ill.Dec. 324, 578 N.E.2d 970 (1991); *U.S. v. Hayashi*, 282 F.2d 599, 606 (9th Cir.1960)).

The awards in cases similar to the one at bar provide the Court with some guidance as to the appropriate amount to award to a decedent's relatives for a death caused by terrorist acts. In *Flatow*, the court awarded \$5,000,000 to each of the parents and \$2,500,000 to each sister and brother of Alisa Flatow. 999 F.Supp. at 32. In *Eisenfeld*, 2000 wl 1918779, * 8, 2000 U.S. Dist. LEXIS 9545 at 18, the court, similarly, awarded \$5,000,000 to each of the parents of Matthew Eisenfeld and to the mother of Arline Duker, who was also killed in the terrorist bombing. In addition, the court awarded \$2,500,000 to the sister of Mr. Eisenfeld and the same amount to the two sisters of Ms. Duker. *Id.*

In this case, the uncontroverted testimony establishes that Cyrus Elahi not only was a dearly beloved brother to his two younger brothers, but he also fulfilled the role of the head of the family and his loss may be said to be that of a brother and a father.¹⁶

Notwithstanding the inherent *112 uncertainty of calculating an award of solatium, this Court concludes that an award in the amount of \$5,000,000 to each of the two brothers of Cyrus Elahi would be appropriate for the profound emotional loss they have experienced and undoubtedly will continue to experience in the future. Therefore, the Court awards \$5,000,000 to Dariush Elahi, on behalf of himself and \$5,000,000 to Cyrus Elahi's younger brother, Elham Elahi. *See Flatow*, 999 F.Supp. at 32 (awarding the plaintiff \$20,000,000 for solatium on behalf of decedent's heirs-in-law, including decedent's siblings).

III. Count II—Action for Survival Damages

The courts have recognized that an action may be pursued under the FSIA for survival damages for the emotional distress and the pain and suffering resulting from acts of state sponsored terrorism. *See Flatow*, 999 F.Supp. at 28; *Eisenfeld*, 2000 WL 1918779, *6-7, 2000 U.S.Dist LEXIS 9545 at *16-17. Thus, a cause of action that could have been brought by Dr. Elahi but for his death, may be asserted in this lawsuit for the benefit of the estate. In Count II of the Complaint, Dariush Elahi asserts such a claim on behalf of the estate.

The plaintiff requests damages for the years of fear that Cyrus Elahi endured before his assassination. According to the plaintiff, this “pre-impact emotional distress,” which occurred well before the actual incident that resulted in death, is compensable in an action for survival damages. The cases cited by the plaintiff, however, do not support such a notion. *See, e.g., Beynon v. Montgomery Cablevision Limited Partnership*, 351 Md. 460, 718 A.2d 1161 (1998) (affirming award of damages for pre-impact fear suffered by decedent as he became aware that auto crash was imminent); *Yowell v. Piper Aircraft Corp.*, 703 S.W.2d 630, 634 (Tex.1986) (affirming award of damages for “mental anguish the decedents suffered from the time of the plane's breakup until it hit the ground”). The general rule in survival actions is that damages are limited to those suffered during the period between injury and death. *See HARPER, JAMES & GRAY, 4 THE LAW OF TORTS* § 24.6, p. 474 (2d ed.1986). The cases cited by the plaintiff similarly stand for the unremarkable proposition that mental anguish flowing from wrongful conduct of the defendant is compensable. In this case, the wrongful conduct of the defendant was the “extrajudicial killing” of Cyrus Elahi. The “pre-impact emotional distress,” while perhaps real, was not a result of the specific incident of wrongful conduct complained of by the plaintiff. The distress felt by Cyrus Elahi was the result of the pre-existing threat to his life, and existed independent of the ultimate act of assassination. Therefore, no damages for such pre-impact distress are available.

The plaintiff also claims damages for the pain and suffering Cyrus Elahi experienced while he was being attacked and killed in his apartment building. As discussed above, this type of pain and suffering is compensable. *See HARPER, supra*, § 25.16, at 612—613 (stating that decedent's pain and suffering prior to death is compensable under many survival statutes, but “[i]f death was instantaneous there can be no recovery under such a statute for pain and suffering”).

Several of the witnesses at the trial in this Court testified that the French authorities *113 found pieces of flesh and blood under Cyrus Elahi's fingernails. They also testified that a witness reported seeing a man fleeing the scene with blood on his jacket. Mr. Boedels testified that Cyrus Elahi was shot seven times. Dr. Ganji testified that a neighbor reported seeing two men struggling. Finally, Dariush Elahi testified that his “memory [from speaking with French police] is that it could have been for a period of as much as three or four minutes that [Cyrus Elahi and his assassin] were struggling before he was hit in the head twice.” Tr. 226. This uncontroverted evidence demonstrates, at a minimum, that Cyrus Elahi was aware of what was happening to him for long enough to grab hold and scratch his assailant. From this, the Court can infer that Cyrus Elahi suffered a period of pain and suffering. But, although it is possible that the struggle “could have been for a period of as much as three or four minutes,” the evidence does not demonstrate that the struggle actually did last for any significant length of time. At trial, the Court asked Mr. Boedels (who had the most extensive access to the French investigation) the following:

The Court: Was there anything indicated in the police report, in the autopsy report, or from any other source that you know of, sir, that indicated how long it was from the time that any one or all of these seven bullets struck him to the time that he actually died? What was the interval? Are we talking hours? Are we talking seconds? Are we talking minutes? If so, how long? Anything that tells us that?

Mr. Boedels: No, there is no evidence, Your Honor, there is no evidence. But I must say that it would have taken, let us say, at least something like 30 seconds, to my opinion. And 30 seconds with people who are willing to kill you, it's a very long delay.

Tr. 139. Notwithstanding Mr. Boedel's (and other witnesses') speculation, there was no significant evidence offered at trial from which the Court could find that Cyrus Elahi suffered for more than a very short period of time. The Court must take this into account in determining damages for pain and suffering.

In sum, the Court holds that distress endured prior to the assassination is not compensable damage. In addition, the Court can only find that Cyrus Elahi's pain and suffering lasted a very brief period of time. Consequently, the Court will award a sum for pain and suffering which is far below the amount requested by the plaintiff. The Court concludes that the appropriate amount of compensation for pain and suffering of the decedent is \$1,000,000.

III. Count III—Punitive Damages

One of the main purposes of the Antiterrorism Act is to provide victims of state sponsored terrorism (or, as in this case, the next-of-kin and personal representative) “an important economic and financial weapon against these outlaw states.” H.R.Rep. 104–383, at 182–183. In order to achieve this purpose, the statute allows for the imposition of punitive damages for any action brought pursuant to the Flatow Amendment. 28 U.S.C. § 1605 note.

Because the plaintiff has established subject matter jurisdiction under section 1605(a)(7), punitive damages may be awarded against MOIS, which has been found to be an “agency or instrumentality of a foreign state,” i.e., the Islamic Republic of Iran. 28 U.S.C. § 1606. *See also Flatow*, 999 F.Supp. at 26; *Anderson*, 90 F.Supp.2d at 113. Punitive damages may not, however, be awarded against the Islamic Republic of Iran. The FSIA exempts a foreign state from liability for punitive damages.¹⁷ *See Victims of Trafficking and *114 Violence Protection Act of 2000*, P.L. No. 106–386, § 2002(f)(2) (October 28, 2000) (repealing recently enacted amendment to 28 U.S.C. § 1606 permitting punitive damages against a foreign state for actions under sections 1605(a)(7) and 1610(f)). *See Anderson*, 90 F.Supp.2d at 114; *Cicippio*, 18 F.Supp.2d at 69.

The purpose of punitive damages is “to punish [a defendant] for his outrageous conduct and to deter him and others like him from similar conduct in the future.” RESTATEMENT (SECOND) OF TORTS § 908(1) (1997). Courts faced with gross violations of international human rights have employed the tool of punitive damages to achieve these dual purposes. By granting sizeable awards, courts have recognized the condemnation of the community of nations of human rights abuses. *See Alejandro* 996 F.Supp. at 1250. Punitive damages are said to help reinforce “the consensus of the community of humankind.” *Filartiga v. Pena-Irala*, 577 F.Supp. 860, 863 (E.D.N.Y.1984). And, as stated in *Anderson v. Islamic Republic of Iran*, “[t]he victim to whom the award is made ... stands as a surrogate for civilized society in general; the victim is made more than whole in order that others may be spared a similar injury.” 90 F.Supp.2d at 114.

The assassination of Cyrus Elahi by agents of MOIS for his outspoken criticism of the Iranian regime was intentional, premeditated, malicious, and cruel. Such an act violates fundamental precepts of international law that are binding on all members of the world community. This is reason enough justify the substantial punitive damages awarded on this date against the defendant MOIS. Another reason one could award punitive damages in this case is to recognize society's interest in the free expression of political ideas. *Cf. Anderson*, 90 F.Supp.2d at 114 (justifying award of punitive damages on basis of “vindicat[ing] the interest of society at-large in the collection and dissemination of complete and accurate information about world conflicts”).

Dr. Patrick Clawson testimony regarding Iran's expenditures on terrorism was illuminating. Dr. Clawson estimated that the MOIS expended between \$50 million to \$200 million on eliminating political opponents of the regime. As he has in previous cases, Dr. Clawson testified that Iran is aware of the recent court judgments. He also testified that it would be consistent with Iran's prior behavior for Iran to alter its behavior so as not to target Americans. To achieve these goals, the Court finds it appropriate and necessary to award \$300,000,000.00 against the defendant MOIS.

CONCLUSION

The plaintiff has established to the Court's satisfaction, pursuant to 28 U.S.C. § 1608(e), that the defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security, engaged in an act of extrajudicial killing of a United States national by ordering, directing and arranging for the assassination of Cyrus Elahi. Accordingly, for the reasons more fully set forth above, the defendants are judged liable for the assassination of Dr. Elahi under the provisions of the FSIA. Except for punitive damages, the defendants are jointly and severally liable for all damages flowing from that unlawful act as *115 awarded by this Court in the following amounts:

Monetary Damages for Wrongful Death

Loss of Accretion to the Estate of Cyrus Elahi	\$ 725,359
Funeral Expenses to the Estate of Cyrus Elahi	\$ 14,676
Solatium—Dariush Elahi	\$ 5,000,000
Solatium—Elham Elahi	\$ 5,000,000
Survival Damages (Pain and suffering of decedent)	\$ 1,000,000
Punitive Damages	\$300,000,000

The Clerk of the Court shall enter judgment accordingly. An Order accompanies these Findings of Fact and Conclusions of Law.

IT IS SO ORDERED.

All Citations

124 F.Supp.2d 97, 176 A.L.R. Fed. 633

Footnotes

- 1 Plaintiff, Dariush Elahi, is a naturalized United States citizen and is the administrator of his brother's estate. Dariush Elahi brings this action as administrator of Cyrus Elahi's estate and in his own right and on behalf of decedent's two other siblings.
- 2 Service of Process was accomplished on February 20, 2000, with the assistance of the Swiss Embassy in Tehran, the United States' protecting power in the Islamic Republic of Iran. This Court did not receive any response from the defendants, either through counsel's entry of appearance, or through a diplomatic note.
This Court takes judicial notice of the fact that the Islamic Republic of Iran is an experienced litigant in the United States federal court system in general and in this Circuit in particular. *See e.g., Foremost-McKesson v. Islamic Republic of Iran*, 905 F.2d 438 (D.C.Cir.1990); *Berkovitz v. Islamic Republic of Iran*, 735 F.2d 329 (9th Cir.1984); *McKeel v. Islamic Republic of Iran*, 722 F.2d 582 (9th Cir.1983).
- 3 Congress intended this provision to afford the same procedural protections to foreign states that Rule 55(e) of the Federal Rules of Civil Procedure gives to the United States. *See De Letelier v. Republic of Chile*, 488 F.Supp. 665, 667 n. 2 (D.D.C.1980); *Commercial Bank of Kuwait v. Rafidain*, 15 F.3d 238, 242 (2nd Cir.1994). Neither 1608(e) of the FSIA or Rule 55(e) "relieves the sovereign from the duty to defend cases and to obey court orders." *Rafidain*, 15 F.3d at 242. However, before judgment can be entered, the plaintiffs must put forth satisfactory evidence as to each element of their claim. *Compania Interamericana Export Import v. Compania Dominicana De Aviacion*, 88 F.3d 948, 951 (11th Cir.1996).
- 4 This procedure has been followed in prior actions brought by victims (or the next-of-kin of victims) of terrorist acts sponsored by the Islamic Republic of Iran. *See Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 6 (D.D.C.1998); *Cicippio v. Islamic Republic of Iran*, 18 F.Supp.2d 62, 67 (D.D.C.1998); *Anderson v. Islamic Republic of Iran*, 90 F.Supp.2d 107 (D.D.C.2000); *Eisenfeld v. Islamic*

Republic of Iran, 2000 U.S. Dist. LEXIS 9545 (D.D.C. July 11, 2000); *Higgins v. Islamic Republic of Iran*, No. 99–377 (D.D.C. Sept. 21, 2000).

Iran also operates in the Middle East through at least three surrogate organizations that receive Iranian funding; Hezbollah, a Lebanese Shiite organization; Hamas, or Islamic Resistance; and the Palestinian Islamic Jihad. The Court notes that previous lawsuits brought by victims (or the next-of-kin of victims) of Iranian sponsored terrorism have involved terrorist actions by these organizations. *See*, note 4, *supra*.

Dr. Patrick Clawson, Director of Research at the Washington Institute for Near East Policy and an expert on the Near East, testified that when this statement first was issued by the Department of State, “there was considerable debate ... about this judgment...” However, as a result of additional information that has emerged from Iran, Dr. Clawson opined that “this statement is now very widely accepted by Iran watchers and is no longer at all controversial.” Tr. 250 (Clawson).

As part of his study and investigation of the Iranian government's campaign against opponents of the regime, Mr. Timmerman compiled a chronological list of specific Iranian terrorist attacks against dissidents. This document, which was submitted into evidence as Exhibit 29, is persuasive evidence of the pattern of assassinations instituted by the Iranian government to silence its critics. Mr. Timmerman testified that in those cases of assassination he had investigated, the Iranian government consulate or embassy was directly involved in providing safehouses, automobiles, money, passports, and escape routes to the perpetrators of these offenses.

A Fatwa is an edict of a religious leader, authorizing a faithful Muslim to commit murder, in this case, against certain opponents of the Iranian regime. Fatwas are not publicly distributed; hence, the fact that one has been issued against a specific person must be gleaned indirectly. The Fatwa issued against Dr. Ganji (Exhibit 105), and introduced into evidence at the hearing in this case, was obtained by Dr. Ganji from sources within the Iranian government.

The Court also has in personam jurisdiction over the defendants. The Foreign Sovereign Immunities Act provides that personal jurisdiction over a defendant will exist where, as here, the plaintiff establishes the applicability of an exception to immunity pursuant to 28 U.S.C. § 1605 and service of process has been accomplished pursuant to 28 U.S.C. § 1608. 28 U.S.C. § 1330(b). Both of those requirements have been met here. *See also Foremost–McKesson v. Islamic Republic of Iran*, 905 F.2d at 442 (“Personal jurisdiction under FSIA exists so long as subject matter jurisdiction exists and service of has been properly made pursuant to 28 U.S.C. § 1608”). Venue appropriately lies in this district court because the federal venue statute provides that actions against a foreign state and a state's agent or instrumentality may be brought in the United States District Court for the District of Columbia. 28 U.S.C. § 1391(f)(4).

Although this provision of the statute has been published as a note to 28 U.S.C. § 1605, it has been interpreted as being an “independent pronouncement of law.” *Flatow*, 999 F.Supp. at 12. In addition, section 1605(a)(7) and the Flatow Amendment are interpreted *in pari materia*. *See Flatow*, 999 F.Supp. at 13.

The definition of “foreign state” in the FSIA includes agencies and instrumentalities of a foreign state. 28 U.S.C. § 1603(a), (b). *See Foremost–McKesson*, 905 F.2d at 446. Defendant MOIS is an agency of the Iranian government. *See Anderson*, 90 F.Supp.2d at 112–113. Accordingly, MOIS, as well as the Islamic Republic of Iran, is liable under the FSIA.

The Immigration and Nationality Act defines the term “national of the United States” as (a) a citizen of the United States, or (b) a person who, though not a citizen of the United States, has permanent allegiance to the United States.” 8 U.S.C. § 1101(a)(2).

Cyrus Elahi became a U.S. citizen in 1961. A photocopy of Cyrus Elahi's passport was admitted into evidence. Exhibit 53.

Because the murder of Cyrus Elahi occurred in Paris, France—not in Iran—the fifth element for coverage under the FSIA, *see supra*, addressing incidents within the foreign state's own territory does not apply. *See* 28 U.S.C. § 1605(a)(7)(B)(i).

The Flatow Amendment, 28 U.S.C. § 1605 note, adds the requirement that the liability of foreign states and their officials and agents be comparable to that of the United States and its agents, officials and employees. *See supra* (seventh required element of cause of action under state sponsored terrorism exception). There can be no serious dispute that if officials or agents of the United States, while acting in their official capacities, arranged for and directed the assassination of a critic of the United States government, they would not be immune from civil suits for wrongful death. *See* U.S. Const. Amend. 5; *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).

Recently enacted amendments to the FSIA allow plaintiffs in specifically designated lawsuits against the Iranian government to recover an award of compensatory damages from Iranian assets frozen by the United States government. *See* Pub.L. No. 106–386, § 2002(a)–(c) (October 28, 2000). As counsel acknowledged, this lawsuit does not appear to come within the provisions of the new legislation.

Although there was significant testimony regarding the mental anguish and loss of society and comfort experienced by Cyrus Elahi's brothers, the Court finds that there was an absence of specific testimony regarding mental anguish and loss of society and comfort experienced by his sister. In addition, while in his younger years, after the divorce of his parents and 21 years prior to his death, Cyrus was a father figure to all his siblings, there was insufficient evidence about the state of Cyrus Elahi's relationship with his sister at the time of his death. *See Flatow*, 999 F.Supp. at 30 (requiring proof of close emotional relationship before awarding damages to

siblings). Therefore, there will be no award of damages for anguish or loss of society and comfort suffered by Cyrus Elahi's sister. No award was requested on behalf of any other family member.

- 17 The plaintiff seeks punitive damages against Iran under two theories: First, the plaintiff argues that punitive damages may be awarded against Iran vicariously based on a theory of respondeat superior. The *Flatow* court accepted this argument. *See Flatow*, 999 F.Supp. at 25–27. Second, the plaintiff argues that Iran can be held jointly and severally liable for punitive damages with MOIS based on Count IV of the complaint—a conspiracy claim. The Court rejects both of these arguments. Congress recently repealed legislation that would have permitted punitive damages against a foreign state in cases, such as this one, brought under 28 U.S.C. § 1605(a)(7). *See* P.L. No. 106–386, § 2002(f)(2). In so doing, Congress returned the law to its pre–1998 state, when it provided that a “foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages....” 2 U.S.C. § 1606. Congress' intention is clear. Punitive damages are not available against a foreign state.

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ANNEX 47



TRANSLATION

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Court of Cassation, Criminal Division, July 9, 1998. No. 9783.612. Not published in the *Bulletin* [official case-law reporter for the Court of Cassation]. Appeal denied.

Court of Cassation

Judgment of July 9, 1998

**Mojtaba MASHHADY or MASHMADY[*] v. Justice M. Schumacher,
Presiding Judge of the Criminal Division**

French Republic

In the Name of the French people:

**On July 9, 1998, at the *Palais de Justice* Courthouse
in Paris, the Criminal Division of the Court of Cassation
delivered the following judgment in open court:**

**Based on: the report of Justice ... [name redacted;
ellipsis in original]; the submissions of the Law Firm of
Nicolay LaNouvelle, attorneys admitted to the Court of
Cassation Bar; and the findings of Advocate-General
[ellipsis in original] de Costil;**

[* Translator's note: Spelled "Mashadi" in U.S. court documents found online]

Ruling on the appeal in law filed by:

- Mojtaba MASHHADY or MASHMADY, challenging the April 25, 1997 decision of the Tenth Division of the Paris Court of Appeal which sentenced him to seven years' imprisonment on charges of conspiracy to plan terrorist acts and ordered his continued custody and the confiscation of the materials placed under judicial seal;

In view of the pleading submitted:

On the first ground of appeal, alleging a violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 427, 463, 513, and 593 of the Code of Criminal Procedure, failure to set forth a valid statement of reasons, and lack of legal grounds:

In that the decision of affirmance from which this appeal is taken denied Mojtaba Mashhady's motion for the attachment of documents, found him guilty of participation in a conspiracy to commit one or more low-degree offenses [*délits*] or one or more high-

degree offenses[*crimes*] punishable by ten years' imprisonment, and sentenced him to seven years' imprisonment; and

On the grounds that:

The Court [of Appeal] found that the documents in case file P902993901/6 to which the attachment motion pertained consisted of records dated, respectively, September 1993, November 1993, December 1993, January 1994, May 1994, and March 1995;

The Court of [Appeal] noted that an investigation into this case was opened on December 15, 1993, and an order serving notice of the closing of that investigation was issued on December 18, 1995, at which time the parties were given a period of 20 days to file motions on the basis of Articles 81(9), 82-1, 156(1) and 173(3) of the Code of Criminal Procedure;

Said court further noted that the investigating judge himself attached to the Court of Appeal case

file certain materials from case file P902993901/6, attachment of which he deemed was necessary, and that therefore it was permissible for the defendants and their attorneys to move for the attachment of other materials;

Said court observed, however, that neither during the investigation nor during the aforementioned 20-day period was any motion filed for the attachment of documents;

Lastly, said court found that the April 12, 1996 order referring the case to the Paris Criminal Court of First Instance [*Tribunal correctionnel de Paris*] terminated the investigative proceeding and had the effect of binding the case over for trial;

It ruled that denial of the motion for attachment was warranted;

Yet, when a motion for the attachment of documents from one proceeding to another is filed after the order to refer the case to the criminal court of

first instance is issued, such a motion must be analyzed as a supplementary information request;

The denial by the aforementioned Court of Appeal of the attachment motion on the ground that said motion had not been filed during the investigation, which was terminated by the order to commit the case for trial, resulted from the court's flawed understanding of the scope of its own powers, and said court thus violated the terms of the provisions cited;

Yet, unless it can be shown, via a reasoned decision, that their production is impossible or pointless, the judge is required to receive all evidence and hear all defenses at all stages of the proceedings, even during oral argument, as long as such evidence and defenses are available to argument by all parties;

Consequently, taking refuge behind the reasoning that the motion for attachment was not timely, without checking to determine whether the documents of which production was sought were not of such a

nature as to aid in the determination of truth and therefore should not be brought before the court in adversary proceedings, the aforementioned Court of Appeal, engaging in misguided reasoning, rendered a decision that failed to comply with the aforementioned legal provisions and the requirements of due process;

Whereas:

We find that in their denial of the motion filed by Mojtaba Mashhady to attach to the proceeding certain documents from the investigation conducted against him on charges of aiding and abetting murder, the judges of the Court of Appeal found, based both their own reasoning and on reasoning adopted from the trial court, that neither the defendant nor his attorney had moved for the attachment of documents either during the investigation or during the 20-day period provided for under Article 175 of the Code of Criminal Procedure;

Said judges noted that the investigating judge himself attached the documents he deemed useful and that the case file contained all those documents favorable to the defendant;

In regard to this reasoning, we find that because a motion for attachment of documents from one proceeding to another cannot possibly be analyzed as a request for additional information, the Paris Court of Appeal expressed valid grounds for its decision and, contrary to the allegations of the Appellant herein as set forth under the first ground of appeal, did not fail to comply with the provisions of the European Convention;

The first ground of appeal must therefore be rejected.

On the second ground of appeal, alleging a violation of Articles 450-1 of the Penal Code and Articles 591 and 593 of the Code of Criminal Procedure, and the lack of statement of reasons, adequate justification, and legal grounds:

In that the decision from which this appeal is taken sentenced the defendant to seven years' imprisonment on charges of conspiracy; and

On the grounds that:

Mojtaba Mashhady contended that he was a victim of both a smear campaign by Hossein ... [name redacted; ellipsis in original] and a frame-up by the police, who, he maintained, concocted evidence against him. The Court [of Appeal] noted, however, that the statements that Hossein ...[ellipsis in original] made to both the crime squad and to the investigating judge were lengthy, voluntary, and substantiated with regard to both the acts constituting the conspiracy engaged in with Mojtaba Mashhady and the acts' terrorist aims, of which the two defendants had knowledge. Those statements were confirmed by the victims, as well as by a very large number of witnesses,[including] Ghasvand, Ghanaee-Miandoab, Ketabolah, Paul, and Shiraz, who described in detail the circumstances under which they were approached by Hossein ...[ellipsis in original] and Mojtaba Mashhady for recruitment to commit and plan

the attacks. Mr. ...[ellipsis in original], in particular, described in great detail the terrorist activities of Mojtaba Mashhady and the means Mashhady used to carry them out, and he did not back down from his accusations on cross-examination;

These statements were also corroborated by the specific findings of the Territorial Watch Office and by the results of the surveillance on Mojtaba Mashhady that was conducted by members of the judicial police, who testified as to his comings and goings both alone and with Hossein ... [ellipsis in original], his attempts to evade police surveillance, and the meetings and gatherings at Orly Airport during November 1989 between the defendant, Mr. ...[ellipsis in original], and members of Iranian intelligence agencies;

This evidence, as well as the reasoning used by the trial judges, which the Court of Appeal adopted, shows that Mojtaba Mashhady and Hossein ...[ellipsis in original] had a genuine agreement to plan one or more high-degree offenses in connection with a terrorist enterprise. This agreement, regarding

which the law does not require knowledge of a specific crime but rather only general knowledge of the criminal nature of the act planned, is established by the various substantial preparatory acts about which the aforementioned witnesses testified;

Attempts to recruit several Iranian nationals as henchmen and obtain information from witnesses, and to monitor and track victims and their families and friends [*sic*—end of sentence appears to be missing—the following may be out of context:]. As a result, the Court [of Appeal] affirmed the challenged ruling concerning the classification of the offense and the guilt of the defendants;

Yet, although the trial court has sole discretion to assess the elements of an offense, its discretion is absolute only to the extent that it is accompanied by a statement of valid reasons and is not tainted by illegality;

The Court of Appeal had insufficient grounds for its decision inasmuch as it merely made the finding that

in this case the agreement between the defendants was established by the various substantial preparatory acts testified to by the above-mentioned witnesses rather than finding "preparation characterized by one or more well-defined substantial acts."

Whereas:

We are satisfied that the findings set forth in the decision from which this appeal is taken, as well as those set forth in the trial-court decision it affirms, establish that the Court of Appeal stated sufficient and internally consistent grounds for its conclusions that all the elements of the offense of which it found the defendant guilty were present;

Therefore, this second ground of appeal, which does nothing but challenge the sole discretion of the trial court to assess the facts and circumstances of the case and to weigh the evidence argued, must be rejected.

