UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS BURNETT, SR., et al.,	:	
	:	
Plaintiffs,	:	
	:	**Civil Action No. 02-1616(JR)**
v.	:	
	:	
AL BARAKA INVESTMENT AND	:	
DEVELOPMENT CORPORATION,	:	
et al.,	:	
	:	
Defendants.	:	

PLAINTIFFS' STATUS REPORT

I. Introduction

On September 20, 2002, the Court issued an Order directing counsel to appear for a status/scheduling conference in this case. The Court's Order was precipitated by the undersigned's attempts to file a Second Amended Complaint (hereinafter "Complaint") in this case.[1]

As the Court is aware, this action relates to the terrorist attacks that took place on September 11, 2001. For the Court's convenience, the Plaintiffs respectfully submit this status report to apprise the Court of the nature and current state of these proceedings, the general nature of the Plaintiffs' claims, and the issues in this case that will, predictably, arise in the near future.

---

[1] As discussed in the Plaintiffs' Motion to Amend the Amended Complaint, incorporated herein, the Plaintiffs were unsuccessful in their attempts to file a Second Amended Complaint. As set forth in Section VII(C), the Plaintiffs' Motion to Amend the Amended Complaint requests the Court's permission to file the Second Amended Complaint, *nunc pro tunc* September 10, 2002. The Plaintiffs anticipate that the Court will, upon the appropriate motion, permit the amendment of the Amended Complaint. *See Fed. R. Civ. P. 15(a)*; *see also Harris v. Secretary, United States Dep't of Veterans Affairs*, 126 F.3d 339, 344-45 (D.C. Cir. 1997) (recognizing that amendments prior to a responsive pleading shall be freely given under Rule 15(a)); *Gaubert v. Federal Home Loan Bank Bd.*, 863 F.2d 59, 69 (D.C. Cir. 1988) ("Leave to amend should ordinarily be freely granted to afford a plaintiff an opportunity to test his claim on the merits."). Accordingly, the balance of this Status Report discusses the current status of this case from the perspective of the Second Amended Complaint (hereinafter "Complaint").

II. General Nature of Case

Plaintiffs, who as of the September 10, 2002 Complaint were 1,750 in number, are the estates and family representatives of those individuals who lost their lives in the now infamous terrorist attacks of September 11, 2001, as well as individuals who were physically injured in those attacks. The Defendants, who are 99 in number, are both United States residents and foreign nationals, individuals, corporate entities (both for profit and not for profit), a foreign government and the entities of a foreign government.[2] The Defendants are alleged to have provided the financial resources and other material support for, and/or otherwise aided and abetted international terrorism, the terrorist group al Qaeda, and certain of its members who participated in the attacks on September 11, 2001. Generally, there are five groups of Defendants in this case who, according to the Complaint, engaged in this conduct: (1) banks; (2) charities; (3) businesses / associations; (4) individuals; and (5) a foreign state and its agents and instrumentalities. The Complaint is the product of an exhaustive yet ongoing investigation that has spanned the globe. Summarizing the claims set forth in the Complaint further, therefore, cannot adequately convey their scope or seriousness.

III. Jurisdiction

The Complaint alleges that the Court has subject matter jurisdiction over this matter pursuant to Title 28, United States Code, §§ 1330(a) (jurisdiction over actions against foreign states), 1331 (federal question jurisdiction) and 1332(a)(2) (diversity jurisdiction), and Title 18, United States Code, § 2338 (exclusive federal jurisdiction for claims arising under any statute concerning terrorism).[3] *See Cmplnt*. ¶ 1.

---

[2] At this time, the Plaintiffs seek leave to add approximately twenty five additional defendants, all private entities or individuals (non-foreign States). *See* Section VII C., *infra.* discussing the proposed Third Amended Complaint which stands to increase the total number of plaintiffs to approximately 2600, with additional plaintiffs continuing to join the *Burnett* action as time passes.

[3] In a typographical error, the Plaintiffs have mistakenly alleged Title 18, United States Code, § 2388 (activities affecting armed services during war) as a basis for jurisdiction. *See Cmplnt.* ¶ 1. The Plaintiffs intend to amend and correct this reference at a later date, with leave of the Court. Plaintiffs also seek leave to amend to add a jurisdictional allegation under 28 U.S.C. 1367 (supplemental jurisdiction).

With particular respect to the Court's jurisdiction under Title 28, United States Code, §§ 1330(a) (jurisdiction over actions against foreign states) and 1331 (federal question jurisdiction), the Complaint also alleges that the Court's subject matter jurisdiction arises under Title 28, United States Code, §§ 1605(a)(2), 1605(a)(5) and (a)(7) (Foreign Sovereign Immunities Act) and 1350 (Alien Tort Act), as well as, Pub. Law No. 102-256, 106 Stat. 73 (Torture Victim Protection Act) and Title 18, United States Code, § 2333 (civil action for acts of terrorism). *See Cmplnt*. ¶ 1.

The Plaintiffs believe that this Court indisputably has subject matter jurisdiction over this case, based upon the statutory provisions cited above and relied upon in the Complaint. In a related case pending before the Court, *Havlish, et al. v. Bin Laden, et al., Civil Action No. 1:02CV00305-JR,* however, attorney Jim Kreindler -- who represents a group of plaintiffs in the Southern District of New York relating to the attacks on September 11, 2001 (hereinafter "the *Ashton* plaintiffs") -- gratuitously sent letters to the Court on July 2, 2002 and August 7, 2002, contending that, pursuant to § 408(b)(3) of the Airline Transportation Safety and Stabilization Act ("ATA"), the Southern District of New York is the only court that has subject matter jurisdiction over, and is a proper venue for, any case relating to the terrorist attacks of September 11, 2001.[4] In a letter dated August 12, 2002, the Court reminded Attorney Kreindler of Local Rule 5.1(b), which prohibits such contact with the Court, and informed him that if the *Ashton* plaintiffs wanted to make these arguments, they were required to intervene and raise them by formal motion.

Undeterred, on September 23 and 24, 2002, the *Ashton* plaintiffs, joined by a second group of plaintiffs in another action in the Southern District of New York also relating to the attacks on September 11, 2001 (hereinafter "the *Bauer* plaintiffs") filed a motion to intervene in this action to raise these same arguments. For reasons set forth in Plaintiffs' Memorandum in

---

[4] As discussed below, assuming, *arguendo*, that Section 408 of the ATA has any bearing on this case it relates solely to the issue of subject matter jurisdiction, not venue.

Opposition to *Bauer* and *Ashton* Plaintiffs Motions for Intervention, which is being separately filed, those motions should be denied as improperly pled. Plaintiffs counsel herein certainly respect the *Ashton* and *Bauer* plaintiffs' counsel, and have and will cooperate with them in the prosecution of related September 11, 2001 victim litigation pending in the Southern District of New York. This professional courtesy cannot justify agreement with a misguided statutory interpretation on an issue as crucial as subject matter jurisdiction.

