The future of the Foreign Claims Settlement Commission rests with the modernization of its jurisprudence: The regrettable results arising from an intersection between the Foreign Claims Settlement Commission and the U.S. insurance industry, a case study

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A recent decision by the Foreign Claims Settlement Commission to deny compensation to a U.S. insurance company flouts the language found in applicable governing documents and effectively means that a U.S. insurance company will rarely, if ever, be able to win compensation at the Commission.

The Perles Law Firm, PC has represented victims of terrorism for over two decades, including several groups of victims of Libyan terrorism. One of these matters was a case called Certain Underwriters at Lloyd’s London v. Great Socialist People’s Libyan Arab Jamahiriya, Civil Action No. 06-731, which was filed in the United States District Court for the District of Columbia on April 4, 2006. The Certain Underwriters plaintiffs, which were a consortium of insurance companies acting as reinsurers for an Egyptian airline, brought that action against the governments of Libya and Syria pursuant to the provisions of the Foreign Sovereign Immunities Act, (“FSIA”), codified at 28 U.S.C. § 1602, et seq. seeking judgment and an award of damages for acts of state-sponsored terrorism that resulted in the hijacking of EgyptAir Flight 648 on November 23, 1985, while the aircraft was bound for Cairo, Egypt from Athens, Greece. The hijacking subsequently spiraled out-of-control and culminated in the complete destruction of the EgyptAir Flight 648 aircraft when Egyptian commandos stormed the plane. Despite the availability of a valid cause-of-action under US federal law for the reinsurers, the Foreign Claims Settlement Commission (“the Commission”) has refused to compensate any of the reinsurers, a group that includes a U.S. company as defined by the Commission’s own precedent.

EgyptAir the owner of the hijacked airplane, originally contracted with MISR, an Egyptian insurance company, which then sought to reinsure its risk by

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1 Perles Law Firm, PC, Washington, DC. This paper was the foundation of the oral presentation and comments by Mr. Perles at the 2012 Sokol Colloquium on the topic of “Jurisprudence of the Foreign Claims Settlement Commission: A look to the Future.”
contracting with several insurance underwriters through the London insurance market. A London broker facilitated this complex transaction by contracting the reinsurance of MISR with many syndicate underwriters at Lloyd’s of London and surrounding insurance companies, as is commonly done in modern commerce when the placement of the asset in question into the stream of commerce could create large scale exposure for its owner. The insurance companies who contracted to reinsure the aircraft for MISR are the Certain Underwriters Plaintiffs. The risk insured by the reinsurers was for the damage faced by MISR should the airplane be destroyed or damaged within the terms of the aviation hull war policy. The single U.S. reinsurer is a company called New York Marine and General Insurance Company (“New York Marine”).

We represented not only the foreign and U.S. insurance companies, but the U.S. personal injury victims as well. The representation included the advocacy of the clients’ interests in court and with the U.S. government, in an effort to force the Libyan government to settle the claims. This effort ultimately succeeded as the U.S. and Libyan governments signed the Claims Settlement Agreement (“CSA”).

The court case was dismissed against Libya as a result of the application of the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301 (2008), passed by Congress on July 31, 2008. On August 14, 2008, the United States and Libya entered into the CSA. Then on October 31, 2008, the Secretary of State provided her certification of receipt of funds in accordance with the Claims Settlement Agreement and with Section 5(a)(2) of the LCRA. In Executive Order 13,477, President George W. Bush espoused the claims of “United States nationals within the terms of Article I” of the CSA. Article I of the CSA refers to settlement of property loss claims brought by “nationals (including natural and juridical persons)” of the parties to the agreement.

The object of the CSA and the LCRA was to settle the claims of U.S. citizens against Libya for acts of international terrorism, and in return to restore Libya’s sovereign immunity for its sponsorship of acts of terrorism. The LCRA contemplates a “comprehensive settlement…pursuant to an international agreement between the United States and Libya as a part of the process of restoring normal relations between Libya and the United States.” Eligible claimants would have the opportunity to seek compensation through a claims-settlement mechanism to be administered by the U.S. government. Section 4(a) of the LCRA requires that the Department of State “designate 1 or more entities to assist in providing compensation to nationals of the United States, pursuant to a claims agreement.”

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3 Act at § 3.
4 Id. at § 5(a)(2)(B)(ii).