On the third ground of appeal, alleging violation of Article 450-1 of the New Penal Code and Articles 2, 2-9, and 593 of the Code of Criminal Procedure, failure to set forth a valid statement of reasons, and lack of legal grounds:

In that the decision from which this appeal is taken declared *Association SOS Attentats* eligible to sue for damages in these criminal proceedings and ordered Mojtaba Mashhady to pay it 1 franc in damages, plus compensation for non-recoverable costs;

On the grounds that:

In a pleading, the attorney of *Association SOS Attentats* petitioned the Court of Appeal to affirm the decision brought before it and order the two defendants to pay 5,000 francs at the appellate stage pursuant to Article 475-1 of the Code of Criminal Procedure;

In a pleading, the attorney of Mojtaba Mashhady argued that *SOS Attentats* was ineligible to sue for damages in these criminal proceedings;

The latter attorney asserted that the offense with which the defendant was charged, namely conspiracy to plan one or more high-degree offenses in connection with a terrorist enterprise, is distinct from other offenses committed against persons and property or committed by conspiracy members;

Therefore, inasmuch as *SOS Attentats* has not cited any specific harm linked directly to the commission of the offenses with which Mojtaba Mashhady is charged, it should be declared ineligible to sue for damages;

The Court of Appeal noted that *Association SOS Attentats*, by law, received the special authorization provided for in Article 2-9 of the Code of Criminal Procedure to sue for damages in criminal proceedings with a view to assisting victims of offenses falling within the scope of Article 706-16 of the Code;

Article 706-16 refers expressly to the lower-degree offense of participation in a conspiracy to plan terrorist acts and declares its provisions to be immediately enforceable;

Accordingly, the Court of Appeal found that the suit for damages instituted by SOS Attentats was admissible;

It affirmed as justified the trial court's order holding Mojtaba Mashhady and Hossein ... [ellipsis in original] jointly and severally liable for the harm caused, and it modified the amount assessed against them under Article 475-1 of the Code of Criminal Procedure to 10,000 francs, to cover all levels of proceedings, and upheld the damages award of 1 franc;

Yet, conspiracy, as defined in Article 450-1 of the New Code of Criminal Procedure, is an offense that exists separate and apart from the high-and low-grade offenses against persons or property that its members plan or commit;

Therefore, *Association SOS Attentats* should be declared ineligible to sue for damages on the basis of this charge in these criminal proceedings inasmuch as it fails to cite any direct harm arising from the offense charged that is distinct from the harm that could result from other high- or low-degree offenses with which the defendants could be charged;

Whereas:

We find, contrary to the allegations by Appellant herein, that the Court of Appeal, in declaring *SOS Attentats* eligible to sue for damages in these criminal proceedings, basing said declaration on the reasoning alluded to in the third ground of appeal, did express valid grounds for its decision.

Any association that has been duly registered for at least five years at the time the offense in question occurs, where the purpose of such association, as set forth in its bylaws, is to assist victims of offenses, does indeed hold, pursuant to Article 2-9 of the Code of Criminal Procedure

the power to exercise the right to sue for damages in criminal proceedings for offenses falling within the scope of Article 706-16 of said Code, which refers expressly to the lower-degree offense of participation in a conspiracy to plan an act of terrorism, as provided for in Article 421-2-1 of the Penal Code.

Therefore, this third ground of appeal must be rejected.

And whereas the decision of the Court of Appeal is free from procedural error;

WE DENY the appeal in law filed with this Court of Cassation.

So adjudged and decreed by the Criminal Division of the Court of Cassation in open court on the date indicated earlier in this document.

Present for oral argument and deliberations in this case were: Justice ... [ellipsis in original], the senior judge, acting for the presiding judge, who was unable to be present; Reporting Judge...[ellipsis in original]; Criminal Division Justices Aldebert, Grapinet, and Roger; Legal

Counselor . . . [ellipsis in original], Advocate-General Le
Foyer de Costil, and Ms. Ely, Division Clerk;

In witness whereof, this judgment is signed by the
Presiding Judge, the Reporting Judge, and the Division
Clerk.

Cour de Cassation

Arrêt du 9 juillet 1998

MASHHADY ou MASHMADY Mojtaba

c/

Président M. SCHUMACHER conseiller

RÉPUBLIQUE FRANÇAISE

AU NOM DU PEUPLE FRANÇAIS

AU NOM DU PEUPLE FRANÇAIS

LA COUR DE CASSATION, CHAMBRE CRIMINELLE, en son audience publique tenue au Palais de Justice à PARIS, le neuf juillet mil neuf cent quatre-vingt-dix-huit, a rendu l'arrêt suivant

Sur le rapport de M. le conseiller ..., les observations de la société civile professionnelle NICOLAY et de LANOUELLE, avocat en la Cour, et les conclusions de M. l'avocat général ... de COSTIL ;

Statuant sur le pourvoi formé par

- MASHHADY ou MASHMADY Mojtaba, contre l'arrêt de la cour d'appel de PARIS, 10ème chambre, du 25 avril 1997, qui, pour participation à une association de malfaiteurs en vue de la préparation d'actes de terrorisme, l'a condamné à 7 ans d'emprisonnement avec maintien en détention et a ordonné la confiscation des scellés ;

Vu le mémoire produit ;

Sur le premier moyen de cassation, pris de la violation des articles 6 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, 427, 463, 513 et 593 du Code de procédure pénale, défaut de motifs et manque de base légale ;

'en ce que l'arrêt confirmatif attaqué a rejeté la demande de jonction de pièces présentée par Mojtaba Mashhady, l'a déclaré coupable de participation à association de malfaiteurs en vue de la préparation d'un ou plusieurs délits ou d'un ou plusieurs crimes punis de 10 ans d'emprisonnement, et l'a condamné à la peine de 7 ans d'emprisonnement ;

'aux motifs que la Cour constate que les pièces de la procédure P902993901/6 dont la jonction est demandée sont constituées de procès-verbaux datés respectivement de septembre 1993, novembre 1993, décembre 1993, janvier 1994, mai 1994 et mars 1995;

qu'elle relève que l'information relative au présent dossier, ouverte le 15 décembre 1993, a fait l'objet d'une ordonnance de notification de clôture le 18 décembre 1995 ouvrant aux parties un délai de 20 jours pour présenter requête sur le fondement des articles 81, 9° alinéa, 82-1, 156, 1° alinéa, et 173, 3° alinéa, du Code de procédure pénale;

qu'elle observe également que le juge d'instruction a opéré lui-même les jonctions qui lui paraissent nécessaires du dossier P902993901/6 au présent dossier et qu'il était, dès lors, loisible aux prévenus et à leurs avocats de solliciter d'autres jonctions;

qu'or, ni dans le cours de l'information, ni dans le délai précité, la jonction des pièces précitées n'a été demandée;

qu'enfin, la Cour constate que l'ordonnance de renvoi devant le tribunal correctionnel de Paris prise le 12 avril 1996 a mis un terme à la procédure d'instruction et a saisi, en l'état du dossier, la juridiction de jugement;

qu'il convient donc de rejeter la mesure sollicitée ;

'alors que lorsque la demande de jonction de pièces en provenance d'une autre procédure est formée après l'ordonnance de renvoi devant le tribunal correctionnel, elle doit s'analyser en une demande de supplément d'information;

qu'en rejetant cette demande aux motifs qu'elle n'avait pas été formée au cours de l'instruction à laquelle il avait été mis un terme par l'ordonnance de renvoi, la Cour a méconnu l'étendue de ses propres pouvoirs et violé les textes susvisés ;

'alors qu'à moins de démontrer, par une décision motivée, l'impossibilité ou l'inutilité de leur production, le juge est tenu de recevoir tous les

éléments de preuve et moyens de défense, à tous les stades de la poursuite, et même au cours des débats devant la juridiction de jugement, dès lors que ces pièces font l'objet d'une discussion contradictoire;

que, dès lors, en se retranchant derrière la tardiveté de la demande de jonction, sans rechercher si les pièces dont la production était sollicitée n'étaient pas de nature à contribuer à la manifestation de la vérité et, partant, ne devaient pas être soumises au débat contradictoire, la cour d'appel, qui se détermine par une motivation inopérante, a privé sa décision de toute base légale au regard des textes susvisés et méconnu les exigences du procès équitable' ;

Attendu que, pour rejeter la demande présentée par Mojtaba Mashhady aux fins de jonction, à la présente procédure, de certaines pièces de l'information suivie contre lui du chef de complicité d'assassinat, les juges du second degré, par motifs propres et adoptés, constatent que ni au cours de l'information, ni dans le délai de 20 jours prévu par l'article 175 du Code de procédure pénale, le prévenu ou son avocat n'a sollicité la jonction d'autres pièces;

qu'ils relèvent que le juge d'instruction a opéré lui-même la jonction des pièces qui lui paraissaient utiles et que le dossier comporte toutes celles qui sont favorables au prévenu ;

Attendu qu'en l'état de ces motifs, et dès lors qu'une requête aux fins de jonction de pièces en provenance d'une autre procédure ne saurait s'analyser en une demande de supplément d'information, la cour d'appel a justifié sa décision sans encourir les griefs allégués, ni méconnaître les dispositions conventionnelles visées au moyen ;

D'où il suit que le moyen ne saurait être accueilli ;

Sur le deuxième moyen de cassation, pris de la violation des articles 450-1 du Code pénal, 591 et 593 du Code de procédure pénale, défaut et insuffisance de motifs, manque de base légale ;

'en ce que l'arrêt attaqué a condamné le prévenu à la peine de 7 ans d'emprisonnement pour association de malfaiteurs ;

'aux motifs que Mojtaba Mashhady assure quant à lui qu'il est la victime à la fois des calomnies de Hossein ... et d'un 'montage' des services de police qui ont constitué contre lui de fausses preuves. La Cour relève, cependant, que les déclarations de Hossein ..., tant devant la brigade criminelle que devant le juge d'instruction, ont été longues, spontanées et circonstanciées à la fois quant aux actes constitutifs de l'association de malfaiteurs avec Mojtaba Mashhady que relativement aux visées terroristes de ces actes, connues des deux prévenus. Ces déclarations ont été confirmées par les victimes ainsi que par de très nombreux témoins Ghiasvand, Ghanaee-Miandoab Ketabolah, Paul et Shiraz, qui ont précisé les circonstances dans lesquelles ils avaient été approchés par Hossein ... et Mojtaba Mashhady pour commettre des attentats ou les préparer. M. ..., en particulier, a très précisément décrit les menées terroristes de Mojtaba Mashhady et les moyens mis en oeuvre par ce dernier pour y parvenir, et il a maintenu ses accusations lors de sa confrontation avec le prévenu;

ces déclarations ont été également corroborées par les constatations précises de la Direction de la surveillance du territoire et les surveillances de Mojtaba Mashhady opérées par la police judiciaire et qui ont toutes mis en évidence ses allées et venues seul ou avec Hossein ..., ses tentatives pour se soustraire aux surveillances policières, les réunions et rencontres à Orly courant novembre 1989 entre le prévenu, M. ... et les membres des services de renseignements iraniens;

Il résulte de ces éléments, ainsi que des motifs relevés par les premiers juges et que la Cour adopte, que Mojtaba Mashhady et Hossein ... avaient constitué une véritable entente pour préparer un ou plusieurs crimes en relation avec une entreprise terroriste. Cette entente, dont la loi n'exige pas la connaissance d'un crime précis, mais une connaissance générale du caractère infractionnel, est établie par plusieurs actes matériels préparatoires rappelés par les témoignages précités;

les tentatives de recrutement d'hommes de main auprès de plusieurs ressortissants iraniens, les recherches de renseignements auprès de témoins, les surveillances et repérages de victimes ou de leurs proches. La Cour confirmera en conséquence le jugement frappé d'appel sur les qualification et déclaration de culpabilité des prévenus ;

'alors que, si les juges du fond apprécient souverainement les éléments constitutifs d'un délit, leur appréciation n'est souveraine qu'à la condition d'être motivée et exempte d'illégalité;

qu'en se bornant à énoncer que l'entente est, en l'espèce, établie par plusieurs actes matériels préparatoires rappelés par les témoignages précités, sans constater une préparation caractérisée par un ou plusieurs actes matériels bien définis, la cour d'appel a entaché sa décision d'une insuffisance de motifs' ;

Attendu que les énonciations de l'arrêt attaqué et du jugement qu'il confirme mettent la Cour de Cassation en mesure de s'assurer que la cour d'appel, par des motifs exempts d'insuffisance ou de contradiction, a caractérisé en tous ses éléments constitutifs le délit dont elle a déclaré le prévenu coupable ;

D'où il suit que le moyen, qui se borne à remettre en question l'appréciation souveraine, par les juges du fond, des faits et circonstances de la cause ainsi que de la valeur des éléments de preuve contradictoirement débattus, ne saurait être admis ;

Sur le troisième moyen de cassation, pris de la violation des articles 450-1 du nouveau Code pénal, 2, 2-9 et 593 du Code de procédure pénale, défaut de motifs et manque de base légale ;

'en ce que l'arrêt attaqué a déclaré recevable la constitution de partie civile de l'Association SOS Attentats et condamné Mojtaba Mashhady à lui payer la somme de 1 franc à titre de dommages-intérêts outre une indemnité pour frais irrépétibles ;

'aux motifs que, par voie de conclusions, l'avocat de la partie civile, l'Association SOS Attentats, sollicite de la Cour la confirmation du jugement déféré et la condamnation des deux prévenus au versement de la somme de 5 000 francs sur le fondement de l'article 475-1 du Code de procédure pénale en cause d'appel;

que, par voie de conclusions, l'avocat de Mojtaba Mashhady soulève l'irrecevabilité de la partie civile SOS Attentats;

qu'il expose que l'infraction reprochée au prévenu, association de malfaiteurs en vue de la préparation d'un ou plusieurs crimes en relation avec une entreprise terroriste 'est distincte d'autres infractions commises contre les personnes et les biens ou commises par les membres de l'association';

que, dès lors, la partie civile n'évoquant aucun préjudice distinct et lié directement à la seule commission des infractions reprochées à Mojtaba Mashhady, il convient de la déclarer irrecevable;

que la Cour observe que l'Association SOS Attentats a reçu de par la loi l'agrément spécial visé à l'article 2-9 du Code de procédure pénale de se constituer partie civile pour assister les victimes d'infractions entrant dans le champ d'application de l'article 706-16 du même Code;

que cette dernière disposition législative vise expressément le délit de participation à une association de malfaiteurs ayant pour objet de préparer des actes de terrorisme, et déclare ces dispositions d'application immédiate;

que, dès lors, la Cour constatera la recevabilité de l'action de SOS Attentats;

qu'elle confirmera comme bien fondée la condamnation solidaire de Mojtaba Mashhady et Hossein ... prononcée par les premiers juges et modifiera la somme attribuée sur le fondement de l'article 475-1 du Code de procédure pénale, en condamnant solidairement les prévenus à lui attribuer la somme de 10 000 francs toutes instances confondues, la somme d'un franc à titre de dommages et intérêts étant maintenue ;

'alors que l'association de malfaiteurs définie par l'article 450-1 du nouveau Code pénal constitue une incrimination indépendante des crimes ou délits contre les personnes ou les biens qui sont préparés ou commis par les membres de l'association;

que, dès lors, doit être déclarée irrecevable la constitution de partie civile de l'Association SOS Attentats qui, fondée sur ce chef d'inculpation, n'invoque aucun préjudice prenant directement sa source dans l'infraction reprochée et distinct de celui pouvant résulter des autres crimes ou délits susceptibles d'être imputés aux personnes mises en cause' ;

Attendu qu'en déclarant recevable et bien fondée, par les motifs repris au moyen, la constitution de partie civile de l'Association SOS Attentats, la cour d'appel a justifié sa décision sans encourir le grief allégué ;

Qu'en effet, toute association régulièrement déclarée depuis au moins 5 ans à la date des faits qui se propose, par ses statuts, d'assister les victimes d'infractions, tient de l'article 2-9 du Code de procédure pénale le pouvoir d'exercer les droits reconnus à la partie civile, pour les infractions entrant dans le champ d'application de l'article 706-16 du même Code qui vise expressément le délit de participation à une association de malfaiteurs en vue de la préparation d'un acte de terrorisme, prévu par l'article 421-2-1 du Code pénal ;

Que, dès lors, le moyen doit être écarté ;

Et attendu que l'arrêt est régulier en la forme ;

REJETTE le pourvoi ;

Ainsi jugé et prononcé par la Cour de Cassation, chambre criminelle, en son audience publique, les jour, mois et an que dessus ;

Etaient présents aux débats et au délibéré M. ... conseiller le plus ancien, faisant fonctions de président en remplacement du président empêché, M. ... conseiller rapporteur, MM. Aldebert, Grapinet, Roger conseillers de la chambre, Mme conseiller référendaire ;

Avocat général M. le Foyer de Costil ;

Greffier de chambre Mme Ely ;

En foi de quoi le présent arrêt a été signé par le président, le rapporteur et le greffier de chambre ;

ANNEX 48

Terror Threat

Deputy Foreign
Minister Danny
Ayalon Photo:
Shahar Azran

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enlarge text](#)

'Iranians planned to assassinate Israeli ambassador'

As Danny Ayalon seeks African nations' support for Iran stance, Kenya's intelligence services reveal they prevented plan to assassinate Israel's Ambassador in Kenya

Itamar Eichner

Deputy Foreign Minister [Danny Ayalon](#) on Thursday praised the Kenyan government for its efforts to stop Iranian terror threats against Israeli and Jewish targets. .

Ayalon who is currently visiting Kenya as part of a round of visits in three African countries – Uganda, Ethiopia and Kenya, praised the local authorities after they arrested the two Iranians in June when the suspects led Kenyan security forces to 15 kilograms (33 pounds) of RDX, a powerful explosive, in the coastal city of Mombasa where several hotels are owned by Israelis.

Related stories:

- [Iranians in Kenya planned Israeli, US attacks](#)
- [Kenya asks Israel for help fighting terrorists](#)
- [Iranian: Israeli agents interrogated me in Kenya](#)

It has now been revealed that the targets included Israel's Ambassador to Kenya, Gil Haskel.

One official said the [Iranians](#) are members of Iran's Islamic Revolutionary Guards Corps Quds Force, an elite and secretive unit.

During Ayalon's visit, all three countries expressed concern regarding Iran's attempts to increase its terror activity in Africa.

Ayalon is also using the visits to conduct a diplomatic battle against Iran, and is trying to convince the African leaders not to take part in the conference of Non Aligned Nations at the end of the month in Teheran.

Avi Granot, deputy director of the African section in the Foreign Ministry, said that the Israeli request to send a delegation of lower ranking representatives was being mulled.

A week before Ayalon arrived in Africa Iranian Vice President Hamid Bakai visited the continent for a round of visits and handed each leader a personal invitation to the conference.

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ANNEX 49

Supreme Court overturns decision to free two Iranian terror suspects

March 15, 2019 4:36 pm

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The judges also that circumstantial evidence had placed the two suspects – Ahmad Mohammed and Sayeed Mousavi – at the scene where the deadly chemical was recovered/FILE

By JEREMIAH WAKAYA (https://www.capitalfm.co.ke/news/author/jwakaya/), NAIROBI, Kenya, Mar 15 – The Supreme Court on Friday overturned a Court of Appeal decision acquitting two Iranian terror suspects sentenced to fifteen years after they were found guilty of three terrorism-related charges.

The ruling of majority judges– Chief Justice David Maraga, Justices Jackton Ojwang and Njoki Ndung'u –carried the day while two– Mohammed Ibrahim and Smokin Wanjala–dissented.

ADVERTISEMENT

The majority ruling read by Justice Ojwang, the Supreme Court judges found police to have lawfully used intelligence reports to unearth 15 kilograms of Cyclotrimethyle trinitramine, a lethal chemical used to assemble explosives, hidden by the suspects at a golf course in Mombasa in June 2012.

"The use of intelligence or informer reports is standard and common practice. The police are not obliged to declare their informants as that will hamper crime detection," the bench noted.

"All aspects of evidence on record go in to corroborate the prosecution's case that the first respondents led the police to the scene where the explosive was dug out," Justice Ojwang outlined.

The three judges also held that circumstantial evidence had placed the two suspects – Ahmad Mohammed and Sayeed Mousavi – at the scene where the deadly chemical was recovered.

According to Justices Maraga, Ojwang, and Ndung'u the Magistrate Court's and subsequently High Court decision to reduce the sentence to 15 years for unlawful possession of cyclotrimethylene trinitramine and intent to cause grievous harm was accordingly entered.

"The circumstantial evidence on record points to the respondents as the people who planted the explosive at the scene where it was dug out. There's no evidence of anyone else having previously planted anything in Mombasa Gold Course and particularly in the vicinity of hole number nine," the judges noted.

They cited a witness account indicating that the suspects had visited the spot thrice including a day before their arrest in June 2012.

In a dissenting opinion however, Justices Mohammed Ibrahim and Smokin Wanjala dismissed the prosecution case against the two Iranians, saying there was no further evidence to validate claims that the suspects planted the explosive chemical at the golf course.



(<https://www.capitalfm.co.ke/news/files/2019/03/OJWANG-IBRAHIM.jpg>)

Justice Ibrahim noted that the golf course was unfenced hence any person could have accessed it and planted the chemical/CFM NEWS

Justice Ibrahim noted that the golf course was unfenced hence any person could have accessed it and planted the chemical.

"In this appeal it was never the prosecution's case that the appellants had confessed to committing the offences they were charged with. Accordingly, we are satisfied that the two courts below erred in admitting the evidence that allegedly led to the discovery of cyclotrimethylene trinitramine," he noted.

"Consequently, having examined the decisions of the superior courts, I entertain no doubt that this matter was decided purely on circumstantial evidence and not on admission of a confession," Justice Ibrahim concluded.

The judges also differed on standard of proof as provided for under Sections 111 and 119 of the Evidence Act, the dissenting judges insisting that evidence adduced had not met the required threshold as set out in statutes.

The case shot into the limelight late last month after a botched plan to facilitate the escape of Mohammad and Mousavi was linked to the Iranian Ambassador to Kenya Hadi Farajvand.

The envoy denied the allegations saying some individuals identifying themselves as interior ministry officials had attempted to extort him.

"I was the one who reported to the Interior Ministry that there were two people who approached me to prepare the departure of the two Iranian nationals saying they would be released," Ambassador Farajvand said.

According to Farajvand, the two people asked for an unspecified amount of money, a request he declined.

"These people who said they were acting on behalf of the Interior Ministry asked me for money. They however did not say how much money they wanted and immediately I realized they wanted a bribe which I did not offer," Farajvand said on February 25.

The two suspects had secured their freedom at the Court of Appeal after lodging a second appeal, the High Court having upheld a guilty verdict rendered by a Magistrate's Court.

Justices Daniel Musinga, Roselyn Nambuye, and Steven Gatembu set Mohammed and Mousavi free in February 2018 citing insufficient evidence adduced by the prosecution.

Three people held over the plot to free the Iranians from jail were set free on Friday after the prosecution said there was no evidence to press charges. ■

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JEREMIAH WAKAYA Wakaya is the Online Editor for Capital FM News. He joined the newsroom as a News Associate in February 2017 and subsequently covered 2017 party primaries, the General Election at the National Tallying Centre and two presidential election petitions. He also covered the inaugural UN-Habitat Assembly at the United Nations complex in Nairobi in May 2019. Wakaya primarily reports on governance, foreign affairs and public interest litigation.

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ANNEX 50

WORLD NEWS

MARCH 17, 2019 / 1:37 PM / 6 MONTHS AGO

Iran recalls ambassador to Kenya over court case



GENEVA (Reuters) - Iran recalled its ambassador to Kenya because of a court decision upholding sentences for two Iranians in jail, foreign ministry spokesman Bahram Qassemi said Sunday, according to the Iranian Students' News Agency.

Iran also lodged a formal complaint with the Kenyan ambassador in Tehran on Saturday because of the Kenyan court decision in the case of Ahmad Abolfathi and Seyed Mansour Mousavi.

In 2016, a Kenyan judge reduced the life sentences given to the two Iranians convicted of planning bomb attacks to 15 years. The case raised concerns about possible Iranian plans to strike targets in the east African nation.

The two were arrested in June 2012 and convicted a year later of planning attacks and possessing 15 kg of military-grade RDX explosives.

The men may have had links to the Quds Force, the elite extra-territorial special forces arm of Iran's Revolutionary Guards, Kenyan investigators have said.

The men were scheduled to be freed before the Kenyan court upheld their sentences on Friday, Qassemi said.

Reporting By Babak Dehghanpisheh; Editing by Ros Russell

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ANNEX 51

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Tehran sets up terror cells in Africa as Western sanctions bite



Sudan and Niger are among the African nations the Quds force is expanding into CREDIT: ABEDIN TAHERKENAREH/EPA-EFE/REX

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By **Con Coughlin**, DEFENCE EDITOR

24 JUNE 2019 • 10:30AM

Iran is setting up a network of terror cells in Africa to attack US and other Western targets in retaliation for Washington's decision to impose sanctions against Tehran, according to Western security officials.

The new terror network has been established on the orders of Qassem Suleimani, the head of the Quds Force, the elite section of Iran's Republican Guard Corps that has responsibility for overseas operations.

The aim of the new terror cell is to target US and other Western military bases on the continent, as well as embassies and officials.

The Iranian cells are said to be active in a number of African countries including Sudan, Chad, Ghana, Niger, Gambia and the Central African Republic.

"Iran is setting up a new terrorist infrastructure in Africa with the aim of attacking Western targets," a senior Western security source told *The Daily Telegraph*. "It is all part of Tehran's attempts to expand its terrorist operations across the globe."

Intelligence officials say Iran has been working on the new terror network for the past three years since signing the nuclear deal on freezing its uranium enrichment activities with the US and other major world powers in 2015.

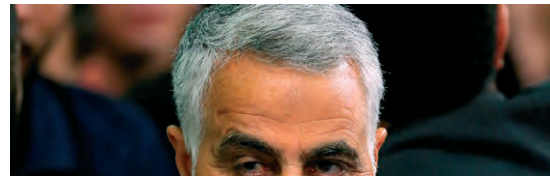
At a glance | Key players in Tehran

Ayatollah Ali Khamenei - Supreme Leader of Iran since 1989, the 78-year-old theologian holds ultimate power under the Islamic Republic's concept of *velāyat-e faqīh*, or guardianship of the Islamic Jurist.

A cautious and conservative figure, he is believed to have hardline sympathies and reluctantly authorised Hassan Rouhani to pursue the nuclear deal with the US. He has compared Israel to a cancerous tumour and Israeli officials accuse him of hoping to destroy the Jewish state.



Maj General Qasem Soleimani - the commander of the Quds force of the Revolutionary Guards Corps, an armed force separate from the regular army, he has been



Show more

The operation is being organised by Unit 400, a highly specialised section of the Quds Force which is run by Hamed Abdollahi, a veteran Republican Guard officers who was designated by the US as supporting terrorist activity in 2012.

The African cell is said to be run by Ali Parhoon, another senior Iranian officer in Unit 400. Details of the terror cell's existence were uncovered following a series of arrests in Chad in April.

Investigators found that Iran was behind the recruitment and training of men between the ages of 25-35 with the aim of committing terror attacks against Western targets on the continent.

There are estimated to be around 300 militants who have been recruited by the Revolutionary Guard and have undergone rigorous training at Iranian-run training camps in Syria and Iraq.

The last batch of recruits were trained at an Iranian base in the southern Iraqi city of Najaf. Iran's attempts to establish a new terror operation in Africa follow revelations in *The Telegraph* earlier this month that British security officials caught terrorists linked to Iran stockpiling tonnes of explosives on the outskirts of London.

The British authorities believe this cell was also set up in 2015 after Iran signed the nuclear deal.

US diplomatic officials say a warning has been circulated to American diplomatic and military missions in the countries where Iranian militants are said to be operating, as well as missions of other Western countries, including Britain, France and Italy.

The revelation that Iran is setting up a new terror network in Africa comes at a time when Tehran has been accused of stoking tensions in the Gulf after Revolutionary Guard commanders confirmed that they were responsible for shooting down a US military drone operating close to the Strait of Hormuz.

In addition Iran has been blamed for carrying out attacks on a number of oil tankers operating in the Gulf that were damaged by mines.

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ANNEX 52

826 F.Supp.2d 128
United States District Court,
District of Columbia.

James OWENS, et al., Plaintiffs,
v.

REPUBLIC OF SUDAN, et al., Defendants.
Winfred Wairimu Wamai, et al., Plaintiffs,

v.

Republic of Sudan, et al., Defendants.
Milly Mikali Amduso, et al., Plaintiffs,

v.

Republic of Sudan, et al., Defendants.
Judith Abasi Mwila, et al., Plaintiffs,

v.

The Islamic Republic of Iran, et al., Defendants.
Mary Onsongo, et al., Plaintiffs,

v.

Republic of Sudan, et al., Defendants.
Rizwan Khaliq, et al., Plaintiffs,

v.

Republic of Sudan, et al., Defendants.

Civil Action Nos. 01–2244 (JDB), 08–1349(JDB), 08–
1361(JDB), 08–1377(JDB), 08–1380(JDB), 10–0356(JDB).

|

Nov. 28, 2011.

Synopsis

Background: Victims of terrorist bombings of two United States embassies in Africa, the majority of whom were foreign national employees of the U.S. Government, and their families, brought action under the Foreign Sovereign Immunities Act (FSIA) against the Republic of Sudan and its Ministry of the Interior, the Islamic Republic of Iran and its Ministry of Information and Security (MOIS), and the Iranian Revolutionary Guards Corps (IRGC), alleging that they provided material support for the attacks. Following entry of defaults as to each defendant, the United States District Court for the District of Columbia, 412 F.Supp.2d 99, denied Sudan's interlocutory motion to dismiss, a decision which was upheld by the Court of Appeals, 531 F.3d 884.