Despite the questionable basis in which the interveners attempt to place the issue before this Court, it must be recognized that the *Bauer* and *Ashton* plaintiffs raise an issue relating to the Court's ability to exercise subject matter jurisdiction in this case at a timely juncture. Although the Plaintiffs do not agree with the misinformed analysis of the issue offered by the *Bauer* and *Ashton* plaintiffs, or the basis for intervention as pled, the issue should be addressed and it should be addressed before this proceeding becomes too far advanced. Indeed, the Court should, *sua sponte*, explore the issue further. *See Insurance Corp. of Ireland v. Compagnie Des Bauxites*, 456 U.S. 694, 702 (1982). *See also Safir v. Dole*, 718 F.2d 475, 481 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1206 (1984); *Potomac Passengers Ass'n v. Chesapeake & Ohio Ry. Co.*, 520 F.2d 91, 95 n.22 (D.C. Cir. 1975); *Kurtz v. Baker*, 644 F. Supp. 613, 620 (D.D.C. 1986). Accordingly, the Court should raise the jurisdiction issue with the parties that are currently properly before it, and rule on this threshold question for the sake of judicial economy. With respectful deference to the Court's docket, it is in all parties' interest to determine this question of subject matter jurisdiction and venue expeditiously.

IV. Venue

The Complaint alleges that venue is proper in this district pursuant to Title 28, United States Code, §§1391(d) (suits against aliens may be brought in any district) and 1391(f)(4) (suits against foreign states may be brought in the United States District Court for the District of Columbia). *See Cmplnt*. ¶ 3. Additionally, as it relates to venue, 18 U.S.C. 2333 provides in part that "a U.S. national may sue in any appropriate district court of the United States." 18 U.S.C. 2333.

V. Service of Process

The Plaintiffs have retained Process Service Network to effectuate service on both the domestic and foreign Defendants named in the Complaint in accordance with Fed. R. Civ. P. 4(f) and 4(j) and Title 28, United States Code, § 1608, and the Hague Convention. There are, however, certain logistical problems associated with serving defendants in foreign lands and the additional burden of translating a lengthy complaint into Arabic for one of the Defendants.[5] Despite these issues, however, the Plaintiffs are confident that they will be able to effect service on all the Defendants within the time allowed by Fed. R. Civ. P. 4.[6]

With particular respect to many of the foreign Defendants, Process Service Network will effect service on them in accordance with the requirements of the Hague Convention. With regard to Defendants located in countries that are not signatories to the Hague Convention, Process Service Network will effect service of process pursuant to the requirements of Fed. R. Civ. P. 4. Affidavits will be obtained from the process servers, in order to provide the Court with proof of service in compliance with Fed. R. Civ. P. 4.

Finally, the Plaintiffs seek leave of Court by a forthcoming motion to serve a number of the Defendants by publication utilizing the newspaper *Al-Quds Al-Arabi*. *Al-Quds Al-Arabi* is a newspaper with wide circulation in the Middle East. The Defendants to be served by publication will fall into two categories. The first category of Defendants will be those individuals upon whom normal means of service is a known impossibility. The second category of Defendants to be served by publication will be those individuals upon whom service of process has been ineffectual. The Plaintiffs will request leave of Court to coterminously run service by publication on the second category, while attempting to perfect service via Process Service Network as detailed above. This approach should result in an efficient methodology for service.

---

[5] As to the Republic of Sudan, the Complaint must be translated into Arabic prior to service. The translation process is underway and the translators estimate it should take approximately four weeks.

[6] As to those defendants located within the United States, that time is 120 days. As to the foreign defendants, there is no such time limitation. *See Fed. R. Civ. P. 4(m)*.

See Havlish v. Sheik Usama Bin-Muhammad Bin-Laden, Cause No. 1:02CV00305 (D.D.C. May 9, 2002), allowing service by publication in a related context.

VI. Causes of Action Alleged

For the Court's convenience, the following chart summarizes the fifteen counts of the Complaint.

COUNT	**DEFENDANT(S)**	**CAUSE OF ACTION**
1	The Republic of Sudan; it's agents and instrumentalities, The Republic of Sudan Ministry of Interior, and The Republic of Sudan Ministry of Defense.	Foreign Sovereign Immunities Act (engaging in conduct for which there is no immunity pursuant to Act under 28 U.S.C. §§ 1605(a)(2), 1605(a)(5) and 1605(a)(7)); P.L. 104-208, Div. A., Title I, 101(c), 110 Stat. 3009-172 (or *Flatow* amendment, reprinted at 28 U.S.C. 1605 note (West Supp.))
2	All Defendants	Torture Victim Protection Act (Pursuant to Pub. L. 102-256, 106 Stat. 73 (reprinted at 28 U.S.C.A. § 1350 note (West 1993))).
3	All Defendants	Alien Tort Claims Act (Pursuant to 28 U.S.C. § 1350).
4	All Defendants	Wrongful Death.
5	All Defendants	Negligence.
6	All Defendants	Survival.
7	All Defendants	Negligent and Intentional Infliction of Emotional Distress.
8	All Defendants	Conspiracy.
9	All Defendants	Aiding and Abetting.
10	All Defendants	Claims Pursuant to 18 U.S.C. § 2333 *et seq*.
11	All Defendants	Racketeering Influenced Corrupt Organizations Act (Using or investing income derived from a pattern of racketeering to acquire an enterprise engaged in or affecting commerce in violation of 18 U.S.C. § 1962(a)).
12	All Defendants	Racketeering Influenced Corrupt Organizations Act (Conducting the affairs of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(a)).
13	All Defendants	Racketeering Influenced Corrupt Organizations Act (Conspiring to commit any of the aforementioned RICO violations in violation of 18 U.S.C. § 1962(d)).
14	All Defendants	Punitive Damages.
15	All Defendants, except the Republic of Sudan	Punitive Damages Under 28 U.S.C. § 1606.

VII. Issues That May Soon Arise In These Proceedings.

A. Subject Matter Jurisdiction.

As stated previously, this Court faces the important issue of its subject matter jurisdiction. The jurisdictional question - raised by the putative interveners in this case as a venue question - arises from the language of § 408(b) of the Air Transportation Safety and System Stabilization Act, Pub. L. No. 107-42, 115 Stat. 230 (2001) ("ATA"), which was signed by President Bush on September 22, 2001. § 408(b)(1) of the ATA creates a federal cause of action for damages arising out of the four plane hijackings and crashes on September 11, 2001. Moreover, § 408(b)(3) of the ATA provides that "[t]he United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought for any claim (including any claim for loss of property, personal injury or death) resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001."

