



Confidential Memorandum

To: Mr. Zev Furst
From: Stephen J. Landes
Michael Dockterman
Date: February 29, 2012
Re: The Abu Dhabi Group

This memorandum outlines key points in our proposed lawsuit on behalf of the estate and family of Aryeh Teitelbaum, a US citizen who was brutally murdered in the November 26, 2008 Mumbai attack.

Basis for the Suit. The Mumbai attack was carried out by Lashkar-e-Taiba (“LeT”), a Pakistani terror group. LeT is an arm and affiliate of Jasmaat-ud-Dawa (“JUD”), a so-called charitable organization that has prominence and visibility in Pakistan even today. Other affiliates of JUD include Idara Khidmat-e-Khalq (“IKK”), Al Dawa Medical Mission (“AMM”), and Falh-e-Insaniat Foundation (“FIF”). Each is a Specially Designated Global Terrorist under US law. Hafiz Saeed, a well-known, highly visible Pakistani jihadist, controls these organizations. Saeed is regularly arrested, interrogated and released by the Pakistani government. The interrelationship between, LeT, its affiliates and Saeed is well known. These are not “shadow” groups or isolated individuals. They are vocal in their hatred for the United States, India, Hindus and Jews and are shunned in all civilized quarters where terrorism is abhorred.

We have irrefutable evidence that Bank Alfalah and United Bank Limited, two major financial institutions controlled by The Abu Dhabi Group, banked the JUD/LeT network for at least seven years leading to the Mumbai attack. On the day of the attack, JUD was running advertisements telling donors to deposit their gifts into these Banks.

It was and is illegal under US law to provide financial services to these Specially Designated Global Terrorist entities. US law makes these Banks, and the Abu Dhabi Group as their owner and sponsor, liable to the victims of the attack. This liability applies even where the acts occur and the entities operate outside of the United States.

The Anti-Terrorism Act of 1992 provides treble damages for victims of terrorism, their estates, and their survivors where 1) the victim was a U.S. national; and 2) where the victim was injured by an act of “international

terrorism.” The treble damages are recoverable from any entity which provided “material support” to the terror organization, including “financial services.”

Aryeh Teitelbaum was a U.S. citizen murdered in the Mumbai terrorist attack committed by LeT. The plaintiffs are his estate and survivors including his widow, eight minor children, parents and siblings. The first element of the Terrorism Act is not in doubt.

The second element – an act of international terrorism - is met where the defendants provided “material support” to the terror organization including “financial services.” The Abu Dhabi Group, Bank Alfalah, and United Bank Limited all provided material support when they publically acted as the bankers and collectors of “donations” for JUD, AMM, IKK and FIF. Both Bank Alfalah and United Bank Limited opened, held, and collected funds for LeT affiliate organizations. In our draft complaint we describe and attach nine advertisements by or on behalf of LeT affiliates soliciting deposits into accounts at these Banks. Certain of the ads make specific reference to “fighters” and “jihad” when they instruct donors to contribute via these Banks. The consequences of this conduct are not limited to civil liability; these are also violations of US criminal laws.

We have people in the field right now collecting additional information and data. Our sources involve not only private citizens but also the relevant agencies of the Indian Government. On January 18, 2012, Steve Landes met with high officials in the India National Investigation Agency (NIA) in Delhi. The Government of India created NIA as an agency of the Ministry of Home Affairs immediately after the Mumbai attack as a new enhanced counterterrorism agency. The meeting, which followed months of preliminary exchanges, included NIA staff members, highly placed members in the Ministry of Home Affairs and representatives of the Ministry of Law, provided additional assistance to us in our investigation.