Holdings: On remand, the District Court, John D. Bates, J., held that:

evidence of material support provided to terrorists who carried out the bombings, by Iran, MOIS, and IRGC, was sufficient to find them liable for victims' damages;

evidence of material support provided by Sudan and its Ministry of the Interior to terrorist organization that carried out the bombings was sufficient to find them liable for victims' damages;

Court had subject matter jurisdiction;

plaintiffs who were foreign national family members of victims of the attacks lacked a federal cause of action but could continue to pursue claims under applicable state and/or foreign law; and

District of Columbia law would provide rule of decision for claims of plaintiffs for whom a federal cause of action was lacking.

Judgment for plaintiffs.

Attorneys and Law Firms

*132 Annie P. Kaplan, Thomas Fortune Fay, Caragh Glenn Fay, Fay Kaplan Law PA, Tuna Mecit, Washington, DC, Ronald Alvin Karp, Karp, Frosh, Lapidus, Wigodsky & Norwind, P.A., Rockville, MD, for Plaintiffs.

MEMORANDUM OPINION

JOHN D. BATES, District Judge.

Over thirteen years ago, on August 7, 1998, the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania were devastated by simultaneous suicide bombings that killed hundreds of people and injured over a thousand. Now, in this civil action under the Foreign Sovereign Immunities Act (“FSIA”), plaintiffs—victims *133 of the bombings and their families—seek to assign liability for their injuries to the Republic of Sudan (“Sudan”), the Ministry of the Interior of the Republic of Sudan, the Islamic Republic of Iran (“Iran”), the Iranian Revolutionary Guards Corps (“IRGC”) and the Iranian Ministry of Information and Security (“MOIS”) (collectively “defendants”).

The Court will proceed in two steps. First, it will present findings as to the causes of the bombings—specifically, findings that defendants were indeed responsible for supporting, funding, and otherwise carrying out this unconscionable attack. Second, the Court will set forth legal and remedial conclusions to bring this litigation to a close.¹ Most recently, and relevant here, the National Defense Authorization Act for Fiscal Year 2008 (“2008 NDAA” or “Act”) amended the FSIA to permit foreign national employees of the United States government killed or injured while acting within the scope of their employment and their family members to sue a state sponsor of terrorism for injuries and damages resulting from an act of terrorism. Here, the majority of plaintiffs are foreign national employees of the U.S. Government and their immediate family members who, as the Court will explain below, lack a claim under the 2008 NDAA amendments to FSIA but may proceed under applicable state law.

Background

Plaintiffs bring this case pursuant to section 1083 of the National Defense Authorization Act for Fiscal Year 2008, Pub.L. No. 110–181, § 1083, 122 Stat. 341 (2008) (codified at 28 U.S.C. § 1605A (2009)). Several cases were consolidated for purposes of the Court’s October 25–28, 2010 evidentiary hearing on liability. In each case, as described below, defendants were properly served according to the FSIA. Defendants failed to respond, and the Clerk of Court entered defaults against defendants in each case. In *Owens v. Republic of Sudan*, No. 1:01–cv–02244 (JDB), service of process was completed upon each defendant: the Republic of Sudan on February 25, 2003 [Docket Entry 9]; the Ministry of the Interior of the Republic of Sudan on February 25, 2003 [Docket Entry 9]; the Islamic Republic of Iran on March 5, 2003 [Docket Entry 10]; and the Iranian Ministry of Information and Security on October 14, 2002 [Docket Entry 6]. Defaults were entered against the Iranian defendants on May 8, 2003, [Docket Entry 11], and defaults were entered against the Republic of Sudan and the Ministry of the Interior of the Republic of Sudan on March 25, 2010 [Docket Entry 173].

In *Wamai v. Republic of Sudan*, No. 1:08-cv-01349 (JDB), service of process was completed on each of the named defendants: the Ministry of the Interior of the Republic of Sudan was served with process on February 12, 2009, pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 15]; the Republic of Sudan was served with process on April 22, 2009 through the U.S. Department of State pursuant to 28 U.S.C. § 1608(a)(4) [Docket Entry 23], which was delivered under diplomatic note on November 12, 2009 [Docket Entry 28]; the Iranian Ministry of Information and Security was served with process on February 14, 2009 pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 15]; and the Islamic Republic of Iran and the Iranian Revolutionary Guards were served with process on *134 April 22, 2009 through the U.S. Department of State pursuant to 28 U.S.C. § 1608(a)(4) [Docket Entry 23], which was delivered under diplomatic notes on November 18, 2009 [Docket Entry 29]. An entry of default was filed against each of these defendants on June 4, 2010 [Docket Entries 34, 35].

In *Amduso v. Republic of Sudan*, No. 1:08-cv-01361 (JDB), the Sudanese defendants were served with process on February 1, 2009 under 28 U.S.C. § 1608(a)(3) [Docket Entry 27], and the Iranian defendants were served on June 26, 2009 under 28 U.S.C. § 1608(a)(4) [Docket Entry 33]. Defaults were entered against the Republic of Sudan and the Ministry of the Interior of the Republic of Sudan on April 22, 2010 [Docket Entry 29] and against the Islamic Republic of Iran and the Iranian Ministry of Information and Security on October 6, 2009 [Docket Entry 40].

In *Mwila v. Islamic Republic of Iran*, No. 1:08-cv-01377 (JDB), service of process was completed on each of the named defendants: the Ministry of the Interior of the Republic of Sudan was served with process on March 17, 2009 pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 3]; the Islamic Republic of Iran and the Iranian Ministry of Information and Security were served with process on September 8, 2009 through the U.S. Department of State pursuant to 28 U.S.C. § 1608(a)(4) [Docket Entry 16]; and the Republic of Sudan was served with process on November 12, 2009 through the U.S. Department of State pursuant to 28 U.S.C. § 1608(a)(4) [Docket Entry 19]. Defaults were entered against the Islamic Republic of Iran, the Republic of Sudan, and the Ministry of the Interior of the Republic of Sudan on February 18, 2010 [Docket Entries 20, 21 and 22] and against the Iranian Ministry of Information and Security on April 21, 2010 [Docket Entry 23].

In *Khaliq v. Republic of Sudan*, No. 1:10-cv-00356(JDB), the Sudanese defendants were served with process on October 13, 2010 pursuant to 28 U.S.C. § 1608(a)(4) [Docket Entry 16]. The Islamic Republic of Iran was served with process on October 11, 2010 pursuant to 28 U.S.C. § 1608(a)(4) [Docket Entry 20]. Defaults were entered against the Republic of Sudan on December 15, 2010 [Docket Entry 18] and against the Islamic Republic of Iran on December 22, 2010 [Docket Entry 21].

Finally, in *Onsongo v. Republic of Sudan*, No. 1:08-cv-01380 (JDB), the Sudanese defendants were served with process on December 17, 2009 pursuant to 28 U.S.C. § 1608(a)(4) [Docket Entry 16]. The Iranian Ministry of Information and Security was served with process on February 14, 2009 pursuant to 28 U.S.C. § 1608(a)(3) [Docket Entry 8], and the Islamic Republic of Iran and the Iranian Revolutionary Guards were served with process on November 18, 2009 pursuant to 28 U.S.C. § 1608(a)(4) [Docket Entry 17]. Defaults were entered against each of the named defendants on June 2, 2010 [Docket Entries 21, 22, and 23].

Before plaintiffs can be awarded any relief, this Court must determine whether they have established their claims “by evidence satisfactory to the court.” 28 U.S.C. § 1608(e); *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 232 (D.C.Cir.2003). This “satisfactory to the court” standard is identical to the standard for entry of default judgments against the United States in Federal Rule of Civil Procedure 55(e). *Hill v. Republic of Iraq*, 328 F.3d 680, 684 (D.C.Cir.2003). In evaluating the plaintiffs’ proof, the court may “accept as true the plaintiffs’ uncontroverted evidence.” *Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97, 100 (D.D.C.2000); *Campuzano v. Islamic Republic of Iran*, 281 F.Supp.2d 258, 268 (D.D.C.2003). In FSIA default judgment proceedings, the plaintiffs may establish proof by affidavit. *Weinstein v. Islamic Republic of Iran*, 184 F.Supp.2d 13, 19 (D.D.C.2002). A three-day hearing on liability and damages was held beginning on October 25, 2010. At this hearing, the Court received evidence in the form of live testimony, videotaped testimony, affidavit, and original documentary and videographic evidence. The Court applied the Federal Rules of Evidence. Based on the record established herein, the Court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

A. Islamic Republic of Iran's Support for Bin Laden and Al Qaeda

The government of the Islamic Republic of Iran ("Iran") has a long history of providing material aid and support to terrorist organizations including al Qaeda, which have claimed responsibility for the August 7, 1998 embassy bombings. *See, e.g.*, Tr. Vol. II at 124–25.² Iran had been the preeminent state sponsor of terrorism against United States interests for decades. *See id.* at 123. Throughout the 1990s—at least—Iran regarded al Qaeda as a useful tool to destabilize U.S. interests. As discussed in detail below, the government of Iran aided, abetted and conspired with Hezbollah, Osama Bin Laden, and al Qaeda to launch large-scale bombing attacks against the United States by utilizing the sophisticated delivery mechanism of powerful suicide truck bombs. Hezbollah, a terrorist organization based principally in Lebanon, had utilized this type of bomb in the devastating 1983 attacks on the U.S. embassy and Marine barracks in Beirut, Lebanon. Prior to their meetings with Iranian officials and agents, Bin Laden and al Qaeda did not possess the technical expertise required to carry out the embassy bombings in Nairobi and Dar es Salaam. The Iranian defendants, through Hezbollah, provided explosives training to Bin Laden and al Qaeda and rendered direct assistance to al Qaeda operatives. Hence, for the reasons discussed below, the Iranian defendants provided material aid and support to al Qaeda for the 1998 embassy bombings and are liable for damages suffered by the plaintiffs.

1. The Iranian Government's Relationship with Hezbollah

Iranian support of Hezbollah began in the 1980s. *Id.* at 123. Iran "actively encouraged, if not directed, the formation of Hezbollah," and the relationship was "quite close" during the 1990s. *Id.* Iran was formally declared a "state sponsor of terrorism" on January 19, 1984, by U.S. Secretary of State George P. Schultz in accordance with section 6(j) of the Export Administration Act of 1979, 50 App. U.S.C. § 2405(j), *see* 49 Fed. Reg. 2836–02 (statement of Secretary of State George P. Schultz, Jan. 23, 1984), and remains designated as a state sponsor of terrorism today. The Iranian government and the Iranian intelligence service "provided substantial financial support and lots of other services" to Hezbollah. Tr. Vol. II at 122.

At all times relevant to this case, Iran was a state sponsor of terrorism that supported terrorist groups that U.S. intelligence agencies believed were capable of attacking U.S. interests. The declassified 1991 National Intelligence Estimate produced by the CIA stated that: "Iranian support for terrorism will remain a significant issue dividing Tehran and Washington. Tehran is unlikely to conduct terrorism directly against U.S. or Western interests during the next two years, but it is supporting radical groups that might do so." Ex. DD at 20.

Hezbollah possessed "extraordinary knowledge of explosives" in the mid-to-late 1990s. Tr. Vol. II at 126. Iran trained Hezbollah "in counterintelligence and in explosive capability" such that Hezbollah "is often described as the A-team of terrorists." *Id.* at 169. Hezbollah operatives were trained in Iran, and Iranian Revolutionary Guard Corp. ("IRGC") trainers were present in Lebanese Hezbollah training camps. *Id.* Indeed, as terrorism expert Evan Kohlmann testified, "Hezbollah is a proxy force of Iran. Its primary foreign sponsor is Iran, both financially and otherwise. Almost all of Hezbollah's activities are well known to the Iranian government. In some cases they're planned by the Iranian government." Tr. Vol. III at 240.

2. Iranian Support for Al Qaeda

In the 1990s, Iranian support for terrorist groups extended beyond Hezbollah to al Qaeda. Dr. Matthew Levitt, an expert witness on the state sponsorship of terrorism, and specifically Iran, Hezbollah and al Qaeda, explained how al Qaeda came into contact with the Iranian government: "Hassan al-Turabi, the head of the National Islamic Front, which ruled Sudan at the time, was keen not only on instituting Islamic sharia law in Sudan at home, but in making the Sudan a place from which worldwide Islamic revolution could flow." Tr. Vol. II at 165. To that end, "Hassan al-Turabi hosted numerous meetings, some large summits with radical extremist groups, including one, for example, in April 1991. Groups like HAMAS and Palestinian Islamic Jihad, Egyptian Islamic Jihad, al Qaeda, Sudanese radicals, Iranians, Lebanese Hezbollah were all invited and attended." *Id.* at 165–66. Such a conglomeration of different terrorist groups and governments such as Iran had been very unusual prior to al-Turabi's

conferences. *Id.* at 166. And “it was at these meetings where Iranian officials, Hezbollah officials, al Qaeda officials and others first began to have some serious meetings.” *Id.* Several meetings took place between representatives of Hezbollah, al Qaeda and the governments of Sudan and Iran. Tr. Vol. III at 240. The purpose of these meetings, “in the words of a ranking al Qaeda shura council member Abu Hajer al-Iraqi, ... was to focus on a common enemy, that being the West, the United States.” *Id.*

Al-Turabi's policies therefore resulted in the exchange of ideas and sharing of resources by groups that would not necessarily have communicated otherwise, including Hezbollah and al Qaeda. Ex. W-2 at 3, 6. Bin Laden and al Qaeda relocated to Sudan in 1991. Tr. Vol. II at 165. The Iranian government played a “very active” role in Sudan during the time that Bin Laden operated from Khartoum. *Id.* at 124. This included playing a “prominent role” in a conference of those resisting the Israeli-Arab peace process, which had been organized by the Sudanese government. *Id.* Hezbollah also had a base of operations in Khartoum, Sudan. Tr. Vol. III at 233.

Iran's role in Sudan grew at the same time that the Sudanese government invited Bin Laden to Khartoum. Al-Turabi invited the President of Iran, Hojatolislam Rafsanjani, to visit Sudan in 1991 to support Al-Turabi's goal of mending the Shia *137 and Sunni divide in Islam in order to present a united front against the West. Ex. V at 5. Iran also maintained a delegation office in Khartoum that was run by Sheik Nomani to facilitate relations between the governments and convert Sunni Arab Muslims to the Shia sectarian view. Tr. Vol. III at 234. The two governments shared information and intelligence between their militaries and intelligence services. *Id.*

In addition, the IRGC, an Iranian state organization that funneled assistance to terrorist organizations abroad—such as Hezbollah in Khartoum—also maintained connections with the Sudanese intelligence service. *Id.* at 234–35. The IRGC was founded shortly after the 1979 Iranian revolution and, along with MOIS, is one of the two major organizations through which Iran carries out its support of terrorism. Tr. Vol. II at 130–31. Indeed, “Hezbollah's presence in Khartoum was made possible by the relationship between the government of Sudan and the government of Iran.” Tr. Vol. III at 240. The Sudanese intelligence service also facilitated the linkage between al Qaeda and Hezbollah and representatives of Iran, which was strengthened by al Qaeda's move to Sudan. *Id.* at 270. The State Department's annual report on “Patterns of Global Terrorism” for 1993 states:

Sudan's ties to Iran, the leading state sponsor of terrorism, continued to cause concern during the past year. Sudan served as a convenient transit point, meeting site and safe haven for Iranian-backed extremist groups. Iranian ambassador in Khartoum Majid Kamal was involved in the 1979 takeover of the U.S. embassy in Tehran and guided Iranian efforts in developing the Lebanese Hizballah group while he served as Iran's top diplomat in Lebanon during the early 1980s. His presence illustrated the importance Iran places on Sudan.

Ex. GG; Tr. Vol. III at 258–59.

Iran provided substantial training and assistance to al Qaeda leading up to the embassy attacks in 1998. For example, Ali Mohammed provided security for one prominent meeting between Hezbollah's chief external operations officer, Imad Mughniyah, and Bin Laden in Sudan. Tr. Vol. II at 170; Ex. A at 28. At Ali Mohammed's plea hearing in the United States District Court for the Southern District of New York on October 20, 2000, he was asked to describe, in his own words, why he believed that he was guilty of the crimes charged arising out of the embassy attack. Ali Mohammed responded:

I was aware of certain contacts between al Qaeda and al Jihad organization, on one side, and Iran and Hezbollah on the other side. I arranged security for a meeting in the Sudan between Mughaniya, Hezbollah's chief, and Bin Laden. Hezbollah provided explosives training for al Qaeda and al Jihad. Iran

supplied Egyptian Jihad with weapons. Iran also used Hezbollah to supply explosives that were disguised to look like rocks.

Ex. A at 28; Tr. Vol. II at 115–19.

Iran was “helping train al Qaeda operatives and al Qaeda personnel” in Sudan in the early 1990s. Tr. Vol. II at 124–25. Dr. Matthew Levitt explained that known al Qaeda operatives had significant relationships with Iran. For example, “Mustafa Hamid, throughout the period we’re talking about here, throughout the 1990s, was one of al Qaeda’s primary points of contact specifically to Iran’s Islamic Revolutionary Guard Corps.” *Id.* at 170. In 2009, the Department of Treasury designated Hamid as a specially designated global terrorist, “noting specifically that he was one of al Qaeda’s senior leadership *138 living in Iran and working closely with the IRGC, the Islamic Revolutionary Guards Corps.” *Id.*; Ex. CC. “In the mid–1990s, Mustafa Hamid reportedly negotiated a secret relationship between Usama Bin Laden and Iran, allowing many al Qaeda members safe transit through Iran to Afghanistan.” Ex. CC.

Following the meetings that took place between representatives of Hezbollah and al Qaeda in Sudan in the early to mid–1990s, Hezbollah and Iran agreed to provide advanced training to a number of al Qaeda members, including shura council members, at Hezbollah training camps in South Lebanon. Tr. Vol. III at 241. Saif al-Adel, the head of al Qaeda security, trained in Hezbollah camps. *Id.* During this time period, several other senior al Qaeda operatives trained in Iran and in Hezbollah training camps in Lebanon. Tr. Vol. II at 169. After one of the training sessions at a Lebanese Hezbollah camp, al Qaeda operatives connected to the Nairobi bombing, including a financier and a bomb-maker, returned to Sudan with videotapes and manuals “specifically about how to blow up large buildings.” *Id.*

Al Qaeda desired to replicate Hezbollah’s 1983 Beirut Marine barracks suicide bombing, and Bin Laden sought Iranian expertise to teach al Qaeda operatives about how to blow up buildings. *Id.* at 176. Prior to al Qaeda members’ training in Iran and Lebanon, al Qaeda had not carried out any successful large scale bombings. *Id.* at 177. However, in a short time, al Qaeda acquired the capabilities to carry out the 1998 Embassy bombings, which killed hundreds and injured thousands by detonation of very large and sophisticated bombs. *See id.* Dr. Levitt concluded that “it would not have been possible for al Qaeda to a reasonable degree of certainty to have executed this type of a bombing attack, which it had never previously executed, without this type of training it received from Iran and Hezbollah.” *Id.* at 181.

Hezbollah engages in international terrorist operations in close tactical and strategic cooperation with the Iranian government. *Id.* at 179. The Supreme Leader of Iran, Ayatollah Khameni, controls oversight of the media, the military, the Ministry of Intelligence, the IRGC, the Basji militia, and the IRGC’s Qods force; all the entities that oversee the training and support of and cooperation with terrorist groups and that grant approval of terrorist attacks conducted with other groups answer to Khameni. *Id.* Hezbollah’s assistance to al Qaeda would not have been possible without the authorization of the Iranian government. *Id.*; Ex. W–2 at 3.

Dr. Levitt testified that Iranian government authorization of Hezbollah’s assistance would be required for several reasons:

The first is again the getting in bed with al Qaeda. After al Qaeda had issued not one but two fatwas, religious edicts, in ‘92 and ‘96, announcing its intent to target the West, it was a dangerous proposition. As I mentioned earlier, Iranian leaders have their own version of rationality, but they are rational actors. And that is something that I believe had to be approved, again, so there would be reasonable or plausible deniability. Overcoming this deep mistrust between the most radical Salafi jihadi Sunnis, who, as we saw in the context of the aftermath of the war in Iraq, are sometimes all too eager to kill Shia in particular, and for the Shia on the other side to overcome their historical animosity towards these radical Sunnis, is no small feat. And I think it is only because of their shared interest at that point, in the 1990s and the

immediate—to target U.S. interests, that they were *139 able to decide to overcome this animosity and mistrust. And I think it's quite clear, because it was for the express purpose of targeting the United States, it shouldn't surprise then that the type of training they received was specifically of the type used in the East Africa embassy bombings. They expressed interest in, we know they received at least videos and manuals about, blowing up large buildings.

Tr. Vol. II. at 179–80; Ex. L–2 at 14–19. The declassified 1990 National Intelligence Estimate produced by the CIA stated the following regarding President Rafsanjani's role in the government's sponsorship of terrorism:

The terrorist attacks carried out by Iran during the past year were probably approved in advance by President Rafsanjani and other senior leaders. The planning and implementation of these operations are, however, probably managed by other senior officials, most of whom are Rafsanjani's appointees or allies. Nonetheless, we believe Rafsanjani and Khomeini would closely monitor and approve the planning for an attack against U.S. or Western interests.

Ex. EE at 7; Tr. Vol. III at 238–40.

Support from Iran and Hezbollah was critical to al Qaeda's execution of the 1998 embassy bombings. *See* Tr. Vol. II at 181. Prior to its meetings with Iranian officials and agents, al Qaeda did not possess the technical expertise required to carry out the embassy bombings. In the 1990s, al Qaeda received training in Iran and Lebanon on how to destroy large buildings with sophisticated and powerful explosives. *Id.* at 188; Tr. Vol. III at 314–15. The government of Iran was aware of and authorized this training and assistance. Hence, for the reasons described above, the Court finds that the Iranian defendants provided material aid and support to al Qaeda for the 1990 embassy bombings and are liable for plaintiffs' damages.

B. The Republic of Sudan's Support for Bin Laden and al Qaeda

Sudanese government support for Bin Laden and al Qaeda was also important to the execution of the two 1998 embassy bombings. Critically, Sudan provided safe haven in a country near the two U.S. embassies. The Sudanese defendants (“Sudan”) gave material aid and support to Bin Laden and al Qaeda in several ways. Sudan harbored and provided sanctuary to terrorists and their operational and logistical supply network. Bin Laden and al Qaeda received the support and protection of the Sudanese intelligence and military from foreign intelligence services and rival militants. Sudan provided Bin Laden and al Qaeda hundreds of Sudanese passports. The Sudanese intelligence service allowed al Qaeda to travel over the Sudan–Kenya border without restriction, permitting the passage of weapons and money to supply the Nairobi terrorist cell. Finally, Sudan's support of al Qaeda was official Sudanese government policy.

1. Safe Harbor

Osama Bin Laden and a small group of supporters founded al Qaeda in Afghanistan in September 1988. Tr. Vol. III at 225. Al Qaeda is Arabic for “the solid foundation” or “base.” *Id.* at 224. Bin Laden was “the primary financier” and the “primary creative genius behind al Qaeda,” a group that sought to “create a worldwide network of individuals who would defend the Muslim community by waging ... a low-intensity war against any of its enemies, including ... the United States and other Western countries.” *Id.* at 225. When al Qaeda was formed, it was a very small, compartmentalized group with centralized leadership composed of a shura *140 council, and each member was head of a subcommittee. *Id.* at 226. Around 1990, as the war in Afghanistan neared its end, al Qaeda faced dangers arising from the eruption of a civil war among the Afghan mujahedeen that had previously fought and defeated the Soviet Union. *Id.* at 228–29. The multi-dimensional civil war involved several factions

and was extremely violent, with shifting front lines, which made it a difficult place for al Qaeda to maintain a secure base. *Id.* at 332–33. The Pakistani government also began to pressure the foreign mujahedeen fighters to leave Pakistan. *Id.* at 229. Hence, al Qaeda needed to find a new base of operations, and Sudan was an eager host.

In 1989, the Sudanese government was overthrown by a military coup led by General Omar al-Bashir and Hassan al-Turabi, the head of the National Islamic Front (“NIF”). *See* Ex. W–2 at 1. Al-Turabi, as the head of the NIF, and al-Bashir, as the head of the military who became the President, joined forces to rule Sudan. Ex. W–2 at 2. Under their leadership, the Sudanese government courted Bin Laden and al Qaeda to convince them to relocate to Sudan. Tr. Vol. III at 242–43. Al-Bashir even sent a letter of invitation to Bin Laden. *Id.* at 243, 333–34; Ex. V at 7.

Al-Turabi and the NIF sought to implement Sharia law throughout Sudan, and then in Muslim majority countries. *Id.* at 334–35. The NIF felt the Muslim world was endangered, primarily by Western encroachment, which had to be resisted. *Id.* at 335. This resulted in the Sudanese government's welcoming of a number of terrorist organizations into Sudan. *Id.* at 335; Ex. V at 5. The NIF also believed in ending the split between the Sunni and Shi'ite branches of Islam. Tr. Vol. III at 335; Ex. V at 5.

Al Qaeda accepted Sudan's invitation and in late 1991 began to move to Sudan. Tr. Vol. III at 242–44. Al Qaeda respected and supported the ideological program of the new government of Sudan. Tr. Vol. III at 333; Ex. V at 5–6. The leadership of Sudan guaranteed al Qaeda a base from which it could operate with impunity, with a minimum risk of foreign interference. In turn, al Qaeda agreed to support the war in south Sudan against the Christians and animists, and to invest in the Sudanese economy. Tr. Vol. III at 333; Ex. V at 5–15.

One of the members of al Qaeda who played an important role in the move was Jamal al-Fadl, who later worked directly with the Sudanese intelligence service under the approval of Bin Laden. Tr. Vol. III at 244. Al-Fadl was Sudanese, and he served as an intermediary between al Qaeda and the Sudanese intelligence service. *Id.* at 244–45. Al-Fadl later defected to the United States and became an official source for the Federal Bureau of Investigation and the U.S. Justice Department. *Id.* at 244.

Al-Fadl provided testimony for the United States government during the criminal trial of Bin Laden. He recalled that when al Qaeda considered moving from Afghanistan to Sudan initially, questions were raised among the al Qaeda leadership over whether Hassan al-Turabi's ruling National Islamic Front party in Sudan would make a suitable and appropriate ally. According to al-Fadl: “The people, they say we have to be careful with that and we have to know more about Islamic Front ... I remember Abu Abdallah [Usama Bin Laden] ... he decide to send some people to Sudan at that time, to discover, to see what going on over there, and they bring good answer or clean answer.” *United States v. Usama Bin Laden*, No. 98–1023, Tr. Trans. at 216–17 (S.D.N.Y. Feb. 6, 2001). Al-Fadl indicated that Bin Laden had dispatched several senior al Qaeda members on this mission, including “Abu Hammam al Saudi, Abu Hajer al Iraqi, and Abu Hassan Al Sudani. And Abu Rida al Suri.” *Id.* at 217. Afterwards, “we got lecture by Abu Hajer al Iraqi, and he ask about what in the Sudan and what this relationship ... He said he went over there and I met some of the Islamic National Front in Sudan and they are very good people and they very happy to make this relationship with al Qaeda, and they very happy to have al Qaeda if al Qaeda come over there.” *Id.* at 217–18.

Al-Fadl personally interviewed and vetted those who sought to travel with al Qaeda to Sudan. Tr. Vol. III at 244. During testimony on February 6, 2001, al-Fadl described his role in facilitating al Qaeda's subsequent move to Sudan at the end of 1990: “I went with some members and we start rent houses and farms over there.... In Khartoum, because they going to bring the members in Sudan, so I went with other members to rent guesthouses and we established to rent houses for the single people and some houses for the people married that got family. And also we bought farms for the training and refresh training.” *Usama Bin Laden*, Tr. Trans. at 219–20. Al-Fadl further testified that he spent approximately \$250,000 of al Qaeda's own finances on acquiring various properties in the Sudan. On the direct orders of Bin Laden and other al Qaeda commanders, al-Fadl purchased large farms in Damazine, Port Sudan, and Soba. *Id.* at 221. Later, al-Fadl testified that he personally witnessed senior al Qaeda commanders—including Salem al-Masri, Saif al-Islam al-Masri, Saif al-Adel, and Abu Talha al-Sudani—supervising training courses in explosives being offered at the farm in Damazine. *Id.* at 243–45.