The Plaintiffs submit that § 408 does not preclude this Court from exercising subject matter jurisdiction over the present case. First, the statutory framework of the Act, including its development since passage, reveals that the jurisdictional limitation in § 408 applies only to claims brought against the types of entities identified in § 408, none of which are the type of defendants in the present case. As originally enacted, § 408(a) of the ATA limited the liability only of air carriers. ATA, § 408(a). Specifically, the original § 408(a) provided that "liability for all claims . . . against any air carrier shall not be in an amount greater than the limits of the liability coverage maintained by the air carrier." *Id.*

In fact, § 408 was originally entitled "Limitation on Air Carrier Liability." In this regard, it is well settled that "the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute." *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (internal quotation and citation omitted). Here, both the title of the statute -- the Air Transportation Safety and System Stabilization Act -- and the original title of § 408 -- Limitation on Air Carrier Liability -- demonstrate that § 408 was originally intended to address only air carrier liability. In recognizing the common sense interpretation of this statute, one

federal jurist recently remanded a September 11th-related case involving the post attack clean-up efforts to New York State Court as not falling within the "exclusive jurisdiction" provisions of the ATA. *Graybill v. The City of New York*, 2002 WL 31031655 (S.D.N.Y.), Memorandum Opinion and Order Denying Jurisdiction and Remanding to State Court, Judge Alvin Hellerstein, September 11, 2002.[7]

In November, 2001, § 408 of the ATA was narrowly amended by § 201(b) of the Aviation and Transportation Security Act ("ATSA"), Pub. L. No. 107-71 (passed November 19, 2001), which extended the limitation on liability to "aircraft manufacturer[s], airport sponsor[s], or person[s] with a property interest in the World Trade Center," as well as the City of New York. Accordingly, the applicability of § 408(b)(3) is currently restricted to air carriers and those additional entities just identified.

Section 408(c) further makes clear that the ATA -- enacted in order to insulate the commercial airline industry from financial collapse -- is not intended to apply to actions against terrorists, terrorist organizations, or their supporters. That subsection originally provided that "[n]othing in this section shall in any way limit any liability of any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act." Section 408(c), as amended by the November, 2001 amendment, serves to highlight that § 408(a) and (b) apply only to non-terrorist-related actions, and not those involved in the present case. Amended § 408(c) provides:

> Nothing in this section shall in any way limit any liability of any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. Subsections (a) and (b) do not apply to civil actions to recover collateral source obligations. Nothing in this section shall in any way limit any liability of any person who is engaged in the business of providing air

---

7 Judge Hellerstein has been assigned to preside over the civil actions filed against the building entity defendants, airlines and other "protected defendants" under the ATA provisions. Recognizing the uniqueness of the terrorist entity defendants, Judge Hellerstein declined jurisdiction over *Ashton* and *Bauer* and they have been reassigned very recently to United States District Judge Allen Schwartz. See *Mulligan v. The Port Authority of New York and New Jersey*, Civ. Action No. 02Civ.6885 (S.D.N.Y. 2002).

> transportation security and who is not an airline or airport sponsor or director, officer, or employee of an airline or airport sponsor.

ATA, § 408(c). In essence, this subsection is meaningless if subsection (b) is held to apply to the claims in the present case. Congress could have extended the scope of § 408(b) of the ATA to encompass claims against terrorists and their supporters, but it clearly did not.

The legislative history of the ATA is entirely consistent with the conclusion that the provision in § 408(b)(3), which provides exclusive jurisdiction to the Southern District of New York, applies only to claims brought against air carriers and those domestic entities later identified. It does not prevent the bringing of claims against terrorists, terrorist organizations, or their sponsors and supporters in other jurisdictions. The legislative history clearly demonstrates that the ATA was passed in order "[t]o preserve the continued viability of the United States air transportation system."[8]

The debates on the House and Senate floors regarding the bill clearly demonstrate that the purpose of the legislation was to ensure that the airline industry -- a vital component to this country's economy -- remained afloat after the tragic events of September 11. *See*, *e.g.*, 147 Cong. Rec. H5875-05 (Sept. 21, 2001) ("we must get the airlines back on a solid footing"). Congress was concerned that the airline industry could not handle the economic impact of the FAA-grounding of flights, as well as the impact of the public's new fear of flying. There is no evidence that Congress intended to usurp or replace the jurisdictional provisions of all federal law that relates to this matter.

With one exception, Congress' discussion of potential liability was limited to the liability of the airlines. *See, e.g.*, 147 Cong. Rec. E1764-01 (Sept. 21, 2001) ("other provisions in the bill limit *airline* liability for the September 11 attack" (emphasis added)); 147 Cong. Rec. H5875-05 (Sept. 21, 2001) (remarks of Rep. Sensenbrenner) ("It is fine to limit airlines' liability, but this will simply put others on the hook."); 147 Cong. Rec. H5894-02 (Sept. 21, 2001) (remarks of Rep. Oxley) ("I would like to applaud the gentleman for the legal protections in the bill *to get*

---

[8] This quoted language was in fact the title of the original bills as introduced to the Congress.

our airlines back in the air. But I wanted to clarify that these protections are intended to limit liability to reasonable levels . . . ." (emphasis added)); 147 Cong. Rec. H5901 (Sept. 21, 2001) (remarks of Rep. Tiahrt) ("Many sectors of the air transportation industry would be subject to economic dislocation and potential bankruptcy if they were exposed to unlimited liability . . . ."); 147 Cong. Rec. H5894-02 (Sept. 21, 2001) (remarks of Rep. Young) ("this issue of potential unlimited liability for the air transport industry").[9]

Nowhere in the legislative history of the ATA does there appear any mention of claims being brought against terrorists, terrorist organizations, or their supporters. Nor are there any express or implied modifications to the pre-existing statutes at issue in this matter. Consequently, there is no legislative statement that the Southern District of New York would have original and exclusive jurisdiction over any and all such claims. Moreover, the Plaintiffs can discern no policy reason why claims against terrorists, terrorist organizations, or their supporters would be limited to one forum.

In sum, the statutory framework and the legislative history support the conclusion that § 408(b)(3), which limits jurisdiction in certain cases to the Southern District of New York, has no applicability to claims brought against terrorists, terrorist organizations, or their supporters. Moreover, had Congress intended to vest exclusive jurisdiction in the Southern District of New York, it had the opportunity to do so when it amended that act (to exclude more explicitly the terrorism exception) and again in the context of enacting the Patriots Act. USA Patriots Act, Title X, 2001. While the Patriots Act creates no additional substantive rights for civil litigants, it preserves and indeed strengthens, in reason, policy and plain language, the pre-existing legal and procedural rights of the victims of terrorism as bestowed in the anti-terrorism federal statutes and jurisprudence. *Id.* This Court indisputably has subject matter jurisdiction over this matter pursuant to the federal statutes identified in Section VI, *supra*.

---

[9] Although Senator Charles Schumer stated during the floor debates that "[t]he intent here it to put all civil suits arising from the tragic events of September 11 in the Southern District," 147 Cong. Rec. S9592 (Sept. 21, 2001), claims against terrorists, terrorist organizations, or their supporters were not mentioned, and, therefore, his statement does not clearly evince an intent to have such claims adjudicated in the Southern District of New York.

