

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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IN RE TERRORIST ATTACKS ON
SEPTEMBER 11, 2001

CIVIL ACTION NO.
03 MDL 1570 (GBD)

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FIONA HAVLISH, in her own right
and as Executrix of the ESTATE OF
DONALD G. HAVLISH, JR., Deceased,

CIVIL ACTION NO.
03-CV-9848 – GBD

RUSSA STEINER, in her own right
and as Executrix of the ESTATE OF
WILLIAM R. STEINER, Deceased,

Case Transferred from the
United States District Court
for the District of Columbia
Case Number 1:02CV00305

CLARA CHIRCHIRILLO, in her own right
and as Executrix of the ESTATE OF
PETER CHIRCHIRILLO, Deceased,

TARA BANE, in her own right,
and as Executrix of the ESTATE OF
MICHAEL A. BANE, Deceased,

GRACE M. PARKINSON-GODSHALK, in her
own right and as Executrix of the ESTATE OF
WILLIAM R. GODSHALK, Deceased,

ELLEN L. SARACINI, in her own right
and as Executrix of the ESTATE OF
VICTOR J. SARACINI, Deceased,

THERESANN LOSTRANGIO, in her own right
and as Executrix of the ESTATE OF
JOSEPH LOSTRANGIO, Deceased, *et al.*,

Plaintiffs,

v.

SHEIKH USAMAH BIN-MUHAMMAD
BIN-LADEN, a.k.a. OSAMA BIN-LADEN,

AL-QAEDA/ISLAMIC ARMY,
an unincorporated association, *et al.*,

FOREIGN STATE DEFENDANTS:

- THE ISLAMIC REPUBLIC OF IRAN,
- AYATOLLAH ALI-HOSEINI KHAMENEI,
- ALI AKBAR HASHEMI RAFSANJANI,
- IRANIAN MINISTRY OF
INFORMATION AND SECURITY,
- THE ISLAMIC REVOLUTIONARY
GUARD CORPS,
- HEZBOLLAH,
an unincorporated association,
- THE IRANIAN MINISTRY
OF PETROLEUM,
- THE NATIONAL IRANIAN
TANKER CORPORATION,
- THE NATIONAL IRANIAN
OIL CORPORATION,
- THE NATIONAL IRANIAN
GAS COMPANY,
- IRAN AIRLINES,
- THE NATIONAL IRANIAN
PETROCHEMICAL COMPANY,
- IRANIAN MINISTRY OF
ECONOMIC AFFAIRS AND FINANCE,

IRANIAN MINISTRY OF	:
COMMERCE,	:
	:
IRANIAN MINISTRY OF DEFENSE	:
AND ARMED FORCES LOGISTICS,	:
	:
THE CENTRAL BANK OF THE	:
ISLAMIC REPUBLIC OF IRAN, <i>et al.</i> ,	:
	:
Defendants.	:

MOTION FOR APPROVAL OF FORM AND PROCEDURE FOR LIS PENDENS

NOW COMES the Plaintiffs in this matter by counsel and hereby move for approval of form and procedure for the filing of *Lis Pendens*.

In support hereof, the Plaintiffs state as follows:

1. On January 28, 2008, the President signed the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181).
2. The new law includes new provisions and amends certain former portions of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602, *et seq.* which creates a federal *lis pendens* procedure in federal courts with respect to assets subject to attachment in aid of execution, or execution, under the new 28 U.S.C. § 1610.
3. With respect to the new federal *lis pendens* procedure, 28 U.S.C. § 1605A(g)

specifically states:

- (g) Property Disposition –
 - (1) IN GENERAL – In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall

have the effect of establishing a lien of *lis pendens* upon any real property or tangible personal property that –

- (A) subject to attachment in aid of execution, or execution, under section 1610
 - (B) located within that judicial district;
and
 - (C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.
- (2) NOTICE- A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.
- (3) ENFORCEABILITY – Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

4. The new law does not describe, other than in very general terms, how this federal *lis pendens* procedure is to operate. The Plaintiffs are concerned that the establishment of their liens through the notices of *lis pendens* in other jurisdictions will be delayed by the uncertainty of local clerks as to how to implement this procedure. In order to avoid this delay, the Plaintiffs have filed this Motion to confirm how Plaintiffs may obtain a *lis pendens* in other jurisdictions for its Motion for Supplemental Relief.

5. The Plaintiffs propose the following procedure and content for the filing of *lis pendens* under the new statute:

- A. The Plaintiffs will file the notice of *lis pendens* form attached hereto as Exhibit 1. The form shall identify the name of the person/entity subject to the notice of *lis pendens* pursuant to the new statute;
- B. The Plaintiffs will attach a copy of the third amended complaints as an exhibit to the notice of *lis pendens*.

- C. The Plaintiffs will attach a copy of the order approving this motion as an exhibit to the notice of *lis pendens*.
- D. The clerk's office shall index the notice of *lis pendens* on its miscellaneous docket or in the same manner as any new action and it shall be indexed by listing as defendants all persons/entities identified in the notice of *lis pendens*.

6. Upon the filing of the notice of *lis pendens* under the new statute, the Plaintiffs will have liens in property in the judicial districts where the notice of *lis pendens* are filed to the extent permitted under 28 U.S.C. 1605A(g) which the Plaintiffs may subsequently enforce.

7. This Motion is being submitted to aid with the efficient implementation of the newly created *lis pendens* procedure. In the absence of the relief requested herein, the Plaintiffs believe that clerk's offices will be confused and will not know how to address Plaintiffs' requests for *lis pendens* under the new statute.

WHEREFORE, the Plaintiffs respectfully request that this Court:

- A. Grant the Motion; and
- B. Grant such other and further relief as is just and appropriate under the circumstances.

Dated: _____, 2012

Respectfully submitted,

/s/ Thomas E. Mellon, Jr.

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