Terrorism expert Evan Kohlmann explained that the government of Sudan had encouraged al Qaeda to move for several reasons. The government envisioned that Sudan “would become the new haven for Islamic revolutionary thought and would serve as a base not just for al Qaeda but for Islamic revolutionaries of every stripe and size.” Tr. Vol. III at 231. Also, al Qaeda's presence allowed Sudan to gain leverage against its antagonistic neighbor Egypt through the use of these groups that were opposed to the Egyptian government and to gain resources from its partnership with the groups, especially Bin Laden who was rumored to be very wealthy. *Id.* Sudan invited “Palestinian HAMAS movement, the Palestinian Islamic Jihad, Hezbollah from south Lebanon, which is an Iranian sponsored Shi'ite movement, al Qaeda, the Egyptian Islamic Jihad, the Libyan Islamic Fighting Group, dissident groups from Algeria, Morocco, the Eritrean Islamic Jihad movement, literally every single jihadist style group, regardless of what sectarian perspective they had, was invited to take a base in Khartoum” to further the goal of organizing and launching a worldwide Islamic revolution. *Id.* at 232.

Sudan's open door policy for militant Islamic revolutionary groups and goal of fostering worldwide Islamic revolution resulted in an unprecedented meeting held in Khartoum known as the Popular Arab and Islamic Congress (“PAIC”). Ex. V at 5. As Dr. Lorenzo Vidino testified, “[t]he creation of the PAIC was ‘the culmination of a quarter-century of study, political activity, and international travel by Turabi,’ and was described by Turabi himself in grandiose terms as ‘the most significant event since the collapse of the Caliphate.’” *Id.* (quoting J. Millard Burr and Robert O. Collins, *Revolutionary Sudan: Hasan al-Turabi and the Islamist State, 1989–2000*, at 56–7 (2003)). Indeed, “[t]he list of participants to the PAIC's first assembly, which was held in Khartoum in April of 1991, reads like a who's who of modern *142 terrorism' ... encompass[ing] groups such as the Philippines' Abu Sayaf, the Algerian FIS, the Egyptian Islamic Jihad, and the Palestinian Hamas [who] voted a resolution pledging to work together to ‘challenge and defy the tyrannical West.’” *Id.*

Al Qaeda thrived “[f]rom 1991 to 1996 [when] bin Laden operated without any limitation inside Sudan, while under the protection of the Sudanese security forces. This freedom of action gave bin Laden and the members of his organization a useful extra-legal status in the Sudan.” Ex. W-2 at 2. Al Qaeda has released official audio and video recordings and books through its media wing, As-Sahab, which explain the organization's tactical decision to move to Sudan. *See* Tr. Vol. III at 246–47. In one official As-Sahab video, an al Qaeda member explains that “[t]he migration to the Sudan isn't just to build that impoverished country, but also for the Sudan to be a launching ground for the management of the Jihad against the forces of tyranny in a number of corners of the world, especially after the House of Saud colludes with the Americans in their entrance to the land of the Two Sanctuaries, in a blatant contradiction of the command of the Prophet (peace be upon him).” Ex. FF. The al Qaeda narrator continues, “[t]he Shaykh was keen to build the Sudan, which is a sound objective, but [also], the Sudan was a factory and production cell for a generation of Mujahideen who would spread to other countries.” *Id.* (second alteration in original); *see also* Tr. Vol. III at 249–51.

Bin Laden's presence in Sudan and partnership with Sudan was openly touted by the Sudanese government, including television broadcasts of Bin Laden in the company of both al-Turabi and President al-Bashir. Tr. Vol. III at 255. The United States monitored this alliance throughout the 1990s. The State Department's 1991 Patterns of Global Terrorism report detailed Sudan's growing connection with terrorist organizations:

In the past year Sudan has enhanced its relations with international terrorist groups, including the Abu Nidal Organization, ANO. Sudan has maintained ties with state sponsors of terrorism such as Libya and Iraq and has improved its relations with Iran. The National Islamic Front (NIF), under the leadership of Hassan al-Turabi, has intensified its domination of the government of Sudanese president General Bashir and has been the main advocate of closer relations with radical groups and their sponsors.

Ex. KK-1; Tr. Vol. III at 307–08. The 1993 Report explained that Sudan had been placed on the list of state sponsors of terrorism. Ex. GG. The report continued:

Despite several warnings to cease supporting radical extremists, the Sudanese government continued to harbor international terrorist groups in Sudan. Through the National Islamic Front (NIF), which dominates the Sudanese government, Sudan maintained a disturbing relationship with a wide range of Islamic extremists. The list includes the ANO, the Palestinian HAMAS, the [Palestinian Islamic Jihad], Lebanese Hizballah, and Egypt's al-Gama'at al-Islamiyya.

Id.; *see also* Tr. Vol. III at 257–59.

Even after Sudan expelled Bin Laden in 1996, al Qaeda operatives remained in Sudan. Ex. AA; *see also* Tr. Vol. II at 173–75; Tr. Vol. III at 305. A declassified CIA report dated May 12, 1997 indicated that Sudan's support for terrorist groups such as al Qaeda continued, despite the considerable international pressure prompting the expulsion of Bin Laden: “[d]espite some positive steps over the past year, Khartoum has sent mixed signals about cutting its terrorist ties and has taken only *143 tactical steps.” Ex. BB; *see also* Tr. Vol. II 175–76.

The State Department's 1997 Patterns of Global Terrorism report detailed Sudan's continued support for terrorist organizations: “Sudan in 1997 continued to serve as a haven, meeting place, and training hub for a number of international terrorist organizations, primarily of Middle East origin. The Sudanese Government also condoned many of the objectionable activities of Iran, such as funneling assistance to terrorists and radical Islamic groups operating in and transiting through Sudan.” Ex. KK–2; *see also* Ex. KK–3 (stating that Sudan continued to serve as a haven of international terrorist organizations in 1998 and noting “[in] particular[] Usama Bin Ladin's al-Qaida organization”); Tr. Vol. III at 308–09. Hence, the evidence strongly supports the conclusion that Sudan harbored and provided sanctuary to terrorists and their operational and logistical supply network leading up to the 1998 terrorist attacks on U.S. embassies in East Africa.

2. Financial, Military and Intelligence Services

As explained in more detail below, Sudan also provided critical financial, military, and intelligence services that facilitated and enabled al Qaeda to strengthen its terrorist network and infiltrate nearby countries. Al Qaeda set up a number of businesses and charities in Khartoum, Sudan to finance its terrorist activities and provide employment and cover for its operatives. The government of Sudan also provided passports and Sudanese citizenship for al Qaeda operatives. Additionally, the Sudanese military and intelligence service coordinated with al Qaeda operatives frequently, providing protection for al Qaeda and sharing resources and information to coordinate attacks on their mutual enemies.

i. Financial Support

Al Qaeda set up several businesses and charities in Sudan as its financial and operative base for terrorist activities. Tr. Vol. III at 253–55. Once al Qaeda settled in Khartoum, it opened business offices and bought a guesthouse designed to house al Qaeda operatives in transit. *Id.* at 252. Al Qaeda's businesses included companies that imported and exported containers, farm products, and construction materials. *See* Ex. HH; Tr. Vol. III at 278–80; Ex. V at 8–9. Al Qaeda's farms provided income and offered space for terrorist training camps. Tr. Vol. III at 252–53. The expansive space allowed for testing explosives, producing mock-ups and planning attacks and assassinations. *Id.*; Ex. V at 15–16.

These businesses produced some commercial profit but, more critically, provided employment for al Qaeda operatives and cover for terrorist activities. Tr. Vol. III at 253–55. The commercial operations also provided an avenue for exchanging currency

and purchasing imported goods without raising international suspicion. *Usama bin Laden*, Tr. Trans. at 239–46 (testimony of al-Fadl). As Mr. Kohlmann explained:

Al Qaeda was looking for a way of self-sustaining, providing a means of income for its membership, its leadership, and also to provide an excuse for why al Qaeda operatives would be traveling to different countries. It makes a good excuse if you show up at a foreign country at an immigration desk and someone asks you, why are you here, I'm here to help sell peanuts. I'm here to provide humanitarian relief. It sounded a lot *144 better than saying I'm here to foment Islamic revolution.

Tr. Vol. III at 255.

Al Qaeda also opened and operated a number of purported charities to provide income for jihad, launder such funds and otherwise operate as a front for terrorist operations. Ex. II; Tr. Vol. III at 285–86. Most of the charities had offices in Khartoum and were active across West and Central Africa, including in Somalia and Kenya. Tr. Vol. III at 286. As fronts for al Qaeda activity, these charities served as depots for al Qaeda communications and records and as safe meeting houses for operatives. *Id.* For example, al Qaeda used the office of Mercy International in Nairobi, Kenya to hide documents, plan operations, and house members of al Qaeda. *Id.* at 287. Al Qaeda members used Mercy International ID cards to pose as relief workers. *Id.* Another charity in Nairobi, Help Africa People, did not engage in any relief work and was utilized similarly as a cover organization for al Qaeda members. *Id.* at 288–89.

Bin Laden and al Qaeda also invested in Sudanese banks. *Id.* at 337. This access to the formal banking system was useful for “laundering money and facilitating other financial transactions that stabilized and ultimately enlarged bin Laden's presence in the Sudan.” *Id.* For example, Bin Laden invested \$50 million in the Sudan's Al Shamal Islamic Bank, and these funds were used to finance al Qaeda operations. Ex. V at 11–14. Al Shamal Islamic Bank was known for financing terrorist operations, and bin Laden remained a leading investor of the bank long after he was expelled from the Sudan. *Id.*

The commercial enterprises served al Qaeda's ultimate goal of organizing jihad against the United States and the West. As Dr. Vidino testified:

During its time in Sudan, al Qaeda grew into a sophisticated organization. Several key figures in the organization portrayed al Qaeda at the time as a multinational corporation complete with a finance committee, investments, worldwide operations, and well-organized, concealed accounts. These activities were clearly facilitated by the Sudanese government. Complacent banks, customs exemptions, tax privileges, and, more generally, full support by the Sudanese government, allowed Bin Laden's commercial activities to flourish. But money has never been Bin Laden's highest aspiration. He used his newfound advantageous position to solidify his nascent organization, al Qaeda. Al Qaeda's commercial activities were to be used simply as a tool for the more important goal of building a stronger al Qaeda, not to generate profits. If profits were made, they were reinvested in the organization.

Ex. V at 15.

ii. *Governmental/Military Support*

The Sudanese government, through al-Turabi and al-Bashir, invited al Qaeda members to leave Afghanistan and come to Sudan in the early 1990s. Tr. Vol. III at 242–43. President al-Bashir followed up on this general invitation with a letter specifically inviting several al Qaeda members to come to Sudan. *Id.* at 243. Al Qaeda members used the letter to “avoid having to go through normal immigration and customs controls” and resolve any “problems with the local police or authorities.” *Id.* This letter served as a “free pass” throughout the Sudan: “Upon viewing this letter, whether it was customs or immigration or Sudanese police officers, they backed off. They understood that these individuals were here in an official quote-unquote diplomatic role.” *Id.*

*145 During the 2001 trial of Bin Laden, Jamal al-Fadl, the former high-ranking al Qaeda member from Sudan, testified that the letter served to publicly verify al Qaeda's extra-judicial status in the Sudan: “Like when we go to Port of Sudan and we bring some stuff that comes—when we have some guys from outside Sudan to go inside Sudan, that letter, we don't have to pay tax or custom, or sometime the Customs, you don't have to open our containers.” *Usama Bin Laden*, Tr. Trans. at 238. The letter and governmental support provided al Qaeda unchecked access throughout Sudan. Tr. Vol. III at 243. Al-Fadl also testified that the Sudanese government provided al Qaeda members—including those who were not Sudanese—with “a couple hundred ... real passports ... and Sudanese citizenships” to facilitate travel outside of the Sudan. *Usama bin Laden*, Tr. Trans. at 441–42.

Al Qaeda and the Sudanese government jointly attempted to acquire nuclear materials and develop chemical weapons. Tr. Vol. III at 284–85. The Sudanese military “was directly engaged in trying to develop regular conventional weapons into nonconventional chemical weapons with al Qaeda's assistance.” *Id.* at 285. Al Qaeda also had the support of Sudanese soldiers to facilitate the transport of weapons. Essam al-Ridi, an al Qaeda member and pilot, testified as to his knowledge of the use of Sudanese soldiers to protect Bin Laden and al Qaeda members. Ex. H at 25; *see also Usama bin Laden*, Tr. Trans. at 569–70. Al-Ridi explained that members of the Sudanese military acted as personal guards for Bin Laden at his guest house in Khartoum. Ex. H at 25–27.

Although Sudan eventually expelled Bin Laden in 1996, the government strongly resisted foreign pressure to turn him over to the United States or grant access to the al Qaeda training camps. Ex. W–2 at 4–5. Steven Simon, an expert on the state sponsorship of terrorism, concluded that the Sudanese government's negotiation with the United States regarding Bin Laden as a terrorist threat “was a charade,” with Sudan not providing “useful information on bin Laden's finances or the terrorist training camps.” *Id.* at 5. Furthermore, “[t]he Sudanese government never offered intelligence regarding al Qaeda cells that might have helped the U.S. unravel the plots to attack the two East African U.S. embassies.” *Id.*

iii. Support from Sudan's Intelligence Services

The Sudanese intelligence service had a delegation office that provided services to Bin Laden and al Qaeda. Tr. Vol. III at 271; Ex. V at 19. As described by Mr. Simon:

The Sudanese intelligence service coordinated with al Qaeda operatives to vet the large numbers of Islamic militants entering the country to ensure that they were not seeking to infiltrate bin Laden's organization on behalf of a foreign intelligence service.

Ex. W–2 at 4. Bin Laden himself was closely involved with the Sudanese intelligence service and aware of its operations. Tr. Vol. III at 271. When al Qaeda members or operatives arrived at the Khartoum airport, Sudanese intelligence would greet them and escort them around customs and immigration to prevent their bags from being searched and their passports from being stamped. *Id.* Al Qaeda operatives tried to avoid passport stamps from Sudanese customs, because of Khartoum's reputation for terrorist activity and the concern that a member with a stamped passport could come under suspicion of being involved in international terrorism. *Id.* at 271–73.

The Sudanese intelligence service facilitated the transport of al Qaeda operatives *146 and funds from Sudan to the Nairobi cell. *Id.* at 294. For example, in violation of Kenyan customs regulations, the Sudanese intelligence service enabled al Qaeda operative L'Houssaine Kherchtou to smuggle \$10,000 from Sudan to Kenya. *Id.* The intelligence service also provided security for al Qaeda, which included protecting Bin Laden from an assassination attempt in Khartoum in 1994. *Id.* at 274. Additionally, the Sudanese intelligence service provided al Qaeda with weapons and explosives. *Id.* at 270.

The relationship between al Qaeda and the Sudanese intelligence was close and mutually beneficial. *See id.* at 268–270. Indeed, “[t]he Sudanese intelligence service viewed al Qaeda as a proxy, much the way that Iran views Hezbollah as a proxy.” *Id.* at 268–69. As a means of increasing their influence, the Sudanese intelligence service considered that “by sharing resources, information, [and] by assisting al Qaeda, the Sudanese could use al Qaeda to attack their mutual enemies.” *Id.* at 269.

3. Sudan's Support Essential to 1998 Embassy Bombings

Sudanese government support was critical to the success of the 1998 embassy bombings: “The presence, the safe haven that Al Qaeda had in the Sudan was absolutely integral for its capability of launching operations not just in Kenya, but in Somalia, in Eritrea, in Libya. Without this base of operations, none of this would have happened.” *Id.* at 317. The support of Sudanese intelligence, the safe haven provided by the Sudanese government to house al Qaeda's leadership and train its operatives, and the provision of passports allowing al Qaeda to open businesses and charities enabled al Qaeda to build its terrorist cells in Kenya, Somalia and Tanzania. *Id.* at 316–19. Indeed, Mr. Simon asserted:

The Republic of Sudan supplied al Qaeda with important resources and support during the 1990s knowing that al Qaeda intended to attack the citizens, or interests of the United States. This support encompassed the safe haven of the entire country for bin Laden and the top al Qaeda leadership. This enabled bin Laden and his followers to plot against the U.S. and build their organization free from U.S. interference. Sudanese shelter enabled Bin Laden to create training camps, invest in—and use—banking facilities, create business firms to provide cover for operatives, generate funds for an array of terrorist groups, provide official documents to facilitate clandestine travel, and enjoy the protection of Sudan's security service against infiltration, surveillance and sabotage.

Ex. W–2 at 5–6. Sudan's support thus facilitated and enabled the 1998 terrorist bombings on the two U.S. embassies in East Africa.

With the support of Sudan and Iran, al Qaeda killed and attempted to kill thousands of individuals on site in the 1998 U.S. embassy attacks in Nairobi, Kenya and Dar es Salaam, Tanzania. The evidence overwhelmingly supports the conclusion that al Qaeda carried out the two bombing attacks, and Bin Laden himself claimed responsibility for them during an al Qaeda documentary history released by the al Qaeda media wing. *See* Exs. LL, MM, NN, OO; Tr. Vol. III at 313–16.

II. CONCLUSIONS OF LAW

The “terrorism exception” to the FSIA was first enacted as part of the Mandatory Victim's Restitution Act of 1996, which was itself part of the larger Antiterrorism and Effective Death Penalty Act of 1996. *See* Pub.L. No. 104–132, § 221(a)(1)(C), 110 Stat. 1241, 1241 (formerly codified at 28 U.S.C. § 1605(a)(7)). The exception permitted *147 claims against foreign state sponsors of terrorism that resulted in personal injury or death, where either the claimant or the victim was a United States citizen at the time of the terrorist act. *See* 28 U.S.C. § 1605(a)(7) (2007). Shortly thereafter, Congress passed the so-called “Flatlow Amendment” in the Omnibus Consolidated Appropriations Act of 1996. *See* Pub.L. No. 104–208, § 589, 110 Stat. 3009–1, 3009–172 (codified at 28 U.S.C. § 1605 note). Initially, some courts construed § 1605(a)(7) and the Flatlow Amendment, read in

tandem, as creating a federal cause of action against the foreign state sponsor of terrorism. *See, e.g., Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 27 (D.D.C.1998).

In *Cicippio–Puleo v. Islamic Republic of Iran*, the D.C. Circuit concluded that neither § 1605(a)(7) nor the Flatow Amendment itself created a cause of action against the foreign state. 353 F.3d 1024, 1027 (D.C.Cir.2004). Instead of a federal cause of action, the D.C. Circuit directed plaintiffs to assert causes of action using “some other source of law, including state law.” *Id.* at 1036; *see, e.g., Dammarell v. Islamic Republic of Iran*, 2005 WL 756090, at *33 (D.D.C. Mar. 25, 2005) (requiring plaintiffs post-*Cicippio–Puleo* to amend their complaint to state causes of action under the law of the state in which they were domiciled at the time of their injuries). Hence, following *Cicippio–Puleo*, the FSIA “terrorism exception” began to serve as “a ‘pass-through’ to substantive causes of action against private individuals that may exist in federal, state or international law.” *Bodoff v. Islamic Republic of Iran*, 424 F.Supp.2d 74, 83 (D.D.C.2006).

In some cases, applying relevant state law created practical problems for litigants and the courts. Under applicable choice of law principles, district courts applied the state tort law of each individual plaintiff's domicile, which in many cases involved several different states for the same terrorism incident. *See, e.g., Dammarell v. Islamic Republic of Iran*, 404 F.Supp.2d 261, 275–324 (D.D.C.2005) (applying the law of six states and the District of Columbia). This analysis resulted in different awards for similarly-situated plaintiffs, based on the substantive tort law distinctions among states for intentional infliction of emotional distress claims. *See, e.g., Peterson v. Islamic Republic of Iran*, 515 F.Supp.2d 25, 44–45 (D.D.C.2007) (dismissing intentional infliction of emotional distress claims of those family members domiciled in Pennsylvania and Louisiana, whose laws required the claimant to be present at the site of the event causing emotional distress).

To address these issues, Congress enacted section 1083 of the 2008 NDAA, which amended the “terrorism exception” and other related FSIA provisions. The Act repealed § 1605(a)(7) of Title 28 and replaced it with a separate section, § 1605A, which, among other things: (1) broadened the jurisdiction of federal courts to include claims by members of the U.S. armed forces and employees or contractors of the U.S. government injured while performing their duties on behalf of the U.S. Government; and (2) created a federal statutory cause of action for those victims and their legal representatives against state sponsors of terrorism for terrorist acts committed by the State, its agents, or employees, thereby abrogating *Cicippio–Puleo*. *See Simon v. Republic of Iraq*, 529 F.3d 1187, 1190 (D.C.Cir.2008), *rev'd on other grounds*, 556 U.S. 848, 129 S.Ct. 2183, 173 L.Ed.2d 1193 (2009).

This case is the second to apply § 1605A to non-U.S. national plaintiffs who worked for the U.S. government (and their non-U.S. national family members), who are now entitled to compensation for personal ***148** injury and wrongful death suffered as a result of the terrorist attacks on the U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania. The first was this Court's recent decision in *Estate of Doe v. Islamic Republic of Iran*, 808 F.Supp.2d 1 (D.D.C.2011), dealing with claims arising out of the 1983 and 1984 bombings of the U.S. embassy in Lebanon.

A. Jurisdiction Under The FSIA

The Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602–1611, is the sole basis for obtaining jurisdiction over a foreign state in the United States. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989); *Brewer v. Islamic Republic of Iran*, 664 F.Supp.2d 43, 50 (D.D.C.2009). Although the FSIA provides that foreign states are generally immune from jurisdiction in U.S. courts, *see* 28 U.S.C. § 1604, a federal district court can obtain personal and subject matter jurisdiction over a foreign entity in certain circumstances. A court can obtain personal jurisdiction over a defendant if the plaintiff properly serves the defendant in accordance with 28 U.S.C. § 1608. *See* 28 U.S.C. § 1330(b). Moreover, subject matter jurisdiction exists if the defendant's conduct falls within one of the specific statutory exceptions to immunity. *See* 28 U.S.C. §§ 1330(a) & 1604. Here, this Court has jurisdiction because service was proper and defendants' conduct falls within the “state sponsor of terrorism” exception set forth in 28 U.S.C. § 1605A.

1. Service of Process

Courts may exercise personal jurisdiction over a foreign state where the defendant is properly served in accordance with 28 U.S.C. § 1608. *See* 28 U.S.C. § 1330(b); *TMR Energy Ltd. v. State Prop. Fund of Ukr.*, 411 F.3d 296, 299 (D.C.Cir.2005). “A foreign state or its political subdivision, agency or instrumentality must be served in accordance with 28 U.S.C. § 1608.” Fed.R.Civ.P. 4(j)(1). “The FSIA prescribes four methods of service, in descending order of preference. Plaintiffs must attempt service by the first method (or determine that it is unavailable) before proceeding to the second method, and so on.” *Ben-Rafael v. Islamic Republic of Iran*, 540 F.Supp.2d 39, 52 (D.D.C.2008); *see also* 28 U.S.C. § 1608. As described above, plaintiffs in each case here properly effected service on all defendants. *See supra* at 132–34. And in each case, defendants did not respond or make an appearance within 60 days, and thus, pursuant to § 1608(d), the Clerk entered default against defendants. Hence, as defendants were properly served in accordance with § 1608, this Court has personal jurisdiction over them.

2. Subject Matter Jurisdiction

The provisions relating to the waiver of immunity for claims alleging state-sponsored terrorism, as amended, are set forth at 28 U.S.C. § 1605A(a). Section 1605A(a)(1) provides that a foreign state shall not be immune from the jurisdiction of U.S. courts in a case where

money damages are sought against [it] for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

§ 1605A(a)(1). For a claim to be heard in such a case, the foreign state defendant must have been designated by the U.S. Department of State as a “state sponsor of ***149** terrorism” at the time the act complained of occurred. *Id.* Finally, subsection (a)(2)(A)(ii) requires that the “*claimant or the victim* was, at the time the act ... occurred

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise an employee of the Government of the United States ... acting within the scope of the employee's employment....

28 U.S.C. § 1605A(a)(2)(A)(ii)(I–III)(emphasis added).

As explained in more detail below, plaintiffs satisfy each of the requirements for subject matter jurisdiction. First, Iran and Sudan were designated as state sponsors of terrorism at the time all of the related actions in this case were filed. Second, plaintiffs' injuries were caused by the defendants' acts of “extrajudicial killing” and provision of “material support” for such acts to their agents. Third, plaintiffs presented evidence that they were either themselves nationals of the United States or U.S. Government employees at the time of the attacks, or their claims are derived from claims where the victims were either U.S. nationals or U.S. Government employees at the time of the attacks, as required by section 1605A(a)(2)(A)(ii). As the case progresses to the damages phase, individual plaintiffs will be required to produce evidence of their employment or familial relationship to establish their standing under the statute.

i. Iran and Sudan Designated As State Sponsors of Terrorism

A foreign state defendant must have been designated as a state sponsor of terrorism at the time the act complained of occurred. 28 U.S.C. § 1605A(a)(2)(A)(i)(I). The statute defines “state sponsor of terrorism” as “a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C.App. § 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. § 2371), section 40 of the Arms Export Control Act (22 U.S.C. § 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism....” 28 U.S.C. § 1605A(h)(6).

Iran and Sudan were designated by the U.S. Department of State as state sponsors of terrorism on January 19, 1984 and August 12, 1993, respectively. Iran was formally declared a state sponsor of terrorism by Secretary of State Schultz, *see* 49 Fed. Reg. 2836 (Jan. 23, 1984), and today remains designated as a state sponsor of terrorism. Sudan was originally designated a state sponsor of terrorism in 1993. *See* 58 Fed. Reg. 52,523 (Oct. 8, 1993). Once a country has been designated as a state sponsor of terrorism, the designation cannot be rescinded unless the President submits to Congress a proper report, as described in the Export Administration Act. *See* 50 U.S.C. app. § 2405(j)(4). Iran and Sudan have never been removed from this list of state sponsors of terrorism. Hence, the requirements set forth in section 1605A(a)(2)(A)(i) are satisfied.

ii. Extrajudicial Killing and Provision of Material Support

The FSIA, as amended, strips immunity “in any case ... in which money damages are sought against a foreign state for personal injury or death that was caused by an act of ... extrajudicial killing ... or the provision of material support or resources for such an act if such an act or provision of material support or resources is engaged in by an official, employee, or agent or such foreign state while acting *150 within the scope of his or her office, employment, or agency.” 28 U.S.C. § 1605A(a)(1). The FSIA refers to the Torture Victim Protection Act of 1991 (“TVPA”) for the definition of “extrajudicial killing.” *See* 28 U.S.C. § 1605A(h)(7). The TVPA provides that

the term “extrajudicial killing” means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all of the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

28 U.S.C. § 1350 note; *see also Valore v. Islamic Republic of Iran*, 700 F.Supp.2d 52, 74 (D.D.C.2010) (adopting the TVPA definition of “extrajudicial killing” in bombing of U.S. Marine barracks in Beirut, Lebanon).

Plaintiffs have satisfied their burden under 28 U.S.C. § 1608(e) to show that the governments of Sudan and Iran provided material support and resources to Bin Laden and al Qaeda for acts of terrorism, including extrajudicial killings. Targeted, large-scale bombings of U.S. embassies or official U.S. government buildings constitute acts of extrajudicial killings. *Estate of Doe*, 808 F.Supp.2d at 14 (“[T]he 1983 and 1984 Embassy bombings both qualify as an ‘extrajudicial killing.’ ”); *Dammarell v. Islamic Republic of Iran*, 281 F.Supp.2d 105, 192 (D.D.C.2003) (“[T]he evidence is conclusive that [the victims of the 1983 embassy bombing in Lebanon] were deliberately targeted for death and injury without authorization by a previous court judgment ... and [the 1983 bombing] constitutes an act of ‘extrajudicial killing.’ ”); *Wagner v. Islamic Republic of Iran*, 172 F.Supp.2d 128, 134 (D.D.C.2001) (finding the September 1984 bombing of the U.S. embassy annex in Lebanon was a “deliberate and premeditated act” that killed 14 people and “[t]here is no evidence that it was judicially sanctioned by any lawfully constituted tribunal”); *Brewer*, 664 F.Supp.2d at 52–53 (same); *Welch v. Islamic Republic of Iran*, 2007 U.S. Dist. LEXIS 99191, at *26 (D.D.C. Sept. 20, 2007) (finding that an embassy attack “clearly qualifies as an extrajudicial killing”).