B. Challenges to the Plaintiffs' Theories of Recovery

The next issue likely to confront the Court is the Plaintiffs' theories of recovery. Whether it be raised in motions to dismiss, for default judgment, for summary judgment, at the trial of this matter, or *sua sponte* by the Court, predictably, the Court will address the question of whether -- as a matter of law -- the Plaintiffs can recover damages under 18 U.S.C. §§ 2333, 2339A and 2339B, The Alien Tort Claim Act, the FSIA, and the law of nations based upon the facts of this case. Foreseeing this probable challenge, and despite the fact that this Court has had a great deal of experience with respect to this issue, the Plaintiffs take this opportunity to briefly describe, with a focus on the application to this matter: (1) the statutory framework relevant to the Plaintiffs' ability to recover in this case; (2) a well-reasoned appellate case that is instructive on this issue, *Boim v. Quranic Literacy Institute and Holy Land Foundation For Relief and Development*, 291 F.3d 1000 (7th Cir. 2002), and related cases; and (3) a general description of the allegations of the Complaint that satisfy the test described in *Boim* and related case law.

1. Statutory Framework.

The appropriate starting point is the statutory framework that permits a private cause of action in order to recover for injuries resulting from international terrorism. As a threshold matter, 18 U.S.C. § 2333 provides in relevant part:

> Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

In turn, the term "international terrorism" is defined as:

> activities that--
>
> (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
> (B) appear to be intended--
> (i) to intimidate or coerce a civilian population;

> (ii) to influence the policy of a government by intimidation or coercion; or
> (iii) to affect the conduct of a government by assassination or kidnapping; and
> (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

18 U.S.C. § 2331(1).

Moreover, 18 U.S.C. § 2339A, entitled "Providing material support to terrorists" reads, in relevant part:

> (a) Offense. -- Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of § 32, 37, 81, 175, 229, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 1993, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332c, 2332f, or 2340A of this title, § 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or § 46502 or 60123(b) of title 49, or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.
>
> ***
>
> (b) Definition. -- In this section, the term "material support or resources" means 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, personnel, transportation, and other physical assets, except medicine or religious materials.

18 U.S.C. § 2339A.

Similarly, § 2339B prohibits the knowing provision of "material support or resources to designated foreign terrorist organizations." 18 U.S.C. § 2339B.

The additional statutes pled herein include the Alien Tort Claims Act; 28 U.S.C. § 1350 (including the law of nations); Torture Victim Protection Act; Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1605(a)(2), 1605(a)(5) and 1605(a)(7)) Racketeering Influenced Corrupt Organizations Act (RICO); *see* Section VI, *supra*. As 1) these laws are more developed in the applicable jurisprudence and 2) as 18 U.S.C. 2333 appears to be directly on point to the facts of this case as to the vast majority of Defendants, it will be discussed in more detail.

2. <u>The Applicable Jurisprudence</u>

The case law interpreting the Federal Sovereign Immunities Act (or FSIA) is well developed in this district, particularly in the context of the atrocities committed by terrorist acts involving Iraq and Iran. As this Court is well aware, the body of case law interpreting the more recent statutes is somewhat less developed. That said, there are many fine jurists that have examined the relevant issues in contexts similar to the instant case.[10] The obvious factual difference faced by the September 11th victims is the sheer scale of the horror and injury and the scope of the scheme. The instant case is brought against the private parties that have materially sponsored or aided and abetted international terrorism, particularly al Qaeda, and Osama Bin Laden. In *Boim*, 291 F.3d 1000, the Seventh Circuit undertook a *de novo* review, engaging in statutory interpretation of 18 U.S.C. 2333, in what it termed a case of first impression. *Id.* The United States government was invited by the court to submit an *amicus* brief, to which all parties were allowed to respond. *Boim* 291 F.3d at 1009.

In analyzing the legislative history regarding 18 U.S.C. 2333, the Seventh Circuit concluded that the "statute clearly is meant to reach beyond those persons who themselves commit the violent act that directly causes the injury." *Boim* 291 F.3d at 1011. The *Boim* court held that Congress' intention was to allow a plaintiff to recover from anyone along the causal chain of terrorism. *Id.* The implications of this holding, and of similar recent holdings touched

---

[10] "Although the interest has been made all the more imperative by the events of September 11, 2001, the terrorist threat to national security was substantial in 1992 when Congress passed § 2333 and in 1996 when Congress passed 2339(B)." *Boim* 291 F.3d at 1027.

on below, are important to the instant case. The families of those murdered or injured on September 11th cannot find justice by looking to any one person. They must look beyond Osama bin Laden to those that fostered, nurtured, equipped or financed him.

As the Seventh Circuit pointed out, "[w]hen it passed § 2339A and 2339B, Congress undoubtedly intended that the persons providing financial support to terrorists should also be held criminally liable for those violent acts. Indeed, [the Congressional Record] indicates an intention to cut off the flow of money in support of terrorism generally . . . The fact that Congress imposed lesser criminal penalties for the financial supporters . . . does not in any way indicate that Congress meant to limit civil liability *to those who personally committed acts of terrorism*. On the contrary, it would be counterintuitive to conclude that Congress imposed criminal liability in § 2339A and 2339B on those who financed terrorism, but did not intend to impose civil liability on those same persons through § 2333." *Boim*, 291 F.3d at 1014 (emphasis added).

Boim involved the parents of a young United States citizen murdered in Israel by members of the Islamic revolutionary organization, Harakat Al-Muqawama Al-Isamiyya ("HAMAS"). The Boims brought an action under 18 U.S.C. § 2333 against not only the terrorists that actually killed their son, but also against charitable organizations that served as front organizations that aided, abetted, financed and provided material support or resources to the terrorist group, HAMAS, through a series of money laundering schemes. The defendants moved to dismiss the complaint for failure to state a claim upon which relief may be granted. *Id.* at 1004. The district court issued a lengthy opinion in which it denied the defendants' motion to dismiss, and the Seventh Circuit subsequently affirmed that judgment. *Id.* at 1001. In so doing, the Seventh Circuit recognized two theories of liability under which the Plaintiffs' complaint could be sustained under 18 U.S.C. § 2333. (The Court also affirmed that 18 U.S.C. 2333 expressly created a private right of action for plaintiffs who are injured by reason of an act of international terrorism. *Boim* at 1019.)

First, the court concluded that the provision of material support to international terrorist organizations gives rise to civil liability under 18 U.S.C. 2333. The court concluded plaintiffs may recover under § 2333 if they can prove that the defendants violated 18 U.S.C. §§ 2339A and 2339B, which criminalize the provision of "material support or resources" to terrorists and foreign terrorist organizations, respectively. *Boim*, 291 F.3d at 1012-13. As used in §§ 2339A and 2339B, "material support or resources" means "currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."[11] 18 U.S.C. § 2339A(b).

Accordingly, the court concluded that, if the *Boim* plaintiffs could prove that the defendants violated either § 2339A or § 2339B by providing material support or resources to terrorist activities, then that conduct was necessarily sufficient to support a finding of "international terrorism" under §§ 2333 and 2331. *Boim*, 291 F.3d at 1015. In other words, the knowing or intentional provision of material support to terrorist groups gives rise to civil liability against those who so sponsor, irrespective of who ultimately pulls the trigger, plants the bomb, or hijacks the aircraft. *Boim*, 291 F.3d at 1015. Such a showing also goes to proximate cause. See *Boim* 291 F3d at 1015 (discussing requirement a plaintiff be injured "by reason of" act of international terrorism as to be demonstrated under traditional tort law.)