It is not a defense under US law to claim that the funds solicited and deposited at Bank Alfalah and United Bank Limited were only going to a “charitable wing” and not to terrorists. US courts have determined that there is no distinction between “social” and “terror” wings. In any event, the “charitable wings” which owned the accounts are themselves designated terrorists under US law. The designations were well known to all banks, even those outside the US, at the time of the Mumbai attack. LeT and its affiliates required banking services to support the infrastructure that allowed them to plan and carry out the Mumbai attack. These accounts directly facilitated the LeT attack. A bank that took these accounts knew there was risk. One of the risks was liability to the terror victims. The Banks are liable to the victims under US law for aiding and abetting the attacks.

It also is not a defense for the Banks to say they did not realize the relationships between their customers and the terrorist organizations. Under US

and international banking laws the defendants were required to investigate their customers. UBL advertises today that it is fully compliant with the PATRIOT act. The evidence, however, is to the contrary for the period covered by the complaint. Knowing these customers was not difficult. In Pakistan everyone knew who they were. Bank Alfalah and United Bank Limited will not be able to show that they were unwitting.

Reasons to Settle. The 26 November Mumbai attack was the worst terror attack since 9/11. A lawsuit we are prepared to file implicating Abu Dhabi and its ruling family cannot be seen as positive from their standpoint. This will be true in the United States and even more so in India. On December 24, 2011, NIA brought charges against eight defendants including David Headley, the Chicago resident who carried out surveillance for the attack and is now in jail in Minnesota awaiting a life sentence. The charges were endorsed by the Indian government. The charge sheet was a major story in the Indian media. In November, PBS ran a full hour documentary on Headley that received much publicity in India and in the US. The show was a vivid display of how the attack was planned and the violence it created.

Terror victim suits are followed closely in the United States and India. They attract significant negative attention at expense to the defendants. Through the prospective litigation the public will learn that The Abu Dhabi Group, which touts itself as the largest foreign investor in Pakistan, also banked the terror groups. This case will directly connect The Abu Dhabi Group, Bank Alfalah, and United Bank Limited with the Mumbai rampage. The headlines will highlight the ruling family's "eminent" banking institutions, with the horror of that November day. If the case goes to verdict, it will be before a jury in Chicago. Twelve regular people will make the decision in federal court about how much to award the Teitelbaum family.

The Abu Dhabi Government will certainly claim that it opposes terrorism and is working in close alliance with the US in counterterrorism efforts. This argument has merit. On December 9 at the Jamestown Foundation Counterterrorism Conference, the State Department's head of the Bureau of Counterterrorism, Ambassador Daniel Benjamin, pointed to the Centre of Excellence for Counterterrorism, opening this year in Abu Dhabi, as an important development. When asked privately about how the flow of funds from the Gulf to terror groups fit into the Centre, however, he took umbrage. Ambassador Benjamin stated that the Abu Dhabi government, a close ally, has been resolute in supporting US counterterrorism efforts. He acknowledged that some "private" individuals might not be "as supportive." This official position will not be credible if the story, which we have documented, is told about the links between Bank Alfalah, United Bank Limited, LeT and members of the Abu Dhabi ruling family.

Ambassador Benjamin's qualification is a very gentle reflection of a December 30, 2009 State Department cable that appeared in The Dawn, a

Pakistan newspaper. The cable focuses on anti-terror financing efforts by Ambassador Richard Holbrooke and Assistant Treasury Secretary David Cohen. It specifically notes, "UAE-based donors have provided financial support to . . . LeT. . . ." It acknowledges that the "UAE's role as a growing global financial center, coupled with weak regulatory oversight, makes its vulnerable to abuse by terrorist financiers and facilitation networks." A copy of the cable is attached to the complaint.

A public lawsuit will demonstrate the clear connection between the ruling family, whose members are the chairmen of the two Banks, and terror finance. Such publicity could prompt additional inquiries and actions, both private and from the government, against the Abu Dhabi Group and its banking institutions. It was only after we brought our civil case against Hamas that the United States Department of Justice brought criminal actions against the Hamas leaders. Ultimately, the Hamas defendants went to jail, their sources of funding were shut and their funds were seized.