With the support of Sudan and Iran, al Qaeda killed hundreds of individuals—and attempted to kill thousands more—on site in the 1998 U.S. embassy attacks in Nairobi and Dar es Salaam. No one questions that al Qaeda carried out the two bombing attacks, and Bin Laden himself claimed responsibility for them during an al Qaeda documentary history released by the al Qaeda media wing. *See* Exs. LL, MM, NN, OO; Tr. Vol. III at 313–16. Such acts of terrorism are contrary to the guarantees “recognized as indispensable by civilized persons.” Hence, the 1998 embassy attacks in Kenya and Tanzania, and the resulting deaths and injuries, qualify as an “extrajudicial killing.”

The statute defines “material support or resources” to include “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, [and] personnel.” 18 U.S.C. § 2339A(b). As described in detail above, defendants provided several kinds of material support to al Qaeda without which it could not have carried out the 1998 bombings. Sudan provided—at least—safe haven for Bin Laden and al Qaeda, and functioned as its training, organizational and logistical hub, from 1991 to 1996. When a foreign sovereign *151 allows a terrorist organization to operate from its territory, this meets the statutory definition of “safehouse” under 18 U.S.C. § 2339A(b):

Insofar as the government of the Republic of Sudan affirmatively allowed and/or encouraged al Qaeda and Hizbollah to operate their terrorist enterprises within its borders, and thus provided a base of operations for the planning and execution of terrorist attacks—as the complaint unambiguously alleges—Sudan provided a “safehouse” within the meaning of 18 U.S.C. § 2339A, as incorporated in 28 U.S.C. § 1605(a) (7).

Owens v. Republic of Sudan, 412 F.Supp.2d 99, 108 (D.D.C.2006). The Sudanese government also provided inauthentic passports, which qualify as “false documentation or identification” under 18 U.S.C. § 2339A(b). Plaintiffs also established that the Iranian government both trained al Qaeda members and authorized the provision of training by Hezbollah in explosives, and specifically in how to destroy large buildings. This support qualifies as “training, expert advice or assistance” under 18 U.S.C. § 2339A(b). *See id.* § 2339A(b)(2) and (3) (defining “training” as “instruction or teaching designed to impart a specific skill, as opposed to general knowledge” and “expert advice or assistance” as “advice or assistance derived from scientific, technical or other specialized knowledge”).

The statute also requires that the extrajudicial killings be “caused by” the provision of material support. The causation requirement under the FSIA is satisfied by a showing of proximate cause. *See* 28 U.S.C. § 1605A(a)(1); *Estate of Doe*, 808 F.Supp.2d at 15–16; *Valore*, 700 F.Supp.2d at 66; *Kilburn v. Socialist People's Libyan Arab Jamahiriya*, 376 F.3d 1123, 1128 (D.C.Cir.2004) (weighing the import of the phrase “caused by” from 28 U.S.C. § 1605(a)(7), the predecessor statute to 28 U.S.C. § 1605A). Proximate causation may be established by a showing of a “reasonable connection” between the material support provided and the ultimate act of terrorism. *Valore*, 700 F.Supp.2d at 66. “Proximate cause exists so long as there is ‘some reasonable connection between the act or omission of the defendant and the damages which the plaintiff has suffered.’ ” *Id.* (quoting *Brewer*, 664 F.Supp.2d at 54 (construing causation element in 28 U.S.C. § 1605A by reference to cases decided under 28 U.S.C. § 1605(a)(7))). Plaintiffs have demonstrated several reasonable connections between the material support provided by defendants and the two embassy bombings. Sudan provided the safe harbor necessary to allow al Qaeda to train and organize its members for acts of large-scale terrorism from 1992 to 1996. Sudan facilitated its safe harbor through constant vigilance by its security services and the provision of documentation required to shelter al Qaeda from foreign intelligence services and competing terrorist groups. Iran's training and technical support was specifically required for the successful execution of al Qaeda's plot to bomb the two embassies. Hence, plaintiffs have established that the 1998 embassy bombings were caused by Iran and Sudan's provision of material support.

B. Federal Cause of Action

Once jurisdiction has been established over plaintiffs' claims against all defendants, liability on those claims in a default judgment case is established by the same evidence if "satisfactory to the Court." 28 U.S.C. § 1608(e). Plaintiffs' claims are brought under section 1605A(c), the newly created federal cause of action, or, in the alternative, under applicable state or foreign law. Section 1605A(c) authorizes claims against state sponsors of *152 terrorism to recover compensatory and punitive damages for personal injury or death caused by acts described as follows.

(c) Private right of action.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A) (i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3), for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

The plain meaning approach to statutory construction governs the Court's interpretation of § 1605A(c). *See Estate of Doe*, 808 F.Supp.2d at 17–19. A straightforward reading of § 1605A(c) is that it creates a federal cause of action for four categories of individuals: a national of the United States, a member of the U.S. armed forces, a U.S. Government employee or contractor, or a legal representative of such a person. Absent from these four categories are non-U.S. national family members of the victims of terrorist attacks. The statutory language that follows the listing of the four categories of individuals in § 1605A(c) does not expand the private right of action beyond those four categories. The cause of action is further described as "for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official employee or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages." *Id.*

Plaintiffs argue that the statutory language creates a cause of action for any individual victim or claimant "for which the courts of the United States may maintain jurisdiction." But the plain language of the statute does not support this construction. Indeed, the text refers back to the waiver of sovereign immunity as to a foreign state for terrorist acts as provided in section (a)(1). Nonetheless, the family member plaintiffs contend that, even if they do not fit expressly within the four categories listed in § 1605A(c)(1)-(4), once the immunity of the defendants has been waived as to their claims, the intent of Congress indicates that the immediate family members of U.S. government employees, despite their status as foreign nationals, are entitled to bring claims through a federal statutory cause of action and seek damages for their losses, including for solatium and pain and suffering.

Plaintiffs explain that the legislative history reveals that a purpose of the 2008 amendments to the FSIA was to "fix[] the inequality" of rights between U.S. citizens and non-U.S. citizens to seek relief from the perpetrators of terrorist acts. *See* 154 Cong. Rec. S54 (daily ed. Jan. 22, 2008) (statement by Sen. Lautenberg). And, plaintiffs continue, Congress was prompted to create a federal statutory cause of action that would resolve the disparity *153 among the various state laws regarding the recovery of emotional distress by immediate family members that existed prior to the statutory amendments. *See* 154 Cong. Rec. S54 (daily ed. Jan. 22, 2008) (statement by Sen. Lautenberg) (noting that the amendments would fix the problem of "judges hav[ing] been prevented from applying a uniform damages standard to all victims in a single case because a victim's right to pursue an action against a foreign government depends upon State law"). Indeed, if foreign national immediate family members of victims do not have a cause of action under § 1605A(c), then Senator Lautenberg did not completely "fix" the problem of

disparate damages standards for this particular category of claimants. But it is not the court's role to fix a problem that Congress failed to address. *See Estate of Doe*, 808 F.Supp.2d at 18–19. As *Cicippio–Puleo* instructed, “the Supreme Court has declined to construe statutes to imply a cause of action where Congress has not expressly provided one.” 353 F.3d at 1033.

Some courts have found jurisdiction and a cause of action under § 1605A and, in so doing, have noted that because § 1605A(c) incorporates the elements required to waive the foreign state's immunity and vest the court with subject matter jurisdiction under section 1605A, “liability under section 1605A(c) will exist whenever the jurisdictional requirements of section 1605A are met.” *Calderon–Cardona v. Democratic People's Republic of Korea*, 723 F.Supp.2d 441, 460 (D.P.R.2010); *see also Kilburn v. Islamic Republic of Iran*, 699 F.Supp.2d 136, 155 (D.D.C.2010) (explaining that the elements of immunity and liability are “essentially the same [under the new amendments] in that § 1605A(a)(1) must be fulfilled to demonstrate that a plaintiff has a cause of action” under § 1605A(c)); *Murphy v. Islamic Republic of Iran*, 740 F.Supp.2d 51, 72 (D.D.C.2010) (analyzing liability and jurisdiction together); *Brewer*, 664 F.Supp.2d at 52 (“[I]f immunity is waived, the Act provides for economic damages, solatium, pain and suffering, and punitive damages.”); *Gates v. Syrian Arab Republic*, 580 F.Supp.2d 53, 64–69 (D.D.C.2008) (analyzing liability under the same elements required for jurisdiction and finding liability where extrajudicial killing and material support elements satisfied). But that is not true here. In each of those cases, the claimants fit within the four categories of individuals who are explicitly provided a cause of action under § 1605A(c) of the statute. The elements for a waiver of immunity and for liability, then, may indeed be the same. But not for individuals who do not fit within the four categories listed in § 1605A(c). *See Estate of Doe*, 808 F.Supp.2d at 19–20.

Hence, those plaintiffs who are foreign national family members of victims of the terrorist attacks in Nairobi and Dar es Salaam lack a federal cause of action. Nonetheless, they may continue to pursue claims under applicable state and/or foreign law. Although § 1605A created a new federal cause of action, it did not displace a claimant's ability to pursue claims under applicable state or foreign law upon the waiver of sovereign immunity. *See Estate of Doe*, 808 F.Supp.2d at 19–20 (citing *Simon*, 529 F.3d at 1192). Indeed, plaintiffs injured or killed as a result of state-sponsored terrorist attacks have pursued claims under both the federal cause of action and applicable state law, and are precluded only from seeking a double recovery. *See id.*

C. Choice of Law

In circumstances where the federal cause of action is not available, courts must determine whether a cause of ^{*154} action is available under state or foreign law and engage in a choice of law analysis. Federal courts addressing FSIA claims in the District of Columbia apply the choice of law rules of the forum state. *Oveissi v. Islamic Republic of Iran*, 573 F.3d 835, 840 (D.C.Cir.2009); *Dammarell*, 2005 WL 756090, at *18. This Court will therefore look to the choice of law rules of the District of Columbia in this case.

Under District of Columbia choice of law rules, the court must first determine whether a conflict exists between the law of the forum and the law of the alternative jurisdiction. If there is no true conflict, the court should apply the law of the forum. *See USA Waste of Md., Inc. v. Love*, 954 A.2d 1027, 1032 (D.C.2008) (“A conflict of laws does not exist when the laws of the different jurisdictions are identical or would produce the identical result on the facts presented.”). If a conflict is present, the District of Columbia employs a “‘constructive blending’ of the ‘government interests’ analysis and the ‘most significant relationship’ test” to determine which law to apply. *Oveissi*, 573 F.3d at 842; *Dammarell*, 2005 WL 756090, at *18 (citation omitted).

In *Dammarell*, an FSIA case that involved the 1983 bombing of the U.S. embassy in Beirut, Lebanon, this Court explained that “under the governmental interests analysis as so refined, we must evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be most advanced by having its law applied to the facts of the case under review.” 2005 WL 756090, at *18. For the “‘most significant relationship’ component of the analysis, the D.C. Court of Appeals directs courts to section 145 of the Restatement of the Conflict of Laws, which identifies four relevant factors: (i) ‘the place where the injury occurred’; (ii) ‘the place where the conduct causing the injury occurred’; (iii) ‘the domicile, residence, nationality, place of incorporation and place of business of the parties’; and (iv) ‘the place where the relationship, if any, between the parties is centered.’” *Id.* (citing Restatement (Second) of Conflict of Laws § 145 (1971)). The Restatement also references the “needs of the interstate and the international systems, the relevant policies of the forum, the relevant policies

of other interested states, certainty, predictability and uniformity of result, and ease in the determination and application of the law to be applied.” *Id.*; see also *Oveissi*, 573 F.3d at 842; *Estate of Heiser v. Islamic Republic of Iran*, 466 F.Supp.2d 229, 266 (D.D.C.2006). As a general rule, the law of the forum governs, “unless the foreign state has a greater interest in the controversy.” *Kaiser–Georgetown Cmty. Health Plan v. Stutsman*, 491 A.2d 502, 509 (D.C.1985).

Three conceivable choices of law are presented in this case: the law of the forum state (the District of Columbia), the laws of the place of the tort (Kenya and Tanzania), or the law of the domicile state or country of each plaintiff (including domestic and foreign locations). See *Dammarell*, 2005 WL 756090, at *18. In previous FSIA terrorism cases involving U.S. citizen plaintiffs, this Court ruled that the law of the domicile state of each plaintiff should provide the rule of decision, noting each state's interest in the welfare and compensation of the surviving family members of individuals killed in the terrorist attacks. See *id.* at *21 (citing cases). Here, as in *Estate of Doe*, the choice of law analysis pertains only to non-U.S. national family members of victims of the terrorist attacks (who lack a federal cause of action), and the balance of interests suggests a different outcome from the FSIA cases involving U.S. citizen plaintiffs.

***155** Consistent with *Dammarell* and other FSIA cases, United States domestic law remains more appropriate in state-sponsored terrorism cases than foreign law. Furthermore, in light of the 2008 amendments to FSIA that seek to promote uniformity and extend access to U.S. federal courts to foreign national immediate family members of victims of terrorism, the law of the forum state, the District of Columbia, should provide the rule of decision.

1. Domestic Law

As in *Dammarell*, the choice of law analysis here points away from the place of the injury, and toward applying the laws of a United States forum. First, no clear conflict of law is present between the laws of the forum (District of Columbia) and the laws of Kenya and Tanzania. Like District of Columbia law, Kenyan law allows immediate family members to recover for their emotional distress. See Pl.'s Att. B, Kenyan Legal Opinion. Tanzanian law also permits immediate family members to recover for some emotional injuries. Tanzanian Probate and Administration of Estates Act, ¶ 33 (Lexis 2010). When “the laws of the different jurisdictions ... would produce the identical result on the facts presented,” *USA Waste*, 954 A.2d at 1032, it tilts the balance of this Court's choice of law analysis towards domestic law.

Second, to the extent that United States law and the law of Kenya and Tanzania (or another foreign jurisdiction) conflict, the District of Columbia's “governmental interests” choice of law test in state-sponsored terrorism cases strongly favors the application of United States law over foreign law. Although “[t]he law of a foreign country has provided the cause of action in some cases arising out of mass disasters that occurred on foreign soil,” *Dammarell*, 2005 WL 756090, at *19 (citing *Harris v. Polskie Linie Lotnicze*, 820 F.2d 1000, 1004 (9th Cir.1987) (applying Polish law to airplane crash occurring in Poland), and *Barkanic v. Gen. Admin. of Civil Aviation of the People's Republic of China*, 923 F.2d 957, 962–64 (2d Cir.1991) (applying Chinese law to airplane crash occurring in China)), such a result is less appropriate in state-sponsored terrorism-related cases. In terrorism cases, “[t]he United States has a unique interest in having its domestic law—rather than the law of a foreign nation—used in the determination of damages in a suit involving such an attack.” *Holland v. Islamic Republic of Iran*, 496 F.Supp.2d 1, 22 (D.D.C.2005) (citing Restatement (Third) of Foreign Relations Law § 402(3) (1987)).

Here, just as in *Dammarell*, “the particular characteristics of this case heighten the interests of a domestic forum and diminish the interest of the foreign state. The injuries in this case are the result of a state-sponsored terrorist attack on a United States embassy and diplomatic personnel. The United States has a unique interest in its domestic law, rather than the law of a foreign nation, determining damages in a suit involving such an attack.” *Dammarell*, 2005 WL 756090, at *20; see also Restatement (Third) of Foreign Relations Law § 402(3) (1987) (recognizing that the United States has an interest in projecting its laws overseas for “certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests”). These considerations “elevate the interests of the United States to nearly its highest point.” *Dammarell*, 2005 WL 756090, at *20; see also *Kaiser–Georgetown Cmty. Health Plan*, 491 A.2d at 509 n. 10

(suggesting that unless a foreign state has a greater interest in the application of its law than the forum state, ***156** the interests of efficiency only serve to further “tilt the balance in favor of applying the law of the forum state”). Hence, the “governmental interest” prong of the District of Columbia choice of law analysis counsels against applying the law of Kenya and Tanzania, or other foreign laws, and suggests that domestic law should control. *Cf. Estate of Doe*, 808 F.Supp.2d at 21–22.

2. District of Columbia Law

In addition to the strong governmental interest in applying United States law in this case, the interests of uniformity of decision among the foreign national family members points to the application of the law of the forum. Most of these plaintiffs are domiciled in Kenya and Tanzania, although some are domiciled in other countries. In previous FSIA decisions, this Court has applied the laws of the several domiciliary states. *See, e.g., Dammarell*, 2005 WL 756090, at *21. Here, however, the interests of uniformity provided by the law of the forum state, which also has a significant interest in the underlying events, provides the most appropriate choice of law for all foreign national family members who lack a federal cause of action. *See Kaiser–Georgetown Cmty. Health Plan*, 491 A.2d at 509 n. 10 (“ ‘The forum State's interest in the fair and efficient administration of justice’ together with the ‘substantial savings [that] can accrue to the State's judicial system’ when its judges are ‘able to apply law with which [t]he[y are] thoroughly familiar or can easily discover,’ tilt the balance in favor of applying the law of the forum.”) (quoting *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 326 & n. 14, 101 S.Ct. 633, 66 L.Ed.2d 521 (1981)).

In the recent amendments to the FSIA, Congress has sought to strengthen enforcement of United States terrorism laws and to extend their protections to foreign nationals who are employees of United States embassies targeted by terrorists and their immediate family members, as well as to correct the problem of disparity among the various state laws regarding recovery of emotional distress by family members. *See Estate of Doe*, 808 F.Supp.2d at 22–23. As discussed above, Congressional desire to promote uniformity does not, by itself, create a federal cause of action for non-United States national family members where the statutory text fails to do so. But efficiency and uniformity are appropriate and meaningful factors in a choice of law analysis. Without doubt, applying District of Columbia law will provide greater uniformity of result, as individual plaintiffs domiciled in different states and foreign nations will all be subject to the same substantive law. Although “the D.C. Court of Appeals has emphasized that concerns of uniformity and familiarity cannot prevail when another location otherwise has ‘a significantly greater interest than does the District’ in the cause of action,” *Dammarell*, 2005 WL 756090, at *20 (citing *Mims v. Mims*, 635 A.2d 320, 324–25 (D.C.1993)), the recent amendments—and the stated goal of those amendments to promote uniformity—serve to increase the interest in applying District of Columbia substantive law to this case.

The District of Columbia's connection to the terrorist attacks in this case further supports this choice of law conclusion. To be sure, the 1998 embassy bombings took place in Kenya and Tanzania, the nationalities and domiciles of the various victims and plaintiffs are disparate and varied, and the defendants have no connection to the United States. But a unifying factor in this case is that all of plaintiffs' claims derive from employment with a federal agency headquartered in the District of Columbia, the seat of the federal government. The application of District of Columbia substantive law best promotes ***157** the United States' interest in applying domestic law rather than the law of a foreign nation, Congress's intent to promote uniformity of result, and the District of Columbia's real connection to the attacks in this case. *See Estate of Doe*, 808 F.Supp.2d at 23–24. Hence, this Court will apply the law of the District of Columbia to plaintiffs' claims that do not arise under the federal cause of action at § 1605A(c).

III. CONCLUSION

For the foregoing reasons, final judgment on liability will be entered in favor of plaintiffs and against defendants. Plaintiff's claims, under federal³ or state law, will be referred to a special master, who will receive evidence and prepare proposed findings and recommendations for the disposition of each individual claim in a manner consistent with this opinion. A separate order will be issued on this date.

All Citations

826 F.Supp.2d 128

Footnotes

- 1 The Court enters the findings and conclusions below pursuant to 28 U.S.C. § 1608(e). That provision requires plaintiffs under the FSIA to “establish [their] claim or right to relief by evidence satisfactory to the court” even where, as here, defendants have failed to appear after proper service.
- 2 “Tr. Vol.” refers to the transcript for each day of the bench trial in this case, beginning on October 25, 2010. Accordingly “Tr. Vol. I” refers to the transcript for the first day of testimony on October 25, 2010, “Tr. Vol. II” refers to the transcript of day two of the bench trial, and so on. “Ex.” refers to those exhibits admitted into evidence during the trial.
- 3 For plaintiffs’ federal claims under § 1605A(c), “[t]he Court is presented with the difficulty of evaluating these claims under the FSIA-created cause of action, which does not spell out the elements of these claims that the Court should apply.” *Valore*, 700 F.Supp.2d at 75. Hence, the Court “is forced ... to apply general principles of tort law—an approach that in effect looks no different from one that explicitly applies federal common law”; but “because these actions arise solely from statutory rights, they are not in theory matters of federal common law.” *Heiser v. Islamic Republic of Iran*, 659 F.Supp.2d 20, 24 (D.D.C.2009); *see also Bettis v. Islamic Republic of Iran*, 315 F.3d 325, 333 (D.C.Cir.2003) (discussing that the term “federal common law” under the FSIA “seems to us to be a misnomer” because “these actions are based on statutory rights”). District courts thus look to Restatements, legal treatises, and state decisional law “to find and apply what are generally considered to be the well-established standards of state common law, a method of evaluation which mirrors—but is distinct from—the ‘federal common law’ approach.” *Heiser*, 659 F.Supp.2d at 24.

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ANNEX 53

184 F.Supp.2d 13
United States District Court,
District of Columbia.

Susan WEINSTEIN, et al., Plaintiffs,
v.
The ISLAMIC REPUBLIC OF IRAN, et al., Defendants.

No. 00-2601 (RCL).

|
Feb. 6, 2002.

Synopsis

Family members and estate of American citizen killed in terrorist suicide bombing on Israeli passenger bus, carried out by terrorist group sponsored by Iran, brought wrongful death action against Iran, its intelligence service, and senior officials of Iranian government, pursuant to antiterrorism provisions of Foreign Sovereign Immunities Act (FSIA). Following defendants' default, the District Court, Lamberth, J., held that: (1) District Court had subject matter jurisdiction pursuant to the Antiterrorism and Effective Death Penalty Act (AEDPA); (2) District Court had personal jurisdiction over defendants; (3) defendants were liable for victim's death; (4) plaintiffs were entitled to damages for loss of accretions to estate, for victim's pain and suffering, and for solatium; and (5) punitive damages in amount of \$150,000,000 were warranted.

Judgment for plaintiffs.

Attorneys and Law Firms

*15 William A. Davis, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, Washington, DC, Jeffrey A. Miller, Westerman Shapiro Draghi & Miller, LLP, Garden City, NY, for plaintiff.

MEMORANDUM OPINION

LAMBERTH, District Judge.

This wrongful death action against the Islamic Republic of Iran, the Iranian Ministry of Information and Security, and three senior officials of the Iranian government arises from an act of state-sponsored terrorism. The decedent, a United States citizen named Ira Weinstein, was killed in the terrorist bombing of the Number 18 Egged passenger bus in Jerusalem, Israel on February 25, 1996. The plaintiffs, who are family members and administrators of Ira Weinstein's estate, have brought this action pursuant to the Foreign Sovereign Immunities Act ("FSIA") of 1976, 28 U.S.C. § 1602-1611.

The FSIA grants federal courts jurisdiction over suits involving foreign states and their officials, agents, and employees in certain enumerated instances. In particular, the FSIA creates a federal cause of action for personal injury or wrongful death resulting from acts of state-sponsored terrorism. 28 U.S.C. § 1608(e) (giving federal courts jurisdiction over suits "in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources ... for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency[.]"). The statute explicitly eliminates foreign governments' sovereign immunity in suits for money *16 damages based on extrajudicial killings and provides that "[a]n official, employee, or agent of a foreign state designated as a state sponsor of terrorism ... shall be liable to a United States national or the national's legal representatives

interview. In the *60 Minutes* interview, Salamah projected himself as relaxed and satisfied with his supervision of the murder of 50 people, including decedent Ira Weinstein. In those statements, Salamah further explained that after joining HAMAS he went to the Sudan for indoctrination training, following which he was sent to Syria, from where he was transported by Iranian aircraft to a base near Tehran. Osamah Hamdan, the official representative of HAMAS in Iran, met him in Tehran. For three months, Iranian military instructors, assisted by translators, trained Salamah at the base outside Tehran in the use of explosives, automatic weapons, hand grenades, RPG and LAW missiles, terrorist methods of ambush, deactivation of land mines for extraction of explosive material, and trigger mechanism for various explosive materials. He sketched out two similar mechanisms, one of which was used in an operation at Gush Qatif in the Gaza Strip in 1995. According to the statements, he received all of his training in the use of explosives in Iran. The statements also include mention of meeting with Mohammed Deif, commander of the military, terrorist wing of HAMAS. Following completion of training, Salamah was sent back to Israel so that he could carry out terrorist attacks, such as the one on the Number 18 Egged bus on February 25, 1996.

***20** (28) Defendant the Islamic Republic of Iran is a foreign state and has been designated as a state sponsor of terrorism pursuant to section 6(j) of the Export Administration Act of 1979, 50 U.S.C.App. § 2405(j) continuously since January 19, 1984.

(29) Defendants Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi-Rafsanjani, and Ali Fallahian-Kuzestani were high officials of the Islamic Republic of Iran on February 25, 1996. They were aware of, consented to, and were involved in Iran's support for HAMAS during the performance of their official duties. In particular, their approval would have been necessary to carry out the economic and other commitment of Iran to HAMAS, including the training of HAMAS terrorists in Iran.

(30) Defendant the Iranian Ministry of Information and Security is the Iranian intelligence service, functioning both within and beyond the territorial borders of Iran. Acting as an agent of the Islamic Republic of Iran, the Iranian Ministry of Information and Security performed acts within the scope of its agency, within the meaning of 28 U.S.C. § 1605(a)(7) and 28 U.S.C. § 1605 note, which caused the death of Ira Weinstein. The Iranian Ministry of Information and Security acted as a conduit for the Islamic Republic of Iran's provision of funds to HAMAS and training to the terrorists under the direction of HAMAS, including Hassan Salamah.

(31) Ira Weinstein's death was caused by a willful and deliberate act of extrajudicial killing in that it was the result of an explosion of material carried aboard the Number 18 Egged bus on February 25, 1996, and intentionally detonated by Magid Wardah at approximately 6:45 a.m. Jerusalem time, acting under instructions from Hassan Salameh, who was acting as an agent of HAMAS.

(32) As a result of Ira Weinstein's death, his Estate suffered a loss of accretions that could have been expected to occur during the course of his anticipated life expectancy in the amount of \$248,164.00.

(33) As a result of Ira Weinstein's death, his surviving wife and children have suffered and will continue to suffer severe mental anguish and the loss of his society and companionship. Indeed, despite being emotionally and psychologically taxing to do so, all of the family member plaintiffs testified extensively about the mental anguish they have suffered as a result of Ira Weinstein's death.

II. CONCLUSIONS OF LAW

A. Subject Matter Jurisdiction—The FSIA Controls This Action

As this Court noted in *Flatow*, an action brought against a foreign state, its intelligence service acting as its agent, and three of its officials, acting in their official capacities, must be brought under the FSIA. *Flatow*, 999 F.Supp. at 10. *See also Saudi Arabia v. Nelson*, 507 U.S. 349, 355, 113 S.Ct. 1471, 123 L.Ed.2d 47 (1993) (noting that “[u]nder the [FSIA], a foreign state is presumptively immune from the jurisdiction of United States court; unless a specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state.”). Indeed, the FSIA must be applied in every action involving a foreign state defendant. *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 489, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983);

D. Damages

(1) *Wrongful Death*. The plaintiffs produced comprehensive affidavit testimony from Professor Adrian Ziderman detailing the loss of accretions to the Estate of Ira Weinstein. These calculations were based on conservative procedures and assumptions. In accordance with Professor Ziderman's affidavit and the report attached thereto, the Court concludes that judgment should be entered for this element of damages for the Estate of Ira Weinstein in the amount of \$248,164.00.