The second theory of liability endorsed by the Seventh Circuit permits recovery under § 2333 where the plaintiffs have proven that the defendants have aided and abetted an act of international terrorism. *Boim*, 291 F.3d at 1021. The court reasoned that "although the words 'aid and abet' do not appear in the statute, Congress purposely drafted the statute to extend

[11] The term "material" within this statutory framework does not equate with substantial or considerable, but rather, "relates to the type of aid provided rather than whether it is substantial or considerable." *Boim*, 291 F.3d at 1015. "Material support or resources" is very broadly defined within the statute. *Boim* 291 F.3d at 1015; 2339A(b). Therefore, is not the measure of the act, but the nature of the act that controls: "even small donations made knowingly and intentionally in support of terrorism may meet the standard for civil liability." *Boim* 291 F.3d at 1015.

liability to all points along the causal chain of terrorism." *Id.* at 1019-20. Specifically, Congress defined "international terrorism" to include activities that "*involve* violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State . . . " 18 U.S.C. § 2331(1) (emphasis added). The court concluded that such language "taken at face value would certainly cover aiding and abetting violent acts." *Boim*, 291 F.3d at 1020. The court further stated that the failure to impose aider and abettor liability on those who knowingly and intentionally funded acts of terrorism would thwart "Congress' clearly expressed intent to cut off the flow of money to terrorists at every point along the causal chain of violence." S. Rep. 102-342, at 22. *Boim*, 291 F.3d at 1021. The guidance of *Boims*' statutory interpretation was recently adopted as a well-reasoned standard by Judge Hellerstein in the Southern District of New York, in the context of the September 11th litigation before that court under the ATA. *See Mulligan v. The Port Authority of New York and New Jersey,* Civ. Action No. 02Civ.6885 (S.D.N.Y. September 6th, 2002). (Providing guidelines for lawsuits before him in the wake of September 11th "except a lawsuit against nations, entities or persons who perpetrated the terrorist acts of September 11th, 2001, or conspired, aided and abetted or participated in them in any manner as those terms are elucidated in *Boim v. Quranic Literary Institute*, 291 F.3d at 1000 (7th Circuit 2002.")

The Plaintiffs also recognize a recent decision by this Court -- *Ungar v. Iran*, 211 F. Supp. 2d 90, 97 (D.D.C. 2002) -- which notes *Boim* in mentioning the paucity of appellate review as it relates to 28 U.S.C. 1605(a)(7). It is worth stating that *Ungar* was decided in the narrow context of obtaining a default judgment against a foreign state defendant and what the relevant standard of proof is under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1608(e). While factually, procedurally and legally distinguishable, the *Ungar* and *Boim* decisions are in harmony when viewed in the broader context. As a threshold matter, the Plaintiffs believe that *Ungar* and the issue regarding the appropriate standard to be applied in a default situation will not be present in the *Burnett* case for three reasons. First, there is only one foreign state defendant (and its agents and instrumentalities) named in this case -- The Republic

of Sudan. Accordingly, the FSIA will be implicated in only a small portion of the claims in this case. Second, the Plaintiffs expect that The Republic of Sudan, or someone on its behalf, will appear and defend this action. As a result, the Plaintiffs do not currently contemplate that it will be necessary to move for default judgment pursuant to 28 U.S.C. § 1608(e) in this matter. Therefore, the issue regarding the requisite standard of proof as discussed in *Ungar* is somewhat of a non-issue in this case. (Nevertheless, it is worth noting that this Court itself recognized in *Ungar* that indirect evidence is often required in proving a civil conspiracy, and that aiding and abetting and/or mutual sponsorship are recognized standards in the context of civil anti-terrorism actions. *Ungar*, 211 F. Supp. 2d at 100.) Moreover, the third and most compelling reason why *Ungar* is largely distinguishable from *Burnett* is that as for the Defendants named in the instant matter (who will have a full and fair opportunity to defend, and have already indicated publicly their intention to do so) the proof will show that under the relevant standards of proof as contained in the relevant jurisprudence regarding civil liability for acts of international terrorism, the Defendants can and will be held liable.

The *Boim* court summarized its holding thusly, "so long as the plaintiffs are able to prove that the defendants knew about the organization's illegal activity, desired to help that activity succeed and engaged in some act of helping" that activity the elements of 18 U.S.C. 2333 are met. *Boim* 291 F.3d 1018. This is not inconsistent with what the Court was asking for in *Ungar*; it was asking for a measure of proof, facts that form the link in the causal chain. As the Court admitted in the *Ungar* case, the plaintiff's evidence for the proposition that Iran's support of terrorism caused the *Ungars'* deaths was "more attenuated than that presented in any previous 1605(a)(7) case" of which it was aware. *Ungar* 211 F.Supp.2d at 97. The Court invited additional submissions of proof and even an appeal on the standard applied, to no apparent avail. Put plainly, *Ungar* is a case limited to its facts, or lack thereof.

The line of civil jurisprudence that has followed the growth of international terrorism is consistent in many respects.[12] The teachings of these cases are consistent not only with the two pronged analysis as discussed in *Boim*, but more basically, provide a touchstone test or theme - whether the Defendants knew or should have known that the acts they engaged in were providing sponsorship of anticipated criminal acts of international terror against the United States – not whether they knew how the acts would be carried out. Where Defendants knowingly or intentionally materially sponsored, or aided and abetted a shared common goal – herein that of promoting and sponsoring a scheme of international terrorism known to be deliberately aimed at America, civil liability will be imposed. This is true irrespective of whether those aiding, abetting or providing the material sponsorship knew the intricacies of the ultimate deadly means employed in furtherance of this common goal. The sponsorship of international terrorism, world destruction, and the promotion of mass murder are not only criminal acts, they are civilly actionable.

The issue in *Ungar* centered on the appropriate standard under a 1608(3) FSIA default, but in doing the Court examined whether proximate causation was established by the Plaintiff. Under 18 U.S.C. 2333, *Boim* and *John Doe I, et al., v. Unocal Corporation, et al.,* 2002 WL 31063976 *(*9th Cir. (Cal.)), where aid to terrorists is "material" – the term provides a causal link between the provision of funds and the ultimate injury from the terrorist action. See Boim, 291 F.3d at 1015. For civil liability, 18 U.S.C. §2333 requires that the plaintiff be injured "by reason of" the act of international terrorism; this phrase has been held to mean that "causation may be demonstrated as it would be in traditional tort law." *Boim* at 1015. Clearly, where the aiding and

---

[12] *See Boim,* 291 F.3d 1000 (7th Cir. 2002); *In re Estate of Ferdinand Marcos Human Rights Litigation*, 25 F.3d 1647 (9th Cir. 1994); *Kadic v. Karazdic*, 70 F.3d 232 (2d Cir. 1995); *John Doe I, et al., v. Unocal Corporation, et al.,*2002 WL 31063976 (9th Cir. (Cal.)); *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1 (D.D.C. 1998); *Hill v. Republic of Iraq*, 175 F.Supp.2d 36 (D.C. 2001) *Wagner v. The Islamic Republic of Iran*, 172 F.Supp.2d 128 (D.D.C. 2001); *Elahi v. The Islamic Republic of Iran*, 124 F. Supp2d 97 (D.D.C. 2000); *Higgins v. The Islamic Republic of Iran, et. al*., No. 99-00377, 2000 WL 336743411 (D.D.C. 2000); *Sutherland v. Islamic Republic of Iran*, 151 F. Supp.2d 27 (D.D.C. 2001); *Jenko v. Islamic Republic of Iran*, 154 F. Supp.2d 27 (D.D.C. 2001); *Pohill v. The Islamic Republic of Iran, et. al.*, 2001 U.S. Dist. Ct. LEXIS 15322 (2001); *Ungar v. Iran*, 211 F. Supp. 2d 90, 97 (D.D.C. 2002).