The Arab Bank has been in court for seven years defending a terror victims case that could have been settled long ago. Instead it will likely go to trial early next year. The judge's rulings to date suggest that Arab Bank is facing serious liability. We also understand that they have spent close to \$100 million in defending the claim. By way of comparison, the family of Daniel Pearl sued Bank Habib in 2007 alleging facts virtually identical to those in our complaint except that this large Pakistan bank acted for al Qaeda. The case was apparently promptly resolved shortly after the complaint was filed with no details being released. Bank Habib's involvement never became prominent and has faded from memory.

We understand the need to be *discrete* in this matter, both in our implication of high-level personnel in the Abu Dhabi Government and how we use our contacts with Government of India. We have been careful not to draw specific attention to the two Banks during our meetings with the authorities. No mention was made of the Abu Dhabi Group. Our goal is to provide for the Teitelbaum family. If we can do so by settling their claims quietly, we shall do so. If we cannot provide for them in this way, we are fully prepared to file our complaint in federal court in Chicago and to try the case to a successful conclusion.

The Suit Will Succeed. This suit will succeed. Claims by terror victims are now well established. Last year the United States Supreme Court upheld the applicable statute from constitutional attack. *Holder v. Humanitarian Law Project*. 130 S.Ct. 2705 (2010). Our complaint follows from the *Boim* case that our firm tried in federal court in Chicago. The Abu Dhabi Group and Bank Alfalah will claim that they can't be sued in the US since they didn't do business here. Nevertheless, the courts (and Congress) are clear that this defense does not work in terror cases. If the Banks fail to defend we can nevertheless obtain a judgment and attach their assets. The complaint meets the

standards of the Due Process Clause and international conventions signed by or acceded to by the United States, the United Arab Emirates, and Pakistan including the International Convention for the Suppression of Terrorism Financing. There is no question that there is jurisdiction over United Bank Limited, as it has a physical location within the United States and does business within the United States. If the only defendant is United Bank Limited, the same facts will prove its liability in open court.

Keep in mind that verdicts in these types of cases amount to hundreds of millions of dollars, as the Anti-Terror Act trebles damages. Our firm won a verdict of \$156 million in a very similar case. Because of the extraterritorial application of these statutes, and the nearly-global application of the UN Conventions, there will be no problem in accessing the assets of either bank or the Abu Dhabi Group in order to satisfy a judgment. As an initial source, we will have access to any property owned by the Abu Dhabi Group or the Banks in the United States as a means to satisfy a likely very high judgment amount.

Edwards Wildman Palmer LLP has extensive experience in pursuing these claims and other major litigation. We are able to sustain the litigation for years to come. We took on this case because we believe that it is the right thing to do and it has merit. Our clients wish to resolve this case and are not greedy. They are not looking for a nine-figure recovery. The Abu Dhabi Group has an opportunity to save the time, expense and public exposure. It can also do the right thing and make the victims whole.

Position of US Government. As you requested we made a useful inquiry as to what position our government would take in the event our lawsuit takes direct aim at the Abu Dhabi Group and members of the ruling family. We posed the question via our own experts, former ranking officials in the Departments of Treasury and State. They raised the issue with well-placed sources in the State Department, including those you suggested. Their conclusion is that, while the government “could have a problem” with a direct attack on the government and ruling family, it would not be much concerned with a suit against the commercial interests represented by the Banks or their sponsors. Specifically, there would not be a problem in identifying the relationship between the Banks and the Abu Dhabi Group in the legal pleadings; and the involvement of the principals of the Banks and the Abu Dhabi Group would naturally flow from the allegations of the complaint. The attached new draft of our complaint has been modified to take these concerns into account: while we do not show the Group as a defendant, we do explain the relationships between The Abu Dhabi Group and the Banks in a way that we are advised will not trigger US government protest. The actions taken this week by the US government against Noor Islamic Bank, notwithstanding its close ties to the Dubai ruling family, support this conclusion.