(2) *Survival Action—Pain and Suffering*. The Court has no difficulty, based on the testimony of Dr. Sprung, finding that Ira Weinstein endured extreme pain and that he suffered greatly from the time of the explosion on February 25, 1996, until his death on April 13, 1996. As Dr. Sprung noted, during his seven-week stay at Hadassah Hospital, Ira Weinstein underwent several surgical procedures which were very painful, including the amputation of both legs, and he suffered immense pain as a result of extensive burn and blast injuries. Moreover, because of his particular medical condition, doctors did not provide Ira Weinstein with as much pain medication as they otherwise would have given to someone with the types of injuries he sustained. Consequently, Ira Weinstein endured even more pain than individuals normally would experience with severe burn and blast injuries.

Despite the overwhelming evidence concerning the extent of Ira Weinstein's injuries and the amount of pain and suffering he endured, it is difficult for the Court to determine the appropriate amount of damages to award as compensation for this pain and suffering. As one court aptly noted, “there is no market where pain and suffering are bought and sold, nor any standard by which compensation for it can be definitely ascertained, or the amount actually endured can be determined[.]” *St. Louis S.W.R. Co. v. Kendall*, 114 Ark. 224, 169 S.W. 822, 824 (1914). This is because “[t]he nature of pain and suffering is such that no legal yardstick can be fashioned to measure accurately reasonable compensation for it. No one can measure another's pain and suffering; only the person suffering knows how much he is suffering, and even he could not accurately say what would be reasonable compensation for it. Earning power and dollars are interchangeable; suffering and dollars are not.” *Herb v. Hollowell*, 304 Pa. 128, 154 A. 582, 584 (1931). Indeed, it goes without saying that no monetary judgment would truly compensate Ira Weinstein for the pain and suffering he endured as a result of the terrorist attack on the Number 18 Egged bus on February 25, 1996. Nor could any court fashion a remedy that would have ameliorated the pain and suffering that Ira Weinstein endured for those forty-nine days at Hadassah Hospital.

Notwithstanding the inherent difficulty and subjectivity involved in awarding damages based on the pain and suffering of a *23 claimant, compensation is required once liability has been determined and in this case such compensatory damages are certainly warranted. Because there is no precise methodology used to calculate damages for pain and suffering, however, the trier of fact (which in this case is the Court) has a significant amount of discretion in determining what is appropriate compensation. *Taylor v. Washington Terminal Co.*, 409 F.2d 145 (D.C.Cir.1969); *Hysell v. Iowa Public Service Co.*, 559 F.2d 468, 472–73 (8th Cir.1977). In making this determination, the Court will not simply award what it abstractly finds to be fair. Rather, in deciding the amount of damages to award in this case, the Court will look at damage awards for pain and suffering in other cases brought under the FSIA and also in personal injury lawsuits arising under a variety of circumstances. *See e.g., Eisenfeld*, 172 F.Supp.2d at 8 (awarding \$1,000,000 to plaintiffs that suffered extreme pain for several minutes after being injured in the bombing of the Number 18 Egged bus); *Flatow*, 999 F.Supp. at 29 (awarding \$1,000,000 for 3 to 5 hours of pain and suffering to plaintiff injured in another bus bombing); *Mousa*, Civil Action Number 00–2096 at 21 (awarding \$12,000,000 for both past and future pain and suffering of plaintiff injured extensively in Number 18 Egged bus bombing); *Snearl v. Mercer*, 780 So.2d 563, 589–90 (La.App.2001) (sustaining award of \$5,000,000 for past and future pain and suffering of plaintiff that had extensive burn injuries and underwent numerous surgical procedures, including the amputation of both legs, after automobile accident); *Eiland v. Westinghouse Electric Corp.*, 58 F.3d 176, 183 (5th Cir.1995) (finding that \$3,000,000 was the maximum amount that plaintiff could recover for the pain he endured and will endure as a result of severe burn wounds); *Martin v. United States*, 471 F.Supp. 6 (D.Ariz.1979) (awarding \$1,000,000 and \$750,000 respectively to two plaintiffs that endured a significant amount of pain after being severely burned in an accident involving a power line); *Hysell*, 559 F.2d at 471–72 (awarding \$300,000 for past and future pain and suffering of plaintiff that was severely burned and had both legs and one arm amputated); *Lynch, et al., v. Invacare Corp.*, Civil Action Number 99–CV–749 (E.D.Okl.2000) (awarding plaintiff \$24,000,000 in products liability case

(6) Plaintiff David Weinstein is the son of decedent Ira Weinstein. He is, and at all relevant times was, a citizen of the United States.

(7) Ira Weinstein, who had served in the United States Navy, worked as a butcher for the Supersol supermarket chain in Israel at the time of his death.

(8) On February 25, 1996, Ira Weinstein boarded the Number 18 Egged bus in Jerusalem, Israel to go to work.

(9) At approximately 6:45 a.m. Jerusalem time, while Ira Weinstein was still aboard, Magid Wardah, another passenger, detonated an explosive charge which, at the direction of HAMAS, he had carried onto the bus concealed in a travel bag. The ensuing explosion caused the complete destruction of the bus, resulted in debris being hurled in excess of 100 meters, and led to the injury and death of numerous individuals, including Ira Weinstein. Nails were placed in the bomb so that it would cause even more injuries than a typical bomb would inflict.

(10) Medical personnel evacuated Ira Weinstein from the site of the bombing to Hadassah Hospital in Jerusalem. Doctors treated Ira Weinstein in the emergency room of the hospital for 12 hours and then admitted him into the intensive care unit, where he stayed until his death on April 13, 1996.

(11) Despite all of his injuries, which are detailed below, Ira Weinstein was conscious upon arrival at the hospital, and remained at least semi-conscious for the majority of his time at Hadassah Hospital.

(12) Dr. Charles Sprung was responsible for Ira Weinstein's medical care at Hadassah Hospital. Dr. Sprung is the director of the general intensive care unit at Hadassah Hospital and is one of the world's foremost experts on severe trauma injuries, including bomb blast injuries and burns. In addition, Dr. Sprung has extensive teaching experience in the field of severe trauma injuries and conditions resulting from bomb blasts, and has conducted a substantial amount of research and published numerous articles in the field. The findings of fact made by the Court with respect to the injuries sustained by and treatment given to Ira Weinstein are based primarily on the testimony of Dr. Sprung.

(13) To a reasonable degree of medical certainty, Ira Weinstein endured extreme and conscious pain and suffering for forty-nine days, from the time of the explosion on February 25, 1996, until his death on April 13, 1996.

(14) Specifically, Ira Weinstein suffered severe and painful injuries from the bomb blast itself. The explosion resulted in such pressure within the confines of the bus that portions of Ira Weinstein's skin were literally ripped from his body. Ira Weinstein suffered an extreme amount of pain as a result of this injury. The blast also caused second to fourth degree burns to *18 30–35 percent of Ira Weinstein's body, including on his legs, chest, face, and hands. These burns required debridements (the procedure of cleaning out and taking off dead skin caused by burns) and skin grafts every one to three days, and the burn dressings also needed to be changed on a regular basis. All of this treatment caused Ira Weinstein to experience severe pain and to suffer greatly.

(15) As a result of the bomb blast, Ira Weinstein also sustained severe injuries to his lungs that caused him to suffer respiratory distress and failure. Upon his arrival at the hospital, Ira Weinstein had to be intubated, he had to have chest tubes inserted, and he had to be placed on a ventilator so that he could breathe. Ira Weinstein endured pain as a result of all of these things as well. Moreover, the treatment of Ira Weinstein was complicated because burn injuries are generally treated with fluids while limiting the amount of fluid intake, conversely, is the treatment for lung and respiratory injuries.

(16) As a result of his injuries, Ira Weinstein developed infections that caused further complications. The most devastating side effect from the infections was low blood pressure, which at times caused him to go into shock and to be near death. Further, bomb blast injuries and burns are usually treated with high doses of pain medication. This could not be done in Ira Weinstein's case, however, because pain medication lowers blood pressure, and since his blood pressure was already low, the pain medication

itself could have killed him. Thus, Ira Weinstein could not receive an adequate amount of pain medication and, consequently, suffered a higher level of pain throughout his stay at the hospital than a patient with his injuries otherwise would have endured.

(17) Ira Weinstein also had to have surgery to relieve abdominal swelling that was caused by excess air pushed downward from his chest area. Doctors were unable, however, to close his abdomen following surgery because of the other injuries he had sustained and the pressure problems that he had.

(18) Ira Weinstein also suffered from abnormal bleeding, which was likely caused by the damage to his lungs. The abnormal bleeding resulted in tremendous swelling of his eyelids, face, and head. The abnormal bleeding further led to extensive clotting that required Dr. Sprung and his staff to perform intermittently a procedure to suction out clots that were developing in his lungs. The procedure, which included the insertion of a tube into Ira Weinstein's windpipe to extract the blood clots, was very painful. Further, while a normal person may only have needed to be suctioned twice every eight hours, Ira Weinstein at various times had to be suctioned several times in an hour because of the abnormal bleeding he was experiencing.

(19) As a result of the infections Ira Weinstein developed (and to prevent future infections), he had both legs amputated on April 11, 1996.

(20) On April 13, 1996, Ira Weinstein died as a result of the injuries he sustained in the bombing of the Number 18 Egged bus.

(21) Dr. Sprung met with the family on a daily basis and kept them updated as to Ira Weinstein's condition. Dr. Sprung testified that Ira Weinstein's family appeared devastated during his stay at Hadassah Hospital.

(22) Plaintiffs Susan Weinstein, Joseph Weinstein, Jennifer Weinstein Hazi, and David Weinstein were informed of the attack and the injuries sustained by Ira Weinstein on February 25, 1996. They *19 visited Ira Weinstein at Hadassah Hospital numerous times.

(23) HAMAS publicly claimed credit for the February 25, 1996 attack on the Number 18 Egged bus shortly after the bombing. Statements made by Hassan Salamah, the HAMAS member who planned the attack, to Israeli police verified this claim. Salamah later corroborated HAMAS' responsibility for the bombing in an interview with the CBS Television news program *60 Minutes*.

(24) HAMAS, the popular name for the Islamic Resistance Movement, is an organization supported by The Islamic Republic of Iran, dedicated to the waging of Jihad, or a holy war employing terrorism with the object of seizing the leadership of the Palestinian people and asserting sovereignty and the rule of the Muslim religion over all of Palestine, including all territory of the State of Israel.

(25) The affidavit testimony of Dr. Reuven Paz and Dr. Patrick Clawson establishes conclusively that the defendants knew of the destructive purposes and objectives of HAMAS, which were set forth in detail in the organization's charter introduced into evidence as Exhibit B to Plaintiff's Exhibit # 1.

(26) Notwithstanding the destructive purposes and objectives of HAMAS, the Islamic Republic of Iran gave the organization at least \$25–\$50 million in 1995 and 1996, and also provided other groups with tens of millions of dollars to engage in terrorist activities. In total, Iran gave terrorist organizations, such as HAMAS, between \$100 and \$200 million per year during this period. The money, among other things, supported HAMAS' terrorist activities by, for example, bringing HAMAS into contact with potential terrorist recruits and by providing legitimate front activities behind which HAMAS could hide its terrorist activities. In fact, this was a peak period for Iranian economic support of HAMAS because Iran typically paid for results, and HAMAS was providing “results” by committing numerous bus bombings such as the one on February 25, 1996.

(27) The conclusion of Dr. Paz and Dr. Clawson that the Islamic Republic of Iran had given material support to HAMAS was further supported by the statements of Hassan Salamah to the Israeli Police and to the CBS reporter during the *60 Minutes*

for personal injury or death caused by acts ... for which the courts of the United States may maintain jurisdiction [.]” 28 U.S.C. § 1605(a)(7); 28 U.S.C. § 1605 note, Civil Liability for Acts of State Sponsored Terrorism.

It is worth noting that two recent cases before this Court that were brought under the FSIA involved the same terrorist bombing that killed Ira Weinstein. In *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1 (D.D.C.2000), and *Mousa v. Islamic Republic of Iran*, Civil Action Number 00–2096(WBB), this Court held the same defendants in the present case jointly and severally liable for the deaths of two other American citizens, Matthew Eisenfeld and Sara Rachel Duker, and for the injuries sustained by Leah Mousa. All three individuals, like Ira Weinstein, were aboard the Number 18 Egged bus when it was bombed on February 25, 1996.

The defendants, despite being properly served with process pursuant to 28 U.S.C. § 1608, have failed to enter an appearance in this matter. As a result, the Court entered default against the defendants on July 16, 2001, pursuant to 28 U.S.C. § 1608(e) and Federal Rule of Civil Procedure 55(a). Notwithstanding indicia of the defendants' willful default, however, the Court is compelled to make further inquiry prior to entering a judgment by default against them. As with actions against the federal government, the FSIA requires that a default judgment against a foreign state be entered only after a plaintiff “establishes his claim or right to relief that is satisfactory to the Court.” 28 U.S.C. § 1608(e).

Accordingly, the Court has engaged in a careful review of the evidence presented in this case, in light of *Eisenfeld*, *Mousa*, and the other reported cases brought under the antiterrorism provisions of the FSIA. *Wagner v. Islamic Republic of Iran*, 172 F.Supp.2d 128 (D.D.C.2001); *Jenco v. Islamic Republic of Iran*, 154 F.Supp.2d 27 (D.D.C.2001); *Sutherland v. Islamic Republic of Iran*, 151 F.Supp.2d 27 (D.D.C.2001); *Daliberti v. Republic of Iraq*, 146 F.Supp.2d 19 (D.D.C.2001); *Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97 (D.D.C.2000); *Anderson v. Islamic Republic of Iran*, 90 F.Supp.2d 107 (D.D.C.2000); *Cicippio v. Islamic Republic of Iran*, 18 F.Supp.2d 62 (D.D.C.1998); *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1 (D.D.C.1998); *Alejandro v. Republic of Cuba*, 996 F.Supp. 1239 (S.D.Fla.1997). Based upon the extensive evidence presented by the plaintiffs, the Court concludes that they have established their claim and right to relief as set forth below.

I. FINDINGS OF FACT

The Court heard testimony in this matter on December 6 and 7, 2001. The plaintiffs proceeded in the manner of a bench trial and the following findings of fact are based upon the sworn testimony and documents entered into evidence in accordance with the Federal Rules of Evidence. Plaintiffs have “established [their] claim or right to relief by evidence that is satisfactory to the Court,” as required by 28 U.S.C. § 1608(e). The Court finds the following facts to be established by clear and convincing evidence, which would have been sufficient to establish a prima facie case in a contested proceeding.

(1) Ira William Weinstein was born on December 4, 1942, in the United States of America. He was a United States citizen from the time of his birth until his death on April 13, 1996.

*17 (2) Plaintiff Susan Weinstein is the widow of decedent Ira Weinstein. She is, and at all relevant times was, a citizen of the United States. She brings this action in her own right, as Co–Administrator of the Estate of Ira Weinstein, and as the natural guardian of plaintiff David Weinstein.

(3) Plaintiff Jeffrey A. Miller, who is also a citizen of the United States, brings this action as Co–Administrator of the Estate of Ira Weinstein.

(4) Plaintiff Joseph Weinstein is the son of decedent Ira Weinstein. He is, and at all relevant times was, a citizen of the United States.

(5) Plaintiff Jennifer Weinstein Hazi is the daughter of decedent Ira Weinstein. She is, and at all relevant times was, a citizen of the United States.

where plaintiff suffered extensive burn wounds and had his left arm amputated). Based on these and other similar cases, the Court finds that \$10,000,000 is an appropriate amount of compensatory damages for the pain and suffering of Ira Weinstein.

(3) *Solatium*. The FSIA provides for an award for solatium where physical injury results in death. As this Court noted in *Flatow*, damages for solatium belong to the individual heir personally for injury to the feelings and loss of decedent's comfort and society. The unexpected quality of a death may be taken into consideration in gauging the emotional impact to those left behind. In this case, the impact upon Ira Weinstein's wife and three children was devastating. Their testimony established conclusively that they each loved Ira Weinstein dearly and that they have experienced a tremendous amount of mental anguish as a result of his death. Thus, the Court finds that the following amounts are appropriate compensation for this element of damages: Susan Weinstein: \$8,000,000; Joseph Weinstein: \$5,000,000; Jennifer Weinstein Hazi: \$5,000,000; David Weinstein: \$5,000,000.

(4) *Punitive Damages*: Punitive damages are awarded to punish a defendant for particularly egregious conduct, and to serve as a deterrent to future conduct of the same type. *24 Restatement (Second) Torts, § 908 (defining punitive damages as “damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.”). As an initial matter, the Court must determine whether it can award punitive damages under the FSIA. Based on the language of the statute and in accordance with the corresponding caselaw, the Court finds that it can levy punitive damages against the Iranian Ministry of Information and Security.¹ The FSIA specifically provides courts with the power to award punitive damages against an agency or instrumentality of a foreign state in a case brought under section 1605(a)(7). 28 U.S.C. § 1606. In this case, the Court finds that both of these requirements are easily satisfied. That is, the plaintiffs brought this action pursuant to 28 U.S.C. § 1605(a)(7) since it arises from the extrajudicial killing of Ira Weinstein, and the Iranian Ministry of Information and Security is an agency or instrumentality of the Islamic Republic of Iran for purposes of the FSIA. *Anderson*, 90 F.Supp.2d at 113; *Elahi*, 124 F.Supp.2d at 113.

Having found that the FSIA authorizes it to award punitive damages, the Court still must determine whether such damages should be awarded in this case. According to the Restatement (Second) of Torts, punitive damages are merited in cases involving “outrageous conduct.” In the instant case, the Court has no difficulty finding that the depraved and uncivilized conduct of the Iranian Ministry of Information and Security constitutes outrageous conduct. The defendant provided material support in the form of training and money to HAMAS so that the organization could carry out terrorist attacks such as the one on February 25, 1996. Under even the most restrictive interpretation of the term, the defendant's actions in this matter are clearly outrageous and warrant the imposition of punitive damages.

The Court must now determine the appropriate amount of punitive damages to award against the Iranian Ministry of Information and Security. In determining the amount of punitive damages to award, courts should consider several factors, including: “[1] the character of the defendant's act, [2] the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and [3] the wealth of the defendant.” Restatement (Second) Torts § 908. The Restatement (Second) of Torts provides that a fourth “factor that may affect the amount of punitive damages is the existence of multiple claims by numerous persons affected by the wrongdoer's conduct. It seems appropriate to take into consideration both the punitive damages that have been awarded in prior suits and those that may be granted in the future, with greater weight being given to the prior awards.”

*25 With respect to the first factor—the character of the defendant's act—the Court has already detailed the heinous nature of the defendant's conduct in this case. The defendant provided material support to HAMAS so that the organization could carry out terrorist acts such as the bombing of the Number 18 Egged bus. It provided terrorists such as Hassan Salameh with both the technical knowledge and the funding necessary to carry out terrorist attacks like the one on February 25, 1996. With respect to the second factor—the extent and nature of harm to the plaintiff—the severity of the injuries Ira Weinstein sustained as a result of the explosion was adequately explained above in the Court's Findings of Fact. With respect to the third factor—the wealth of the defendant—the Court finds that the Iranian Ministry of Information and Security has substantial amounts of funds at its disposal. The Iranian Ministry of Information and Security has approximately 30,000 employees and is the largest intelligence agency in the Middle East. *Aff. of Clawson* at § 22. Moreover, its annual budget is estimated to be between \$100–\$400 million. *Id.*

28 U.S.C. § 1330. That is, the sole bases for subject matter jurisdiction in an action against a foreign state defendant are the FSIA's enumerated exceptions to immunity. *Argentine Republic v. Amerasia Shipping Corp.*, 488 U.S. 428, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989). Accordingly, this Court lacks *21 jurisdiction over this matter unless it falls within one of the FSIA's enumerated exceptions to foreign sovereign immunity. *Nelson*, 507 U.S. at 355, 113 S.Ct. 1471.

The FSIA has been construed to apply to individuals for acts performed in their official capacity on behalf of either a foreign state or its agency or instrumentality. *El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 671 (D.C.Cir.1996) (citing *Chuidian v. Philippine Nat'l Bank*, 912 F.2d 1095, 1099–1103 (9th Cir.1990)). In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996, which abrogates the immunity of foreign states for their sponsorship of terrorist acts. 28 U.S.C. § 1605. Specifically, Congress amended the FSIA to eliminate the immunity of those foreign states officially designated as state sponsors of terrorism by the Department of State, if the foreign state so designated commits a terrorist act, or provides material support and resources to an individual or entity that commits such a terrorist act, which results in the death or personal injury of a United States citizen. 28 U.S.C. § 1605(a)(7). Based on the foregoing authority, the Court concludes that it has jurisdiction over the subject matter of this action.

B. Personal Jurisdiction

This Court has *in personam* jurisdiction over foreign state sponsors of terrorism under 28 U.S.C. § 1605(a)(7). As the Court noted in *Flatow*, the FSIA provides that personal jurisdiction over defendants will exist where a plaintiff establishes the applicability of an exception to immunity pursuant to 28 U.S.C. § 1604, § 1605, or § 1607, and service of process has been accomplished pursuant to 28 U.S.C. § 1608. *Flatow*, 999 F.Supp. at 19. Plaintiffs have demonstrated by clear and convincing evidence that § 1605(a)(7) of the FSIA applies in this action, and that service of process was properly accomplished pursuant to 28 U.S.C. § 1608.

C. The Actions of the Defendants

A foreign state may be liable under the FSIA when there is injury from a terrorist act, that act was perpetrated by the designated state or an agent receiving material support from the designated state, the provision of support was an act authorized by the foreign state, the foreign state has been designated as one providing material support to terrorism, either the victim or the plaintiff was a United States national at the time of the terrorist act, and similar conduct by the United States, its agents, officials or employees within the United States would be actionable. In this case, all of these elements have been demonstrated by clear and convincing evidence. 28 U.S.C. § 1605(a)(7); 28 U.S.C. § 1605 note.

The action of the HAMAS agent in detonating an explosive charge on the Number 18 Egged bus on February 25, 1996 falls within the scope of the Torture Victim Protection Act of 1991. The Court finds that it was a “deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all judicial guarantees which are recognized as indispensable by civilized peoples.”

There is no question that HAMAS and its agents received massive material and technical support from the Islamic Republic of Iran. The sophistication demonstrated in the use of a relatively small explosive charge with such devastating effect indicates that it is unlikely that this attack could have resulted in such loss of life without the assistance of regular military forces, such as those of Iran. Thus, the defendants not only provided the terrorists with the technical knowledge required to carry out the February 25, 1996 attack on *22 the Number 18 Egged bus, but also gave HAMAS the funding necessary to do so. Further, as of February 25, 1996, Iran was a nation designated by the United States Department of State as providing material support for terrorism and Ira Weinstein was an American national.

Finally, it is beyond question that if officials of the United States, acting in their official capacities, provided material support to a terrorist group to carry out an attack of this type, they would be civilly liable and would have no defense of immunity. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).

Finally, with respect to the fourth factor, the Court has considered previous and potential future awards of punitive damages based on the defendant's conduct in this regard. Specifically, the Court is aware of the fact that in two other cases brought under the FSIA as a result of the bombing of the Number 18 Egged bus, a total of \$420,000,000 was awarded in punitive damages. Notwithstanding the awards in these other cases, the Court finds that \$150,000,000 in punitive damages is an appropriate award in this case. In reaching this conclusion, the Court notes that “[n]o principle exists which prohibits a plaintiff from recovering punitive damages against a defendant or defendants simply because punitive damages have previously been awarded against the same defendant or the same defendants for the same conduct, or because other actions are pending against the defendant or defendants which could result in an award of punitive damages.” Speiser, Krause, and Gans, *The American Law of Torts* 828–29 (1985) (observing that “[i]n a number of product liability cases, involving usually drugs or motor vehicles, the courts have held or recognized that, notwithstanding the potential danger of awarding multiple punitive damages to separate plaintiffs bringing successive actions against a single defendant, successive awards of punitive damages are permissible.”); *Scheufler v. General Host Corp.*, 126 F.3d 1261, 1272 (10th Cir.1997) (stating that “although the United States Supreme Court recently emphasized the Due Process Clause of the Fourteenth Amendment prohibits a state from imposing grossly excessive punishment on a tortfeasor, it did not hold multiple punitive damage awards arising out of the same conduct are unconstitutional”) (internal citation omitted); *Dunn v. HOVIC*, 1 F.3d 1371, 1387 (3d Cir.1993) (noting that the “Restatement, which provides the most persuasive evidence of the common law ‘as generally understood and applied in the United States,’ and which we are obliged to consult before exercising whatever common law authority we have in this case, does not preclude successive claims of punitive damages arising out of the same course of conduct, but instead permits consideration of the existence of multiple punitive damages claims against a defendant as a factor in assessing damages.”). At the same time, the Court is cognizant of the fact that several potential difficulties can arise when several plaintiffs seek punitive damages from one defendant. *In re TMI*, 67 F.3d 1119, 1127–28 (3d Cir.1995) (stating that “[a]s a practical matter *26 we are, of course, aware of the possibility that several large punitive damage awards here, as with any mass tort litigation involving a limited fund, might deplete the fund.”); *Simpson v. Pittsburgh Corning Corp.*, 901 F.2d 277, 280–82 (2d Cir.1990) (positing that multiple punitive damage awards may be due process violation); *Juzwin v. Amtorg Trading Corp.*, 705 F.Supp. 1053, 1055 (D.N.J.) (noting that defendants “can be held liable over and over again for the same conduct, a result which would be barred by virtue of the right against double jeopardy in a criminal matter. Although an award in an individual case may be fair and reasonable, the cumulative effect of such awards may not be [.]”). See also Kenneth R. Redden, *Punitive Damages* 118–120 (1980). Nevertheless, the Court finds that a total award of \$570,000,000 (\$150,000,000 here, \$300,000,000 awarded to the plaintiffs in *Eisenfeld*, and \$120,000,000 awarded to the plaintiff in *Mousa*) is not excessive in light of the dual purposes of punitive damage awards (punishment and deterrence), the facts established by clear and convincing evidence in this case, and the punitive damage awards in other cases brought under the FSIA.² Indeed, were the Court to hold otherwise, it would be effectively limiting the defendant's exposure to punitive damages precisely because it killed these individuals in one massive terrorist act as opposed to killing them in three separate acts. There is no persuasive, let alone controlling, legal authority to support such a ruling.

III. CONCLUSION

Today, the Court hopes to make whole, as much as legally possible, those hurt by the death of Ira Weinstein. Although judicial remedies will greatly support the plaintiffs' recovery, full recovery can only be attained by each plaintiff in his own way. Thus, for the foregoing reasons, the Court finds that the plaintiffs have established, by clear and convincing evidence, their claim or right to relief.

A separate order shall issue this date.

All Citations

184 F.Supp.2d 13, 182 A.L.R. Fed. 705

Footnotes

- 1 The plaintiffs also seek punitive damages against the Islamic Republic of Iran itself. As the Court noted in *Elahi*, however, punitive damages may not be awarded against the Islamic Republic of Iran because “Congress recently repealed legislation that would have permitted punitive damages against a foreign state in cases, such as this one, brought under 28 U.S.C. § 1605(a)(7)”. See P.L. No. 106–386, § 2002(f)(2) [October 28, 2000]. In so doing, Congress returned the law to its pre–1998 state, when it provided that a “foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages [.]” *Elahi*, 124 F.Supp.2d at 113 n. 17. The Court’s decision in *Eisenfeld* predated this statutory change. Thus, while the Court did award such damages in *Eisenfeld*, it cannot do so in the instant case.
- 2 In other cases brought under to the FSIA, courts have awarded \$300,000,000 in punitive damages against the Iranian Ministry of Information and Security. See e.g., *Elahi*, 124 F.Supp.2d at 114.

ANNEX 54

271 F.Supp.2d 286
United States District Court,
District of Columbia.

Shaul STERN, Individually and as legal representative of the Estate of
Leah Stern, Joseph Stern, Shimson Stern, Yocheved Kushner, Plaintiffs,

v.

The ISLAMIC REPUBLIC OF IRAN, (aka Iran, the Republic of Iran, Republic of Iran, the Government of Iran,
Iranian Government, and Imperial Government of Iran) the Iranian Ministry of Information and Security,
Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi–Rafsanjani, and Ali Fallahian–Khuzestani, Defendants.