abetting of terrorism is established by the evidence, this showing will also satisfy proximate cause. *Id.* Aiding and abetting requires actual or constructive (i.e. reasonable) knowledge that ones actions will assist the perpetrator in a commission of a crime – irrespective of whether the aider and abettor knows the precise crime that the principal intends to commit. *Unocal* at 10, 13, 16. "Thus, because (defendant) knew that acts of violence would probably be committed, it became liable as an aider and abettor when such acts of violence – specifically murder and rape – were in fact committed." *Unocal* at 17.

In addition to claims pursuant to 18 U.S.C. 2333, as analyzed above, the Plaintiffs herein also allege causes of action under the Alien Tort Claims Act, 28 U.S.C. 1350, the law of Nations, the Racketeer Influenced and Corrupt Organizations Act, or RICO, 18 U.S.C. 1961 et. seq.; and the FSIA. With the noted exception of appellate decisions on default standards under the FSIA, the jurisprudence on these statutes is well developed and relevant to the instant case. The recent *Unocal* decision deals with these additional causes of action and the relevant standards of proof at length.

In analyzing the Alien Tort Claims Act (ATCA) and the law of Nations, the 9th Circuit in *Unocal* reversed the district court's requirement that "active participation" in the illegal acts complained of be demonstrated. *Unocal* at 10. Instead, the court held that the appropriate standard for aiding and abetting under the ATCA and the law of Nations is "knowing practical assistance or encouragement that has a substantial effect on the perpetration of the crime." *Unocal* at 10. The court also noted that it is well-settled that the law of nations is part of the federal common law. *Unocal* at 11. Joining the 7th Circuit in *Boim* and the 2nd Circuit in *Kadic*, in the context of international terrorism, the 9th Circuit reaffirmed the rationale that the actual participation or knowledge of the ultimate terrorist incident is not required to establish liability. Thus, "it is not necessary for the accomplice to share the *mens rea* of the perpetrator, in the sense of the positive intention to commit the crime. In fact, it is not even necessary that the aider and abettor knows the precise crime the principal intends to commit. Rather, if the accused is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact

committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor." *Unocal* at 13 (citations omitted.)

In taking guidance from both criminal and international law, the 9th Circuit applied the standard of actual or constructive knowledge that the acts would assist in the commission of a crime. *Unocal* at 8, 15, 20. Practical assistance that had a substantial effect (*e.g.* in the present matter, financing of terrorist training) was the threshold in that context, and one that is relevant herein. *Unocal* at 16. The 9th Circuit also reaffirmed the 2nd Circuits' view that in instances of mass murder, a private right of action under the ATCA does not require a finding that an "act of state" is involved. *See Unocal* at 20; *Kadic*, 70 F.3d at 250. These holdings are entirely consistent with the international consensus condemning acts of genocide and terrorism generally, and the attacks of September 11, 2001 specifically. Immediately following the attacks of September 11th, The United Nations Security Council, by resolution 1373, unanimously held that all Nations should act to prevent and suppress the financing and support of terrorism, including the seizing of financial assets of those who facilitate the commission of terrorist acts. U.N. Security Council Resolution 1373 (2001). The practical and policy applications of this resolution cannot be overstated. The concurring opinion in *Unocal* reached a similar result but argued the appropriate standard was federal common law as opposed to the law of nations. *Unocal* at 24 - 28. The concurrence reasoned that the federal common law was so well-developed in the context of anti-terrorism cases that criminal and international law, while informative, need not be controlling. The distinction is somewhat semantic in that the same result is reached by both. In the end, the concurrence also adopted a *Boim*-style analysis as the appropriate standard for liability and causation.

3. <u>The Instant Case.</u>

This action seeks to hold accountable al Qaeda terrorists and their sponsors for the financing, sponsorship, and provision of material, logistical support or resources that led to the attacks of September 11, 2001. The financial resources and support networks that aid and abet al

Qaeda – the businesses, charities, and individuals who operate in the shadows and often under a thin veil of legitimacy – are what enabled these attacks to be carried out. The conduct of the Defendants, as described in exacting detail in the complaint, was in furtherance of a civil conspiracy, an enterprise and scheme, aiding and abetting, and/or providing material sponsorship to acts of international terrorism that 18 U.S.C. 2333, The USA Patriot Act, Title X, 2001, and related statutes were enacted to prevent and punish. As the Seventh Circuit put it:

> The only way to imperil the flow of money and discourage the financing of terrorist acts is to impose liability on those who knowingly and intentionally supply the funds to the persons who commit the violent acts. *Boim,* 291 F.3d at 1000.

The international terrorists al Qaeda and its figurehead Osama bin Laden are and have been internationally recognized as a danger to innocent persons generally, and the United States specifically. Simply stated, the attacks of September 11, 2001, could not have occurred without significant funding, training and logistical support to the hijackers. Nor could such plans, on such a scale, have been concocted entirely in secret, nor done without a trace. In fact, the hijackers have left a trail, and that trail leads to the Defendants in this matter. That is not to assert that the Plaintiffs need prove that each and every aider and abettor or material sponsor knew the intimate details of the September 11th plot. (In fact, it would be counter-intuitive to expect that is how the terrorist cells operate.) Rather, what is required and will be shown is that the Defendants in this action – with constructive or actual knowledge – gave material support and thereby sponsored and promoted the international terrorism of al Qaeda. It was this sponsorship and support that made the events of September 11th even possible.

The individuals, banks, charities and businesses named in the complaint comprise a vast, interconnected web of terrorist supporters. At the center of many of these organizations are known al Qaeda terrorists and their sponsors. Many of the "charity" Defendants have been designated as nothing more than fictitious covers for terror sponsorship, by governments across the world. They are money launderers for terrorism internationally. The various Defendants are vast in scope, yet a closely inter-connected group. As an example, the al Baraka Bank is run by

Saleh Abdullah Kamel, who also co-chairs the al Shamal Islamic Bank and financially supports the al Haramain charity. The al Haramain charity is a known sponsor of al Qaeda; a Bosnian report concluded that al Haramain acted as a channel for financing the activities of terrorist organizations generally, and Osama bin Laden specifically. By knowingly aiding and abetting al Qaeda and by engaging in the material sponsorship of international terror, they are liable under *Boim* for the end results they facilitated.

The al Barakaat Exchange is a defendant that has been officially designated by the United States Department of Treasury as a terrorist entity and financial sponsor of Osama bin Laden. This is an example of a defendant that engaged in the intentional and material sponsorship of international terrorism rendering them liable under 18 U.S.C. 2333 and related theories. This is true irrespective of whether the al Barakaat financiers - engaged in the material sponsorship and aiding and abetting of international terrorism - knew the intricacies and ultimate details of the September 11 plans. Nor will feigned ignorance of the plot not shield them from liability for the attacks they enabled, for the test cannot be purely subjective. As the *Boim* court reasoned, "if we failed to impose liability on aiders and abettors who knowingly and intentionally funded acts of terrorism, we would be thwarting Congress' clearly expressed intent to cut off the money flow to terrorists at every point along the causal chain of violence." *Boim* 291 F.3d at 1021. The anti-terrorism provisions of the federal law "would have little effect if liability were limited to persons who pull the trigger or plant the bomb because such persons are unlikely to have assets, must less assets in the United States, and would not be deterred by the statute." *Boim* 291 F.3d at 1021. "(P)erhaps more importantly, there would not be a trigger to pull or a bomb to blow up without the resources to acquire such tools of terrorism and bankroll the persons who actually commit the violence." *Boim* 291 F.3d at 1021. Those who raised, laundered, and forwarded the funds or other material support to al Qaeda terrorists are liable for the terror they empowered and unleashed.

Another of the Defendants herein at the epicenter of the sponsorship of al Qaeda terrorism is Osama bin Laden's brother-in-law - the defendant Khalid bin Mafouz, who until

recently ran the National Commercial Bank. Bin Mafouz has historically, consistently funneled money in support of al Qaeda and international terrorism through the National Commercial Bank, the International Islamic Relief Organization, and the Muwafaq "charity." The bin-Mafouz-National Bank-IIRO connection in sponsoring international terrorism generally, and al Qaeda specifically, meets the standard for imposition of liability under either a material support or aid and abet analysis. The same is true of the remainder of the Defendants named in the Complaint.

The proof uncovered to date shows an intricate, overlapping web of material sponsorship, aiding and abetting, and civil conspiracy to commit and promote international terror. *Id*. As the trail of material support and financial sponsorship of Osama bin Laden and al Qaeda continues to be identified and traced, additional sponsoring entities will surface. As a result, Plaintiffs anticipate additional defendants will be identified in the course of the investigation and as formal discovery begins.

This Court's expeditious treatment of Plaintiffs' request to serve letters rogatory requesting background documents and information possessed by the Spanish court investigating certain al Qaeda cells is greatly appreciated. As the investigation continues, Plaintiffs anticipate the need to bring similar requests to the Court as the evidence warrants, which leads to a discussion of Plaintiffs' Motion to Amend the Amended Complaint.

C. <u>The Plaintiffs' Motion To Amend The Amended Complaint.</u>

By separate motion, the Plaintiffs have moved to amend their Amended Complaint. As indicated above, and in the Motion to Amend, the Plaintiffs previously attempted to file a Second Amended Complaint. While the Plaintiffs' motion provides the procedural vehicle through which the Court may now accept the Second Amended and an explanation as to the confusion surrounding its attempted filing, in the context of this report, the Plaintiffs felt it appropriate to

provide the Court with the reasons why the Complaint has been amended twice and will probably require additional amendments in the near future.[13] The reasons are three-fold.

First, additional plaintiffs are continually seeking to participate in this case, thus necessitating amendment to include them. Counsel contemplates that if leave is granted to file a Third Amended Complaint they will add approximately 800 Plaintiffs for a combined total of over 2,600 Plaintiffs. It is anticipated that additional Plaintiffs may continue to seek to join the suit. The ends of justice are served by allowing free and liberal amendments at this stage in the proceeding. Fd. R. Civ. P. 15(a).

Second, the nature of the investigation underlying this case also necessitates further amendment of the Complaint. The investigation of this case has been coordinated and supervised by Plaintiffs' counsel. In the course of this ongoing investigation, additional aiders and abettors and terrorist sponsors are being unearthed. The Plaintiffs' investigators established direct contacts to sources of information and caches of documents in many countries including Great Britain, Bosnia-Herzegovina, Germany, Italy, Spain, Israel, and the Netherlands. Moreover, the investigators established contacts in, and are collecting evidence from Russia, Uzbekistan, Tajikistan, India, and Pakistan. Investigators have also been dispatched to Israel to review, catalog, and acquire documents pertaining to the funding of terrorism by many of the Defendants and potential new defendants.

Significant highly relevant information and documentation is expected from a variety of nations, including those mentioned. Israel, for example, is willingly making available to the Plaintiffs herein an immense collection of information and documentation that is critical to this case, and to the Plaintiffs' goal of uncovering the truth. Plaintiffs' counsel notes with disappointment the United States government's apparent stand with respect to supporting discovery efforts in this matter. That some former political opponents of the United States have

---

[13] The Plaintiffs are prepared to file the Third Amended Complaint within thirty days of the status conference, or sooner, if directed by the Court.

provided substantial assistance evidences the widespread support for the war on terror and the role that these Plaintiffs can play in that battle. While the United States government stands mute is regrettable to the Plaintiffs; that the government would actively obstruct either formal or informal discovery efforts is inexcusable and inconsistent with the common goals we share as Americans and civilized persons in preventing further violence.

Considering the geographical range and cultural diversity of the Defendants, and the diverse locations of much of the evidence used to make and support the allegations contained in the Complaint, the investigation has proceeded as expeditiously as possible. Nonetheless, additional compelling evidence of the involvement of other individuals and businesses continues to be collected, necessitating additional amendment of the Complaint. The Spanish indictment, of which the Court is already aware, alleges that five individuals have been arrested in Spain, having served as directors of ten Madrid-based corporations that laundered money from certain Saudi Arabian interests to al Qaeda. According to the criminal indictment, the money was funneled to al Qaeda cells in Germany. (Plaintiffs' counsel is also in contact with the German prosecutors to obtain the evidence they possess.) Plaintiffs seek to add as Defendants the individuals and entities identified in the Spanish indictment, among others. It is clear that based on the information contained in the Spanish criminal indictments, these parties offered material support and resources to al Qaeda. The illegal laundering of money by these parties to the al Qaeda terrorist cell in Germany, and to the 9/11 hijacker Mohammed Atta, justifies leave to amend to add these parties as Defendants.

In addition to those identified in the Spanish indictments, the Plaintiffs seek leave of Court to add three additional banks as Defendants, based on the evidence to date: Bank al-Taqwa, Dubai Islamic Bank, and the Arab Bank. Bank al-Taqwa has been designated as a terrorist front organization that is part of the al Qaeda financial network. See Executive Order November 7, 2001. On August 29, 2002, fourteen additional organizations affiliated with al-Taqwa were similarly designated as terrorist sponsors and their assets were frozen. Executive Order August 29, 2002. One of the ringleaders of the al-Taqwa bank, Youssef M Nada, is

already named as a defendant in this suit. The Bank al-Taqwa has intimate ties to many of the other Defendants herein, in keeping with the overlapping nature of the illicit commingling and laundering of funds to provide support and sponsorship of al Qaeda. The stringent standard imposed by the United States government in so designating terrorist entities, such a designation more than satisfies the standards required for notice pleading at this stage of the proceeding. Boim 291 F.3d at 1027.