No. 1:00CV02602 (RCL).

|
July 17, 2003.

Synopsis

Survivors of terrorist bombing victim brought wrongful death action against Islamic Republic of Iran and its Ministry of Information and Security, seeking damages under Foreign Sovereign Immunities Act (FSIA). The District Court, Lamberth, J., held that: (1) court had subject matter jurisdiction; (2) defendants were liable for victim's personal injuries and wrongful death; and (3) appropriate damages were \$1,000,000 for victim's pain and suffering prior to death, solatium damages of \$3,000,000 per surviving child, and punitive damages of \$300,000,000.

Judgment for plaintiffs.

Attorneys and Law Firms

*287 Jeffrey A. Miller, Westerman Ball Ederer Miller & Sharstein, LLP, Mineola, NY, for Plaintiffs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

LAMBERTH, District Judge.

I. BACKGROUND

This is an action for wrongful death, personal injury and related torts against the Islamic Republic of Iran, the Iranian Ministry of Information and Security, and three senior officials of the Iranian government. The decedent, Leah Stern, was a United States citizen who was killed at the age of 69 in the terrorist bombing in a market in Jerusalem, Israel on July 30, 1997. The plaintiffs, who are the children of Leah Stern, brought this action under *288 the Foreign Sovereign Immunities Act ("FSIA") of 1976, 28 U.S.C. §§ 1602–1611.

The FSIA establishes federal court jurisdiction over foreign states and their officials, agents and employees in certain enumerated instances. In particular, the FSIA eliminates the sovereign immunity of foreign states and creates a federal cause of action for acts of state-sponsored terrorism "in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources ... for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency ...". 28 U.S.C. § 1605(a)(7). The FSIA further provides that "an official, employee, or agent of a foreign state designated as a state sponsor of terrorism ... shall be liable to a United States national or the national's legal representatives for personal injury or death caused by acts ... for

which the courts of the United States may maintain jurisdiction ...”. 28 U.S.C. § 1605 note, Civil Liability for Acts of State Sponsored Terrorism.

The Defendants, despite being properly served with process pursuant to 28 U.S.C. 1608, have failed to answer or enter an appearance in this matter, and Defendants' default was entered by the Court on February 13, 2002, pursuant to 28 U.S.C. § 1608(e) and Fed.R.Civ.P. 55(a). Notwithstanding indicia of Defendants' willful default, however, this Court is compelled to make further inquiry prior to entering a judgment by default against Defendants. The FSIA requires that a default judgment against a foreign state be entered only after a plaintiff “establishes his claim or right to relief by evidence that is satisfactory to the Court.” 28 U.S.C. § 1608(e); *see also Flatow v. The Islamic Republic of Iran, et al.*, 999 F.Supp. 1, 6 (1998).

This Court has engaged in a careful review of the evidence presented in this case, in light of *Flatow*, 999 F.Supp. 1, and the other reported cases under the antiterrorism provisions of the FSIA. *See, e.g., Weinstein v. Islamic Republic of Iran*, 184 F.Supp.2d 13 (D.D.C.2002); *Sutherland v. Islamic Republic of Iran*, 151 F.Supp.2d 27 (D.D.C.2001); *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1 (D.D.C.2000); *Jenco v. Islamic Republic of Iran*, 154 F.Supp.2d 27 (D.D.C.2001); *Daliberti v. Republic of Iraq*, 97 F.Supp.2d 38 (D.D.C.2000); *Anderson v. Islamic Republic of Iran*, 90 F.Supp.2d 107 (D.D.C.2000); *Cicippio v. Islamic Republic of Iran*, 18 F.Supp.2d 62 (D.D.C.1998); *Alejandre v. Republic of Cuba*, 996 F.Supp. 1239 (S.D.Fla.1997). Based upon the extensive evidence presented, the Court concludes that the plaintiffs have established their claim and right to relief as set forth below.

II. FINDINGS OF FACTS

The Court received testimony and evidence on the matter of defendants' liability and plaintiffs' damages on January 3, 2003.¹ The following findings of fact are based upon the sworn testimony of the plaintiffs' expert witnesses, Dr. Reuven Paz, Dr. Patrick Clawson, Mr. Ronni Shaked and Dr. Alan Friedman, the testimony of the plaintiffs themselves, and the voluminous exhibits entered into evidence.

***289** Plaintiffs have “established [their] claim or right to relief by evidence that is satisfactory to the Court,” as required by 28 U.S.C. § 1608(e). The Court finds the following facts to be established by “clear and convincing evidence, which would have been sufficient to establish a prima facie case in a contested proceeding.” *Weinstein v. Islamic Republic of Iran*, 184 F.Supp.2d 13, 16 (D.D.C.2002).

(1) Leah Stern was born on June 23, 1928, and was a citizen of the United States at all relevant times, including July 30, 1997. Affidavit of Joseph Stern, sworn to on January 2, 2003 (“J. Stern Aff.”), ¶ 1, Exhibit “A” thereto.

(2) Plaintiffs Joseph Stern (J. Stern Aff., ¶ 1), Yocheved Kushner (Affidavit of Yocheved Kushner, sworn to on January 2, 2003 (“Kushner Aff.”), ¶ 1), Shimson Stern (Affidavit of Shimson Stern, sworn to on January 2, 2003 (“Shimson Stern Aff.”), ¶ 1) and Shaul Stern (Affidavit of Shaul Stern, sworn to on January 2, 2003 (“Shaul Stern Aff.”), ¶ 1) are U.S. citizens and the children of decedent Leah Stern.

(3) On Friday, July 30, 1997, two suicide bombers belonging to the Hamas terrorist organization and acting on behalf of Hamas entered the Mahane Yehuda outdoor produce market in downtown Jerusalem, which was crowded with Sabbath-eve shoppers. Affidavit of Ronni Shaked, sworn to on January 1, 2003 (“Shaked Aff.”), ¶ 26. Each of the bombers carried a briefcase packed with a powerful explosive charge. Shaked Aff., ¶ 26. At a pre-arranged signal, the bombers triggered their explosives. Shaked Aff., ¶ 26. The blasts ripped through the crowded market, killing 15 shoppers, including decedent Leah Stern, and wounding another 168 (hereinafter “the bombing attack”). Shaked Aff., ¶ 26. In a press release, Hamas claimed responsibility for the bombing attack. Shaked Aff., ¶ 26.

(4) As a result of the explosion, Leah Stern suffered horrendous injuries. The explosion caused Leah Stern severe burns, and much of the skin on her face was ripped off by the blast. Leah Stern suffered multiple and diffuse lacerations over the facial area,

thorax, abdomen and limbs. Several pieces of shrapnel, specifically nails, lodged in her chin, right breast, right arm, both knees and left thigh. Leah Stern also suffered a gaping abdominal wound which exposed her intestines. Her left leg was covered with burns and lacerations from the explosion, and bones in the lower leg were broken. Leah Stern's right leg was partially severed at the knee, and shrapnel lodged in the remaining portion of her leg. Affidavit of Dr. Alan Friedman, sworn to December 31, 2002 ("Friedman Aff."), ¶¶ 10–17, Exhibit "A" thereto.

(5) Leah Stern expired from her wounds on the scene on July 30, 1997. *Id.*, ¶¶ 18–20.

(6) Dr. Alan Friedman, an expert in trauma medicine experienced in the treatment of bomb blast victims, testified on the basis of the postmortem report prepared by pathologists at the L. Greenberg Institute of Forensic Medicine in Tel Aviv that death was not instantaneous for Leah Stern, and that to a reasonable degree of medical certainty, Leah Stern suffered at least several minutes of extreme pain and suffering from the time of the blast until she succumbed to her injuries. *Id.*

(7) Plaintiffs were informed of the attack and of the death of their mother. J. Stern Aff., ¶ 7; Kushner Aff., ¶ 7; Shimson Stern Aff., ¶¶ 10–13; Shaul Stern Aff., ¶ 10.

(8) The testimony of plaintiffs, Leah Stern's children, each compellingly demonstrates how from the day of the bombing onward, the lives they had previously lead had been irrevocably shattered. Indeed, the continuing emotional impact of the bombing on Leah Stern's children is clearly *290 evident in the substance of their testimony.

(9) It is clear to the Court that the plaintiffs, children of the decedent, have all suffered great emotional anguish, loss, misery and distress, which has continued from the date of the terrorist attack through today. Each of the children had a close relationship with their mother, who, it is evident from the testimony, made each child feel like his or her relationship was particularly special and close. Although each plaintiff testified about his or her attempts to cope with the loss of their parent, none have been able to fully heal nor cope with the loss, particularly in light of her cruel, violent, agonizing and senseless death.

(10) Israeli police eventually apprehended and charged two men, Muaid Said Bilal (hereinafter "Bilal") and Omar Abdel Rahman al-Zaban (hereinafter "Zaban") with participating in the Mahane Yehuda bombing attack on July 30, 1997. Shaked Aff., ¶ 27. Affidavit of Dr. Reuven Paz, sworn to on December 29, 2002 ("Paz Aff."), ¶¶ 54–67. Both Bilal and Zaban were convicted by an Israeli court of the murder of Leah Stern and the other victims of the bombing attack, and of membership in and performing services for Hamas. Shaked Aff., ¶ 27; Paz Aff., ¶¶ 54–67. Bilal and Zaban, and other members of their Hamas cell who were apprehended by Israel, provided Israeli police with a detailed account of the planning, funding and execution of the bombing attack by Hamas. *Id.*; Shaked Aff., ¶ 28.

(11) The decision to carry out the bombing attack was taken and approved by the Hamas senior command, which is the highest decision-making body in Hamas. Paz Aff., ¶¶ 59–60. The Hamas senior command, which was based at that time in Jordan, assigned the task of planning and executing the bombing attack to senior Hamas military commander Mahmoud Abu Hanoud. Paz Aff., ¶¶ 59–60; Shaked Aff., ¶¶ 29–31.

(12) Mahmoud Abu Hanoud had been active in Hamas since the early 1990s, and was among some 400 Hamas operatives expelled by Israel to Lebanon in 1992. Paz Aff., ¶¶ 38–39. While in Lebanon, Abu Hanoud received military training from Iranian Revolutionary Guards and from the Iranian proxy group Hizbollah in the use of munitions, explosives, firearms and other terrorist techniques. *Id.* Upon returning to the West Bank, Abu Hanoud became a senior leader in Hamas and put to use the military and terrorist training he had acquired from Iranian and Iranian-proxy forces in Lebanon, planning and executing numerous sophisticated bombing attacks, including the July 30, 1997 bombing.² Paz Aff., ¶¶ 38–39; Shaked Aff., ¶¶ 26–35.

(13) The Hamas terrorist organization was established by Islamic militants in December 1987. Paz Aff., ¶ 13. Hamas views Muslims as an oppressed minority which must confront a global conspiracy against Islam. Israel and the United States are regarded, in the view of Hamas, as the greatest enemies of Islam. Paz Aff., ¶¶ 19 and 26.

(14) Hamas opposes a peaceful resolution of the Middle East conflict, and the charter of Hamas, first published in August 1988, states that, “*There is no solution to the Palestinian problem except by Jihad.*” Until at least 1997, Hamas had ruled out any possibility of peace between the Palestinians and Israelis.³ Paz Aff., ¶ 17, Exhibit “B” thereto.

*291 (15) Until 1992, Hamas was involved in sporadic attacks against Israeli civilians, mainly using primitive weapons such as knives and Molotov cocktails, but was not organized as an effective terrorist organization because its members had not yet received extensive systematic training in munitions, weapons and techniques of conspiracy and insurgency, and did not have adequate foreign financial support. Shaked Aff., ¶¶ 23, 37; Paz Aff., ¶ 20.

(16) Hamas began to carry out suicide bombings in Israel in April 1994, soon after Hamas leaders and operatives began receiving training and support from regular and proxy Iranian forces in Lebanon and Iran. Shaked Aff., ¶¶ 14, 22; Paz Aff., ¶ 21.

(17) In the early 1980s, The Islamic Republic of Iran, also known as “The Republic of Iran”, “Republic of Iran”, “The Government of Iran”, “Iranian Government”, “Imperial Government of Iran”, and “Iran” (“Iran”), Affidavit of Dr. Patrick Clawson, sworn to on December 31, 2002 (“Clawson Aff.”), ¶ 36, decided to export its Islamic revolution to other countries by providing material support to militant Islamic organizations around the globe. Paz Aff., ¶ 22.

(18) Pursuant to its policy of supporting militant Islamic groups, Iran sought out and developed a close relationship with Hamas, and Iran and Hamas eventually entered into a mutually beneficial operational alliance. Paz Aff., ¶¶ 22–24. The joint goal of the Iran–Hamas alliance is Islamic revolution through jihad, or violent and unrelenting struggle against Israel and the West. Paz Aff., ¶ 24.

(19) Iran was interested in transforming Hamas into a powerful and deadly terrorist organization for several reasons. Shaked Aff., ¶ 23. On the ideological plane Iran supports the use of terrorist violence against Jewish and Israeli targets, and by training and funding Hamas to carry out such attacks Iran achieved what it considers an important goal. Shaked Aff., ¶ 24; Paz Aff., ¶ 24. Additionally, Iran sought, and still seeks, to strengthen the influence of Islamic groups within Palestinian society. Shaked Aff., ¶ 24; Paz Aff., ¶¶ 22–24. By bolstering Hamas, and turning it into a deadly and effective leader in the fight against Israel, Iran boosted popular support for the Islamic movement among Palestinians. Shaked Aff., ¶ 24; Paz Aff., ¶¶ 22–29. Likewise, in the political sphere, Iran was and is interested in using Hamas terrorist attacks to disrupt peace negotiations between Israel and the Arabs. Paz Aff., 22–29; Shaked Aff., ¶ 24. Accordingly, Iran expended great efforts to initiate a financial and operational alliance with Hamas. Paz Aff., ¶¶ 22–29.

(20) Hamas shares these Iranian policy goals and was willing to help Iran achieve them, in return for weapons, financing, and military training to conduct and expand its armed struggle against Israel. Shaked Aff., ¶ 25; Paz Aff., ¶¶ 22–23.

(21) Relations between Iran and Hamas were formalized in 1988, when Iran agreed to Hamas' request to send a delegation to Iran and to establish an official representation in that county. Since that time Hamas has stationed an “ambassador” in Iran. Paz Aff., 32. Iranian-trained Hamas members also serve as liaison officers between Iran and Hamas. *Id.* Hamas military leader Musa Abu Marzook and Hamas *292 leader Sheik Yassin have also traveled to Iran to coordinate relations. *Id.*

(22) During approximately the past decade, Iran has given Hamas massive financial support and provided professional terrorist training to hundreds of Hamas operatives. Shaked Aff., ¶¶ 13–19; Paz Aff., generally.

(23) Iran provides terrorist training and economic assistance to Hamas through its Ministry of Information and Security (“MOIS”). Clawson Aff., ¶ 32. The MOIS has approximately 30,000 employees and a budget of between \$50 million and \$100 million.⁴ Clawson Aff., ¶ 33. The MOIS provides professional military training for terrorist operations to Hamas, and the funds provided by Iran to Hamas come almost entirely from the MOIS's budget. Paz Aff., ¶ 31. The MOIS is also responsible for liaising with Hamas and coordinating relations between Iran and Hamas. Paz Aff., ¶ 32.

(24) For the past decade, Iran has systematically provided military training to hundreds of Hamas terrorists in training camps located in Iran and in Lebanon. Paz Aff., ¶ 33. The transformation of Hamas into an effective, competent and deadly terrorist organization started in the early 1990's, when Hamas operatives began to receive Iranian military training. Shaked Aff., ¶ 14.; Paz Aff., ¶ 34.

(25) Iran operates a large military training camp near Teheran, called "Al-Quds," at which Hamas terrorists are trained. Paz Aff., ¶ 34; Shaked Aff., ¶ 22. Training of Hamas operatives in Iran began in the early 1990s. Paz Aff., ¶ 34; Shaked Aff., ¶ 22, Exhibits "D" and "E". In 1994 a group of nineteen Hamas members spent three and a half months in intensive military exercises at the Al-Quds camp. Paz Aff., ¶ 36 thereto. Since that time, large numbers of Hamas operatives have been sent to Iran from the West Bank and Gaza Strip to train at the Al-Quds camp. Paz Aff., ¶ 34.

(26) At the Al-Quds camp, Hamas operatives are trained in weapons use, manufacturing explosives and bombs, carrying out assassinations, collection and use of intelligence, clandestine operations and terrorist tactics, shooting from moving vehicles and motorcycles, parachuting and diving. Paz Aff., ¶¶ 35–36. The training at Al-Quds is conducted by the MOIS Revolutionary Guards. Paz Aff., ¶ 35. One group of Hamas operatives spent several years training in Iran, and underwent officers course in the Iranian army college. Paz Aff., ¶ 34.

(27) Iran also provides terrorist training to members of Hamas in camps operated by Iran and the Hizbollah terrorist group in Lebanon. Paz Aff., ¶ 37. Hizbollah is an Iranian proxy organization, controlled, funded and operated by Iran.⁵ *Id.* Training *293 is provided to Hamas operatives in Lebanon both by military instructors belonging to Iranian Revolutionary Guards, which is an official Iranian government agency, and by Hizbollah commanders. *Id.*

(28) As early as 1992, Iran provided Hamas operatives with training in Hizbollah camps in Lebanon. Paz Aff., ¶ 37; Clawson Aff., ¶¶ 16–19; Shaked Aff., ¶¶ 14–22, Exhibits "B" and "C". The training of Hamas operatives in Lebanon increased dramatically in 1993, after Hizbollah and Iranian Revolutionary Guard members initiated contact with some 400 Hamas operatives who were deported by Israel to Lebanon, and provided military training to hundreds of the Hamas deportees. Shaked Aff., ¶ 15; Paz Aff., ¶ 38. This Iranian military training continued for nearly a year, until late 1993, when virtually all of these newly-trained Hamas terrorists returned to the West Bank and Gaza. Shaked Aff., ¶ 15. Since that time, Iran has continued to provide terrorist training to large numbers of Hamas operatives in Hizbollah bases in Lebanon.

(29) The Iranian training provided to Hamas operatives in Lebanon included the manufacture and use of munitions, bombs and explosives, including TNT and plastic explosives, and a broad range of firearms and weapons training including the use of RPG and LAW shoulder-missiles. Paz Aff., ¶ 37, Exhibit "D" thereto. Hamas members in Lebanon were also trained in ambush techniques, sabotage, methods of subterfuge and intelligence gathering, and navigation.

(30) The Hamas members trained by Iran are highly educated and include university graduates. Paz Aff., ¶ 41. These operatives are specifically trained by Iran to constitute a cadre of commanders and cell leaders, in order to return to Gaza and the West Bank in order to train and lead others. *Id.* The Hamas members who received Iranian training in Lebanon and Iran have become senior military commanders, the "officers corps" of the organization, who build bombs and explosive devices, and plan, direct and supervise suicide bombings and other terrorist attacks. *Id.*

(31) The expulsion of the 400-plus leading Hamas members to Lebanon, where they received professional terrorist training from Iran and its proxies, proved to be the watershed event in Hamas' rise and development as professional and effective terrorist organization. Clawson Aff., ¶¶ 18–19, 21. By December, 1993, nearly all of the 400 deportees had returned to the West Bank and Gaza Strip. Clawson Aff., ¶ 21. The returning Hamas members, armed with professional, Iranian-supplied training in munitions and explosives, quickly established an operational and organizational infrastructure far more deadly and effective than that which Hamas had previously been capable of maintaining.

(32) Among the group of Hamas deportees who were trained by Iran in Lebanon *294 was Mahmoud Abu Hanoud, who later returned to the West Bank. Shaked Aff., ¶ 15; Paz Aff., ¶ 39. Upon his return to the West Bank, Abu Hanoud's Iranian training qualified him as a senior Hamas military commander. Shaked Aff., ¶ 30; Paz Aff., ¶ 39. Until his death in November 2001, Abu Hanoud organized, planned and executed a large number of deadly terrorist bombings, including the bombing of the Mahane Yehuda market in Jerusalem on July 30, 1997. Shaked Aff., ¶ 30; Paz Aff., ¶ 39.

(33) In the early 1990's Iran began to give large sums of money to Hamas in order to allow the organization to build an operational infrastructure to commit terrorist activity in Israel. Iran has provided tens of millions of dollars to Hamas for terrorism since the early 1990s. Paz Aff., ¶ 43.

(34) Iran gave Hamas financial support in 1996 and 1997 in amounts between \$25–\$50 million. Clawson Aff., ¶ 23. These cash payments to Hamas are in addition to other forms of support.

(35) After a successful terrorist attack, Iran provides payments to Hamas to reward it. During the mid 1990s, including 1997, Iran was spending \$200 million on terrorism each year. Clawson Aff., ¶ 23. Numerous sources, including those in Iran, indicate that Iran provides payment to Hamas after a terrorist action, especially those of a spectacular nature such as suicide bombings. Clawson Aff., ¶ 24.

(36) Additionally, Iran provides operational support to Hamas including false documents and transportation to numerous Mideast locations. Paz Aff., ¶ 46. Iran also provides propaganda support through its radio stations and newspapers throughout the Muslim world. Clawson Aff., ¶ 28.

(37) Iranian government support for terrorism is an official state policy and the approval of high-ranking Iranian political figures including defendants Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi–Rafsanjani, and Ali Fallahian–Khuzestani was necessary for Iranian agencies such as the MOIS to support Hamas with training and economic assistance. Paz Aff., ¶ 47; Clawson Aff., ¶ 34. Iran's support of Hamas could not occur without this approval.

(38) Iran's leader Ayatollah Khamenei first approved the MOIS' provision of support to Hamas and other Islamic organizations in 1988. Paz Aff., ¶ 48. Then-president Ali Akbar Hashemi–Rafsanjani encouraged Iran's relationship with Islamic terrorist organizations such as Hamas. Iran's support of Hamas could not occur without this approval. *Id.*

(39) Ali Fallahian–Khuzestani, former head of the MOIS, created the policy of providing day-to-day help and assistance to Islamic terrorist organizations such as Hamas. Iran's support of Hamas could not occur without this approval. *Id.*

(40) Iran is now, and since about 1985 has been continuously listed on the U.S. State Department's list of state sponsors of terrorism as set forth in an annual report entitled “Patterns of Global Terrorism”. According to the 1997 Global Patterns report, Iran was “the” principal state sponsor of terrorism in 1996–1997. The report specifies Iran's support for Hamas:

“Iran continued to provide support—in the form of, training, money and/or weapons—to a variety of terrorist groups, such as ... Hamas ... The Iranian Government continued to oppose any recognition of Israel and to encourage violent rejection of the Middle East peace process. In the fall of 1997, Tehran hosted numerous representatives of the terrorist groups—including Hamas, ... at a conference of ‘Liberation Movements.’ Participants reportedly discussed the jihad, established greater coordination between certain groups, *295 and an increase in support for some groups.”

Id. Clawson Aff., ¶ 13, Exhibit “B” thereto.

(41) The approval of high-ranking political figures such as Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi-Rafsanjani, and Ali Fallahian-Khuzestani was necessary for Iranian agencies such as the MOIS to support Hamas with training and economic assistance. Clawson Aff., ¶ 34. High-level Iranian government officials provide “operational policy advice to terrorists.” *Jenco v. Islamic Republic of Iran*, 154 F.Supp.2d 27 (D.D.C.2001). Hamas is a particular favorite of Iran, and acknowledges receiving \$15 million of support per month from Iran. *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1 (D.D.C.2000), see also *Weinstein v. Islamic Republic of Iran*, 184 F.Supp.2d 13, 22 (D.D.C.2002) (“There is no question that Hamas and its agents received massive material and technical support from The Islamic Republic of Iran”).

(42) Iran and Hamas brazenly publicize such support. For example, Hassan Salameh, a Hamas leader in the West Bank and Gaza Strip, boasted on American television of his sophisticated training (in the uses of explosives, grenades, automatic weapons, RPG and LAW missiles, planning ambushes, use of land mines, etc.) in Iran by members of its military. *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d at 8.

(43) By 1997, the professional military training provided to Hamas by Iran had significantly boosted Hamas' operational capabilities. Shaked Aff., ¶¶ 13–15; Paz Aff., ¶ 70. A decade ago Hamas was incapable, despite its violent rhetoric, of mounting massive bombing attacks and its terrorist activities were mainly confined to stabbings and sporadic drive-by shootings. Paz Aff., ¶ 70. The professional military training provided by Iran to hundreds of Hamas operatives completely transformed Hamas. Shaked Aff., ¶¶ 13–15. These Iranian-trained Hamas operatives, who are experts in munitions, bomb-making, weapons and covert activities now make up the “officers corps” of Hamas in the West Bank and Gaza, and serve both as military commanders and military instructors—i.e. they both organize and lead terrorist attacks, and pass on to the next generation of Hamas terrorists the training which they received from Iran. Moreover, without Iranian financial support, Hamas would have been extremely limited in its operational capabilities. This transformation of Hamas into an effective and deadly terrorist group was, and remains, the explicit goal of Iran in providing this training, and Iran has very successfully attained this goal.

(44) The bombing attack carried out on July 30, 1997, in which Leah Stern was murdered, exemplifies the Iranian contribution to Hamas' operational and financial capabilities. Shaked Aff., ¶ 39. This attack was planned and carried out under the direction of Mahmoud Abu Hanoud. Shaked Aff., ¶ 39; Paz Aff., ¶ 58. As mentioned above, Abu Hanoud was deported to Lebanon in 1992, and was among the Hamas deportees who received training in munitions, weapons use and covert operations by Iranian and Iranian proxies in Lebanon. Paz Aff., ¶ 58.

(45) After receiving written instructions from the Hamas senior command to carry out the bombing attack, Abu Hanoud assembled a highly-specialized team of Hamas terrorist operatives to execute the attack. Shaked Aff., ¶ 31; Paz Aff., ¶¶ 60–61. The team was well-organized, each member was assigned specific tasks, and operated with military discipline under the command of Abu Hanoud. Shaked Aff., ¶ 31; Paz Aff., ¶¶ 60–68.

(46) The logistics of the bombing attack were complex and expensive: for the purpose *296 of this attack Abu Hanoud's team purchased, on his instructions, large quantities of chemicals used to manufacture explosives, rented a storage room to hide and manufacture the explosives, rented a safe-house for the use of team members before and after the attack, rented vehicles and purchased disguises. Shaked Aff., ¶ 32. These logistical preparations cost many thousands of dollars, and were paid for directly by Abu Hanoud using funds provided to him specifically for this purpose by the Hamas command. Shaked Aff., ¶ 32; Paz Aff., ¶ 65.

(47) Abu Hanoud constructed the bombs used in the attack utilizing the Iranian training he had received in Lebanon. Shaked Aff., ¶ 34; Paz Aff., ¶ 59. Abu Hanoud directed the manufacture of the explosives from raw materials, using sophisticated chemical mixing techniques and cooling methods learned by him during his training. Shaked Aff., ¶ 34; Paz Aff., ¶ 62. Abu Hanoud told Bilal that some 30 kilograms of explosives were manufactured in preparation for the bombing. Paz Aff., ¶ 62.

(48) In addition, a Hamas operative captured and charged by Israel with aiding Abu Hanoud in the attack, Iman Halawa, sketched for Israeli police a diagram of the electronic triggering mechanism used by Abu Hanoud's team. Shaked Aff., ¶ 34, Exhibit

“G”. This complex electronic triggering mechanism was constructed using the know-how and professional military training provided to Abu Hanoud by Iranian agents in Lebanon.

(49) Abu Hanoud also planned the attack using the professional methods of camouflage and disguise that he had been taught in Lebanon, in order to ensure the success of the attack and prevent the Israeli security services from discovering the identities of the bombers and their handlers. The bombers were ordered to score their fingertips with razor blades and fill the wounds with instant contact glue to prevent their identification by fingerprints. In addition, the manufacturers' tags had been removed from their clothing in order to disguise their origins. The bombers were disguised to enable them to infiltrate into the heart of downtown Jerusalem without arousing suspicion. The site of the attack, the Mahane Yehuda market, has been the site of past terrorist attacks, and is one of the most heavily guarded and patrolled locations in Israel. The bombers were also instructed to stagger the explosions, in order to kill and maim rescue personnel who would respond to the first blast. Shaked Aff., ¶ 35.