The Arab Bank and the Dubai Islamic bank are similarly implicated for their roles in the furtherance of international terrorism; Plaintiffs respectfully request they should be allowed leave to amend to bring the proper parties before this Court in a timely fashion. An additional charity that serves as a front has been determined by Plaintiffs counsel to be a proper party to this suit. Additional information that the Court requires as to the Defendants to be added will be provided if helpful. However, Plaintiffs suggest that it is in the interest of justice that parties be added to this action in a timely manner. *See Fed. R. Civ. P. 15(a)*; *see also Harris v. Secretary, United States Dep't of Veterans Affairs*, 126 F.3d 339, 344-45 (D.C. Cir. 1997) (amendments prior to a responsive pleading shall be freely given under Rule 15(a)); *Gaubert v. Federal Home Loan Bank Bd.*, 863 F.2d 59, 69 (D.C. Cir. 1988) ("Leave to amend should ordinarily be freely granted to afford a plaintiff an opportunity to test his claim on the merits.")

Finally, there are certain minor technical amendments to the jurisdictional allegations and the legal counts that Plaintiffs seek leave of Court to amend. These changes include correction of certain typographical errors, minor reorganization and clarification of the legal counts, and the addition of parties as described above. *See* Motion for Leave to Amend the Amended Complaint, filed September 27, 2002.

Respectfully Submitted,

/S/ Ronald L. Motley
Ronald L. Motley, Esq. (SC Bar No. 4123)
Joseph F. Rice, Esq. (SC Bar No. 4710)
Jodi Westbrook Flowers, Esq. (SC Bar No. 66300)
Donald Migliori, Esq. (RI Bar No. 4936; MA Bar No. 567562; and MN Bar No. 0245951)
Michael Elsner, Esq. (NY & VA Bar Nos. ME-8337)
Anne McGinness Kearse, Esq. (SC Bar No. 15642)
Elizabeth Smith, Esq. (SC Bar No. 68246)
NESS, MOTLEY, P.A.
28 Bridgeside Boulevard, P.O. Box 1792
Mount Pleasant, South Carolina 29465
Telephone: (843) 216-9000

/S/ Allan Gerson
Allan Gerson, Esq. (DC Bar No. 327494)
ATTORNEY AT LAW
4221 Lenore Lane
Washington, DC 20008
Tel: (202) 966-8557

/S/ Harry Huge
Harry Huge, Esq. (DC Bar No._55640)
ATTORNEY AT LAW
Market Street North
401 Ninth Street, N.W., Suite 450
Washington, DC 20004
Telephone: (202) 824-6046

/S/ John D'Amato
John D'Amato, Esq., (NY Bar No. JD-9041)
Guy Molinari, Esq., (NY Bar No. GM-2155)
RUSSO, SCARNARDELLA & D'AMATO, P.C.
1010 Forest Avenue
Staten Island, NY 10310
Telephone: (718) 442-0900

/S/ William N. Riley
William N. Riley, Esq.(IN Bar No. 4941-49)
R. Douglas Hailey, Esq. (IN Bar NO. 7375-49)
Mark K. Dudley, Esq. (IN Bar No. 15418-49)
Amy Ficklin DeBrota, Esq. (IN Bar No. 17294-49)
Mary Beth Ramey, Esq. (IN Bar No. 5876-49)
ATTORNEYS AT LAW
3815 River Crossing Parkway, Suite 340
Indianapolis, Indiana 46240
Telephone: (317) 848-7939

/S/ Paul J. Hanly, Jr.
Paul J. Hanly, Jr., Esq. (NY Bar No. PH-5486)
HANLY & CONROY, LLP
415 Madison Avenue
New York, NY 10017-1111
Telephone: (212) 401-7600

/S/ Jack Cordray
Jack Cordray, Esq. (SC Bar No. 1400)
CORDRAY LAW FIRM
40 Calhoun Street
Charleston, SC 29401
Telephone: (843) 577-9761

/S/ Thomas E. Mellon, Jr.
Thomas E. Mellon, Jr., Esq. (PA Bar No. 16767)
John A. Corr, Esq., (PA Bar No. 52820)
Stephen A. Corr, Esq. (PA Bar No. 65266)
MELLON, WEBSTER & SHELLY
87 North Broad Street
Doylestown, PA 18901
Telephone: (215) 348-7700

/S/ Don Howarth
Don Howarth, Esq. (CA Bar No. 53783)
Suzelle M. Smith, Esq. (CA Bar No. 113992)
Robert D. Brain, Esq. (CA Bar No. 98815)
HOWARTH & SMITH
800 Wilshire Boulevard, Suite 750
Los Angeles, CA 90017
Telephone: (213) 955-9400

/S/ Sanford Rubenstein
Sanford Rubenstein, Esq. (NY Bar No. SR-4488)
RUBENSTEIN AND RYNECKI
16 Court Street
Brooklyn, NY 11241
Telephone: (718) 522-1020

/S/ Samuel L. Davis
Samuel L. Davis, Esq.
(DC Bar No. 326579 & NJ Bar No. 7257)
DAVIS, SAPERSTEIN & SALOMON, P.C.
375 Cedar Lane
Teaneck, NJ 07666
Telephone: (201) 907-5000

/S/ Michael N. Block
Michael N. Block, Esq. (NY Bar No. 0957)
SULLIVAN, PAPAIN, BLOCK, MCGRATH
& CANNAVO, P.C.
120 Broadway Avenue, 18th Floor
New York City, NY 10271
Telephone: 212-732-9000

/S/ Vincent F. Pitta
Vincent F. Pitta, Esq. (NY Bar No. VFP1435)
Milton Mollen (NY Bar No. MM1504A
HERRICK, FEINSTEIN, LLP
2 Park Avenue
New York City, NY 10016
Telephone: 212-592-1400

/S/ Robert Conason
Robert Conason, Esq. (NY Bar No. RC2605)
GAIR, GAIR, CONASON, STEIGMAN
& MACKAUF
80 Pine Street
New York City, NY 10005
Telephone: 212-943-1090

/S/ J.D. Lee
J. D. Lee, Esq. (TN Bar #2030)
LEE, LEE & LEE
422 S. Gay Street
Knoxville, TN 37902
Telephone: 865-544-0101

/S/ Gary O. Galiher
Gary O. Galiher, Esq. (HI Bar No. 2008)
GALIHER, DEROBERTIS, NAKAMURA, ONO
& TAKITANI
610 Ward Avenue, Suite 200
Honolulu, Hawaii 96814
Telephone: 808-597-1400

/S/ Anthony M. Sellitto, Jr.
Anthony M. Sellitto, Jr., Esq.
OLIVER & SELLITTO
205 Bond Street
Asbury Park, NJ 07712
Telephone (732) 988-1500

/S/ Kenneth Sacks
Sacks and Sacks, LLP
150 Broadway, 4th Floor
New York, NY 10038
Telephone (212) 964-5570

Attorneys for Plaintiffs

Dated: September 30, 2002