(50) In every respect, the bombing of the Mahane Yehuda market on July 30, 1997 by Hamas was the work of “professionals”, utilizing to deadly effect the training provided by the defendants. Shaked Aff., ¶¶ 38–40.

III. CONCLUSIONS OF LAW

A. Jurisdiction and Foreign Sovereign Immunity

This Court has original subject matter jurisdiction over suits under the FSIA against foreign states which are not entitled to immunity. 28 U.S.C. § 1330(a), *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989).

The FSIA eliminates the sovereign immunity of foreign states for acts of state-sponsored terrorism “in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources ... for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency ...” *297 28 U.S.C. § 1605(a)(7). The FSIA further provides that “an official, employee, or agent of a foreign state designated as a state sponsor of terrorism ... shall be liable to a United States national or the national's legal representatives for personal injury or death caused by acts ... for which the courts of the United States may maintain jurisdiction ...” 28 U.S.C. § 1605 note, Civil Liability for Acts of State Sponsored Terrorism.⁶

In order to establish subject matter jurisdiction and lift immunity pursuant to § 1605(a)(7) and § 1605 note, plaintiffs must show the following elements:

- (1) that personal injury or death resulted from an act of torture, extrajudicial killing, aircraft sabotage, or hostage taking; and
- (2) the act was either perpetrated by a foreign state directly or by a non-state actor which receives material support or resources from the foreign state defendant; and
- (3) the act or provision of material support or resources is engaged in by an agent, official, or employee of the foreign state while acting within the scope of his or her office, agency, or employment; and
- (4) that the foreign state be designated as a state sponsor of terrorism either at the time the incident complained of occurred or was later so designated as a result of such act; and
- (5) if the incident complained of occurred within the foreign state defendant's territory, plaintiff has offered the defendants a reasonable opportunity to arbitrate the matter; and
- (6) either the plaintiff or the victim was a United States national at the time of the incident; and

(7) similar conduct by United States agents, officials, or employees within the United States would be actionable.

See, e.g., *Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97, 106–107.

The testimony and evidence presented establishes that each of these requirements is satisfied in this case, as detailed below.

The Court first finds that the death of Leah Stern and plaintiffs' injuries were caused by the bombing attack carried out by Hamas in Jerusalem on July 30, 1997, which attack was an act of extrajudicial killing within the meaning of 28 U.S.C. § 1605(a)(7).⁷

Additionally, the Court also finds that Iran and the MOIS provided “material support or resources” to Hamas and its operatives, within the meaning of 28 U.S.C. § 1605(a)(7), for the specific purpose of carrying out such acts of extrajudicial killing.

A finding that Iran provided material support to Hamas for such bombings is further supported by precedent. See e.g. *Weinstein v. The Islamic Republic of Iran*, 184 F.Supp.2d 13, 22 (D.D.C.2002) (“There is no question that Hamas and its agents received massive material and technical support from the Islamic Republic of Iran”).

The Court also finds that defendants MOIS, an agency of Iran, Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi–Rafsanjani, and Ali Fallahian–Khuzestani who are officials and employees of Iran, provided material support and resources to Hamas for such bombings while acting within the scope of their office, agency and employment.

The Court also finds that Iran was designated as a state sponsor of terrorism by the United States both at the time that Iran provided Hamas with material support and resources and at the time of the bombing.

The Court further finds that the decedent and the plaintiffs were at the time of the attack and remain until today United States citizens. Under the FSIA, immunity is abrogated and subject matter jurisdiction is conferred for claims under 28 U.S.C. § 1605(a)(7) if “either the plaintiff or the victim [was] a United States national at the time of the incident.” *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 16 (D.D.C.1998).

Finally,⁸ the Court finds that if an official of the United States, acting in his official capacity, provided material support to an organization such as Hamas in order to cause or facilitate terrorist attacks, he would be liable and unable to claim a defense of immunity. 42 U.S.C. § 1983, *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).

Based on these findings, the Court therefore concludes that the defendants are not immune from this action and that it has subject-matter jurisdiction over this action.

The FSIA also provides that personal jurisdiction over defendants will exist where service of process has been accomplished pursuant to 28 U.S.C. § 1608 and plaintiff establishes the applicability of an exception to immunity pursuant to 28 U.S.C. § 1605. *Flatow*, 999 F.Supp. 1, 19. Since service of process has been effected pursuant to 28 U.S.C. § 1608 and plaintiffs have established an exception to immunity, this Court has *in personam* jurisdiction over defendants.

B. Liability

The FSIA provision governing liability, 28 U.S.C. § 1606, provides that foreign states “shall be liable in the same manner and to the same extent as a private individual under like circumstances” on any claim for which they are not entitled to immunity under § 1605. In examining defendants' liability in tort, “the Court applies federal common law,” *Sutherland* at 47, as well the law of this district, *Flatow* at 15, n. 6.

Applying common law rules of tort liability, this Court finds that defendants are liable for the wrongful death of Leah Stern and the related torts pled by plaintiffs, all of which arise from the July 30, 1997, bombing in Jerusalem.

As described above, this Court has found that defendants provided Hamas with massive material support and resources, including military training of hundreds of operatives, for the express purpose of carrying out terrorist attacks such as the bombing on July 30, 1997. Additionally, in the years prior to the attack, defendants provided Hamas with many *299 tens of millions of dollars, specifically earmarked for terrorist attacks of this type.

The expert testimonies introduced by the plaintiffs were unanimous in concluding that without Iranian military training and financial support, Hamas would have been extremely limited in its operational capabilities, and unable to mount expensive and technically complex suicide bombings, including the bombing in the Mahane Yehuda market on July 30, 1997. The “successful” execution of a powerful bombing by disguised terrorists in the heart of the heavily guarded capital of Israel required professional training and financial support. Training and funding for this and other similar attacks was provided by Iran.

The senior Hamas operative who planned, organized and directed the manufacture of the bombs and execution of the attack, Mahmoud Abu Hanoud, received professional military training in the manufacture and use of explosive devices, subterfuge, intelligence-gathering and other terrorist techniques which were put to deadly use in the bombing. Preparations for this single attack were complex and costly. Absent Iranian training and funding, Hamas would have lacked the capability to carry out this attack.

These findings, detailed fully above, render defendants liable in tort for the injuries suffered by the plaintiffs.⁹

Indeed, the circumstances establishing defendants' liability in this case are essentially identical to the circumstances of the Hamas bombing which was the subject of the decisions of this Court in *Eisenfeld*, *Weinstein* and *Mousa*. In those cases, this Court held Iran and the other instant defendants liable for wrongful death and personal injuries of U.S. citizens caused by a Hamas bus bombing in Jerusalem, on February 25, 1996. This Court found Iran and the instant defendants liable for the 1996 Hamas bombing on the basis of both their general provision of massive financial resources and training to Hamas, and on the grounds that Hassan Salameh, the Hamas terrorist who organized and commanded that attack, had received Iranian training in the use of weapons and explosives. Likewise, in this case, another “alumnus” of Iranian terrorist training courses, Mahmoud Abu Hanoud, planned, organized and directed the July 30, 1997, bombing and the preparation of the explosive charges used therein. Defendants' liability in the instant matter therefore parallels their liability in *Eisenfeld*, *Weinstein* and *Mousa*.

The Court therefore finds the defendants jointly and severally liable for defendants' damages.

IV. DAMAGES

A. Survival Action—Pain and Suffering.

(1) As detailed above, Dr. Alan Friedman, an expert in trauma medicine, testified about the injuries sustained by Leah Stern in the bombing. On the basis of the post mortem report prepared by Israeli pathologists, Dr. Friedman found that Leah Stern suffered several minutes of extreme pain and suffering before succumbing to her injuries.

(2) The courts have recognized the right to pain and suffering in cases involving less onerous circumstances.

If Plaintiff presents sufficient evidence of conscious pain and suffering, determination of the compensation has largely been relegated to the discretion of the *300 trier of fact by courts in this jurisdiction based upon factors including the duration and nature of the suffering endured. The United States Court of Appeals for the District of Columbia Circuit has firmly established that the trier of fact has broad discretion in calculating damages for pain and suffering.

Taylor v. Washington Terminal Co. 409 F.2d 145, 150 (D.C.Cir.1969).

(3) An award is even more warranted in an action for a violent and cruel death by terrorism,

As the cases clearly indicate, the courts have increasingly been awarding monetary relief for the suffering exacted when a person, in the midst of his normal enjoyment of life, is suddenly and cruelly required to confront his death, as well as to experience it.

Notes, Kimball, Axelrod & Goldstein, *Damages in Tort Actions*, § 21.02[4].

(4) In suits involving acts of terrorism, the federal courts have routinely awarded survival damages to the deceased's estate for the physical and emotional pain and suffering endured by the victim in the moments before death. The courts have recognized that even very short periods of pain and suffering prior to death in a terrorist attack are compensable. *See, e.g., Elahi v. Islamic Republic of Iran*, 124 F.Supp.2d 97 at 113 (\$1 million awarded when witness testified that death occurred "at least something like 30 seconds" following shooting); *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1, (D.D.C.2000) at 5 (\$1 million awarded for each victim of a bombing who survived for "several minutes"); *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1 at 29 (D.D.C.1998) (\$1 million award when "conscious pain and suffering continued for at least three to five hours.")

(5) The physical pain and mental anguish consciously suffered by Leah Stern in the final moments of her life were excruciating. Moreover, unique to this case is fact that Mrs. Stern was advanced in age.

(6) The Court therefore finds appropriate an award of One Million Dollars (\$1,000,000) for Leah Stern's pain and suffering prior to death.

B. Solatium.

(7) The Foreign Sovereign Immunities Act provides for an award for solatium. As this Court noted in *Flatow*, 999 F.Supp. at 29, damages for solatium belong to the individual heir personally for injury to the feelings and loss of decedent's comfort and society. The unexpected quality of a death may be taken into consideration in gauging the emotional impact to those left behind. In this case the impact upon Leah Stern's children was devastating. One of the aspects of terrorism is its targeting of the innocent with the intent to create maximum emotional impact. This type of action deserves a reply in damages that will fully compensate for the truly terrible emotional suffering of the surviving children.

(8) In previous actions for wrongful death brought under the FSIA, this Court has awarded solatium damages in the amount of \$5,000,000.00 for the loss of a child and \$2,500,000.00 for the loss of a sibling. *See Flatow* and *Eisenfeld*, respectively.

(9) This case differs from *Flatow* and *Eisenfeld*, however. Unlike *Eisenfeld* and *Flatow*, this case involved the loss of a parent. *See, e.g. Alejandro v. The Republic of Cuba*, 996 F.Supp. 1239, 1249 (S.D.Fla.1997) (awarding daughter of decedent Alejandro, who died after his plane was shot down by Cuban jets, \$8,000,000 for mental pain and suffering and loss of companionship).

***301** (10) The Court concludes as a matter of law that the following amounts are appropriate compensation for this element of damages under these facts: Joseph Stern: \$3,000,000.00; Shimson Stern: \$3,000,000.00; Shaul Stern: \$3,000,000.00; and Yocheved Kushner: \$3,000,000.00.

(11) *Punitive Damages.* While 28 U.S.C. § 1606 prohibits the direct imposition of punitive damages on a foreign state, it permits such damages against agencies and instrumentalities of a foreign state. *See Weinstein v. Islamic Republic of Iran*, 184 F.Supp.2d

13, 24 n. 1 (explaining that the FSIA does not authorize punitive damages awards against foreign states themselves, as opposed to their agencies and instrumentalities).

As noted by the Court in *Flatow*, punitive damages “are designed ‘to punish [a defendant] for his outrageous conduct and to deter him and others like him from similar conduct in the future,’ ” *id* at 32 citing RESTATEMENT (SECOND) TORTS § 908(1) (1977). In light of Iran's continued and massive support for terrorism, it would be manifestly unjust to refrain from assessing punitive damages against its agents and instrumentalities in the instant case.

Moreover, the failure to impose punitive damages after several previous impositions might be construed by Iran as a capitulation by the United States in the struggle to prevent and punish terrorism. *See Jenco v. Islamic Republic of Iran*, 154 F.Supp.2d 27, 39 (D.D.C.2001). Permitting Iran to draw such a conclusion would undermine the deterrent effect which is the *raison d'être* of § 1605(a)(7):

As it proved impossible to fight terrorism by bringing the terrorists themselves to justice, Congress created jurisdiction over and rights of action against foreign state sponsors of terrorism. By creating these rights of action, Congress intended that the Courts impose a substantial financial cost on states which sponsor terrorist groups whose activities kill American citizens. This cost functions both as a direct deterrent, and also as a disabling mechanism: if several large punitive damage awards issue against a foreign state sponsor of terrorism, the state's financial capacity to provide funding will be curtailed.

Flatow at 33.

Punitive damages are awarded to punish a defendant for particularly egregious conduct, and to serve as a deterrent to future conduct of the same type. They require an assessment by the Court of the wealth of the defendant and character of the defendant. *Flatow*, 999 F.Supp. at 32. According to Dr. Clawson, in 1997, the amount spent on terrorism by Iran was between \$100,000,000.00 and \$200,000,000.00, a substantial increase from 1995, the year of the attack in the *Flatow* case. Dr. Clawson testified that imposing severe punitive damages against Iran has great deterrent effect. Indeed, the punitive damage awards in the FSIA cases to date against Iran have received a great deal of attention in the Iranian press. This has sparked debate in the Iranian parliament regarding relations with the United States, and the FSIA lawsuits were cited as examples of Iran's failings in that regard. In addition, in order to deter the type of senseless and destructive terrorist acts which are the subject of this case, an ample punitive damage award should be entered. In *Eisenfeld*, this Court expressed its hope that punitive damages equal to three times Iran's annual expenditure would serve to deter future such attacks. The Court therefore finds that punitive damages against all defendants other than the Islamic Republic of Iran, jointly and severally, in the amount of \$300 million is appropriate.

***302 V. CONCLUSION**

This Court possesses subject matter jurisdiction over this action and personal jurisdiction over Defendants. Plaintiffs have established to this Court's satisfaction, pursuant to 28 U.S.C. § 1608(e), and by clear and convincing evidence, that Defendants, the Islamic Republic of Iran, the Iranian Ministry of Information and Security, Ayatollah Ali Hoseini Khamenei, former President Ali Akbar Hashemi-Rafsanjani, and former Minister Ali Fallahian-Khuzestani, are jointly and severally liable for all damages awarded by this Court for their provision of material support and resources to a terrorist group that caused the extrajudicial killing of Leah Stern and harm to the plaintiffs.

This Court takes note of the Stern family's courage and steadfastness in pursuing this litigation, and their efforts to do something to deter more tragic deaths and suffering of innocent Americans at the hands of these terrorists. Their efforts are to be commended.

A separate order shall issue this date.

ORDER AND JUDGMENT

For the reasons set forth in the accompanying Findings of Fact and Conclusions of Law, it is hereby

ORDERED that judgment be and it is entered on behalf of Leah Stern's surviving children, Plaintiffs Joseph Stern, Shimson Stern, Shaul Stern and Yocheved Kushner against Defendants, The Islamic Republic of Iran, the Iranian Ministry of Information and Security, Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi-Rafsanjani and Ali Fallahian-Khuzestani, jointly and severally, for solatium, in the total amount of TWELVE MILLION DOLLARS (\$12,000,000.00), allocated as follows: to Decedent's son, Joseph Stern, THREE MILLION DOLLARS (\$3,000,000.00); to Decedent's daughter Yocheved Kushner, THREE MILLION DOLLARS (\$3,000,000.00); Decedent's son, Shimson Stern, THREE MILLION DOLLARS (\$3,000,000.00); to Decedent's son, Shaul Stern, THREE MILLION DOLLARS (\$3,000,000.00), and it is further

ORDERED that judgment be and it is entered on behalf of Plaintiff, SHAUL STERN, Individually and as legal representative of the Estate of Leah Stern against Defendants, The Islamic Republic of Iran, the Iranian Ministry of Information and Security, Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi-Rafsanjani and Ali Fallahian-Khuzestani, jointly and severally, for the conscious pain and suffering of Leah Stern in the amount of ONE MILLION DOLLARS (\$1,000,000.00), and it is further

ORDERED that judgment be and it is entered on behalf of Plaintiff, SHAUL STERN, Individually and as legal representative of the Estate of Leah Stern against Defendants, the Iranian Ministry of Information and Security, Ayatollah Ali Hoseini Khamenei, Ali Akbar Hashemi-Rafsanjani and Ali Fallahian-Khuzestani, jointly and severally, for punitive damages in the amount of THREE HUNDRED MILLION DOLLARS (\$300,000,000.00), and it is further

ORDERED that the caption in this matter is amended so that it appears as follows:

SHAUL STERN, Individually and as legal representative of the Estate of LEAH STERN, JOSEPH STERN, SHIMSON STERN, YOCHEVED KUSHNER,

Plaintiffs,

-against-

THE ISLAMIC REPUBLIC OF IRAN, (aka Iran, The Republic of Iran, Republic of Iran, The Government of Iran, Iranian Government, and Imperial Government of Iran) THE IRANIAN MINISTRY OF INFORMATION AND SECURITY, AYATOLLAH ALI HOSEINI *303 KHAMENEI, ALI AKBAR HASHEMI-RAFSANJANI, and ALI FALLAHIAN-KHUZESTANI,

Defendants.

; and it is further

ORDERED that the Clerk of Court shall cause a copy of this Order and Judgment and the accompanying Findings of Fact and Conclusions of Law to be transmitted to the United States Department of State, to be translated into Farsi for diplomatic service upon the Defendants in accordance with the provisions of 28 U.S.C. § 1608, with the costs of translation to be paid by the Plaintiffs.

SO ORDERED.

All Citations

271 F.Supp.2d 286

Footnotes

- 1 The Court by its Order, dated December 18, 2002, permitted plaintiffs to introduce affidavit testimony. *See Hutira v. Islamic Republic of Iran*, 211 F.Supp.2d 115, 124 (D.D.C.2002); *Weinstein v. Islamic Republic of Iran*, 175 F.Supp.2d 13 (D.D.C.2001); *Commercial Bank of Kuwait v. Rafidain Bank*, 15 F.3d 238, 242 (2d Cir.1994); *International Road Federation v. Democratic Republic of the Congo*, 131 F.Supp.2d 248, 252 (D.D.C.2001).
- 2 Abu Hanoud succeeded in eluding capture until November, 2001, when he was killed in a shoot-out with Israeli forces. Shaked Aff., p. 12, n. 1
- 3 Hamas' violent nature has been noted in several federal decisions. see *In re Abu Marzook*, 924 F.Supp. 565 (S.D.N.Y.1996) (recounting numerous incidents of Hamas terrorism against civilians in the Mideast), *U.S. v. One 1997 E35 Ford Van*, 50 F.Supp.2d 789 (N.D.Ill.1999) (describing Hamas' covert financial transactions in the U.S.), (D.D.C.2000), *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1 (D.D.C.2000), *Mousa v. Islamic Republic of Iran*, 238 F.Supp.2d 1 (2001), *Weinstein v. Islamic Republic of Iran*, 184 F.Supp.2d 13 (D.D.C.2002).
- 4 The MOIS is an Iranian government agency which has been described as "roughly comparable to the KGB of the former Soviet Union." *Anderson v. Islamic Republic of Iran*, 90 F.Supp.2d 107, 112 (D.D.C.2000).
 Along with Iran's Revolutionary Guards, the MOIS is the Iranian government's coordinator of the regime's various terrorist activities. With 30,000 agents, a budget of between \$100 and \$500 million, it is the largest espionage service in the Middle East. It spends between \$50 and \$100 million a year sponsoring terrorist activities of various organizations such as Hamas and Hizbollah. *Id.* at 113.
 The MOIS functions "within and beyond Iranian territory" and has a specific relationship with Hamas. *Eisenfeld v. Islamic Republic of Iran*, 172 F.Supp.2d 1, 6 (D.D.C.2000). The MOIS is the "conduit for the Islamic Republic of Iran's provision of funds to Hamas and training to the terrorists under the direction of Hamas." *Id.* at 6.
- 5 Iran's control over Hizbollah is so far-reaching that this Court has repeatedly held Iran vicariously liable, under the doctrine of respondeat superior, for actions of Hizbollah. *See, e.g., Sutherland v. Islamic Republic of Iran*, 151 F.Supp.2d at 47:
 Judge Kotelly of this Court opined: "it is now the universally held view of the intelligence community that Iran was responsible for the formation, funding, training, and management of Hizbollah." *Higgins v. The Islamic Republic of Iran*, Civ. A. No. 99-377, 2000 WL 33674311 (D.D.C.2000). As well, Judge Jackson declared in *Anderson* that the defendants 'financed, organized, armed, and planned Hizbollah operations in Lebanon and elsewhere.'
 (citing *Anderson*, *Flatow* and *Eisenfeld*).
 Therefore, Hizbollah's "acts, which were intentionally committed by Sutherland's captors, are attributable to the defendants because the defendants substantially funded and controlled Hizbollah ... As such, the defendants are liable under the tort doctrines of respondeat superior and joint and several liability." *Id.* at 48.
- 6 Section 1605(a)(7) was enacted in April 1996 and was expressly intended to apply to causes of action arising both before and after its passage. Pub.L. No. 104-132, Title II, § 221(c) (April 24, 1996). Section 1605 Note was enacted in September 1996. Pub.L. No. 104-208, Div. A, Title I, § 101(c) (Sept. 30, 1996). The two should be construed *in pari materia*, and the later amendment relates back to the earlier one. see *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 13-14 (D.D.C.1998)
- 7 § 1605(e)(1) adopts the definition of an extrajudicial killing contained in the Torture Victim Protection Act of 1991, Pub.L. No. 102-256, § 3(a), 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note), i.e., "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all judicial guarantees which are recognized as indispensable by civilized peoples."
- 8 Because the attack did not occur within the Iranian territory, plaintiffs are not required to offer the defendants an opportunity to arbitrate.
- 9 Here, too, to the extent that these actions were carried out by the MOIS or the individual defendants, the Islamic Republic of Iran is liable on the basis of the doctrine of respondeat superior.

ANNEX 55

New Hamas leader says it is getting aid again from Iran; New Hamas leader says it is getting aid again from Iran

Canadian Press

August 28, 2017 Monday 01:26 PM EST

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Section: INTERNATIONAL

Length: 1105 words

Byline: Fares Akram And Josef Federman, The Associated Press

Body

GAZA, Palestinian Territory - Hamas' new leader in the Gaza Strip said Monday his group has repaired relations with Iran after a five-year rift and is using its newfound financial and military *aid* to gear up for new hostilities with Israel.

The announcement by Yehiyeh Sinwar came as U.N. Secretary-General Antonio Guterres was visiting Israel. At a meeting with the U.N. chief, Israeli Prime Minister Benjamin Netanyahu complained about what he called rising anti-Israel activity by *Iran* and its allies in the region.

Iran was once the top backer of Hamas, an Islamic militant group that seeks Israel's destruction. But Hamas broke with Iran in 2012 after the group refused to support Iran's close ally, Syrian President Bashar Assad, in the Syrian civil war.

During a four-hour meeting with journalists, Sinwar said those ties have been restored and are stronger than ever.

"Today, the relationship with Iran is excellent, or very excellent," Sinwar said. He added that the Islamic Republic is "the largest backer financially and militarily" to Hamas' military wing.

It was the first time that Sinwar has met reporters since he was elected in February. The 55-year-old Sinwar, who spent two decades in Israeli prison after being convicted of masterminding the abduction and killing of two Israeli soldiers, has close ties with Hamas' militant wing and takes a hard line toward Israel.

Israel and Iran are bitter enemies, and Israel has recently expressed concern that Iran and its Lebanese proxy Hezbollah are seeking a permanent military presence in Syria near the Israeli border. Both Hezbollah fighters and Iran have backed Assad's forces in the Syrian war.

In his meeting with Guterres, Netanyahu alleged Iran is building sites in Syria and Lebanon to produce "precision-guided missiles" to be used against Israel.

"Iran is busy turning Syria into a base of military entrenchment, and it wants to use Syria and Lebanon as warfronts against its declared goal to eradicate Israel," Netanyahu said. "This is something Israel cannot accept. This is something the U.N. should not accept."

New Hamas leader says it is getting aid again from Iran; New Hamas leader says it is getting aid again from Iran

Israel has also accused the U.N. peacekeeping force in Lebanon, UNIFIL, of failing to prevent Hezbollah from smuggling huge quantities of weapons into southern Lebanon in violation of a 2006 cease-fire. UNIFIL's mandate is up for renewal at the end of the month and Israel is pressing for the force to have an increased presence to better monitor and prevent the alleged Hezbollah arms buildup.

UNIFIL's commander, Maj. Gen. Michael Beary, told The Associated Press last week that he has no evidence that weapons are being illegally transferred and stockpiled in the Hezbollah-dominated south. But Guterres promised Netanyahu that he will do everything in my capacity" to ensure UNIFIL fulfills its obligations.

"I understand the security concerns of Israel and I repeat that the idea or the intention or the will to destroy the state of Israel is something totally unacceptable from my perspective," he *said*.

Responding to Israeli claims that the U.N. is biased, Guterres stressed his commitment to "treating all states equally." He *said* those who call for Israel's destruction peddle in a "form of modern anti-Semitism" - though he also *said* he doesn't always agree with the country's policies.

Guterres heads to the West Bank on Tuesday and is scheduled to visit Gaza on Wednesday. The U.N. maintains major operations in Gaza, running schools and health clinics and delivering humanitarian aid. Guterres is not scheduled to speak to Hamas.

Late Monday, Guterres met with Maj. Gen. Yoav Mordechai, commander of COGAT, the defence body that is responsible for Palestinian civilian affairs.

Mordechai blamed Hamas for the poor conditions in Gaza, *saying* the group tries to exploit civilians and aid programs. He also *said* Hamas' refusal to return the remains of two dead Israeli soldiers, along with two Israeli civilians it is holding, hinders Israeli efforts to assist Gaza.

"The terror organization Hamas does not hesitate at all and repeatedly exploits the Gaza residents by attempting to take advantage of Israel's assistance, despite the severe civil hardships in the strip," Mordechai *said*.

Guterres later met with the families of the dead soldiers and captive Israeli civilians.

In his briefing with reporters, Sinwar would not say how much aid Iran provides his group. Before the 2012 breakup, *Iran* provided an estimated \$50 million a month to Hamas.

Hamas wrested control of Gaza from the Western-backed President Mahmoud Abbas' forces in 2007. Since then, it has fought three wars with Israel. *Hamas* has killed hundreds of Israelis in suicide bombings, shootings and other attacks. It is considered a terrorist group by Israel, the United States and the European Union.

Sinwar stressed that the Iranian aid is for "rebuilding and accumulating" Hamas' military powers for a larger fight against Israel that is meant to "liberate Palestine."

"Thousands of people work every day to make rockets, (dig) tunnels and train frogmen," he *said*. "The relationship with Iran is in this context."

But the shadowy leader said his movement does not intend to start a fourth war with Israel, instead preferring to remedy dire living conditions in the impoverished coastal enclave.

Israel and Egypt imposed a blockade on Gaza after the Hamas takeover a decade ago. Trying to pressure Hamas and regain control, Abbas has asked Israel to reduce electricity supplies to Gaza, and he has slashed the salaries of thousands of his former government employees there.

The result is that Gaza suffers acute power outages of up to 16 hours a day, unemployment of nearly 50 per cent and widespread poverty.

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Sinwar has turned to Egypt, which has begun to ease the blockade as it seeks Hamas' help in controlling their border. The Egyptian military has been fighting an Islamic insurgency in the Sinai desert, near Gaza.

Relations with Cairo "have improved dramatically," Sinwar said. Egypt has recently sent fuel to ease the power crisis in response to Hamas' building of a buffer zone along the border.

"We will knock on all the doors, except that of the (Israeli) occupation, to resolve the problems," he said.

Sinwar was among more than 1,000 Palestinians released by Israel in 2011 in exchange for an Israeli soldier, Gilad Schalit, whom Hamas kidnapped in 2006.

Sinwar said there would be no new talks over a prisoner swap until Israel frees 54 prisoners released in the Schalit swap that have been re-arrested.

"We are ready to start negotiations through a mediator, but only when the table is cleaned. Freed prisoners must feel they are immune."

Federman reported from Jerusalem.

Load-Date: August 31, 2017

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