

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EL-SHIFA PHARMACEUTICAL)	
INDUSTRIES COMPANY, and)	
SALAH EL DIN AHMED MOHAMMED IDRIS)	Case Number: 1:01CV00731
)	JUDGE: Richard W. Roberts
)	DECK TYPE: General Civil
)	
Plaintiffs,)	
)	
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant,)	
)	

NOTICE OF SUPPLEMENTAL AUTHORITY

The United States hereby advises the Court of supplemental United States Supreme Court authority regarding plaintiffs' claims under the Federal Tort Claims Act. This suit arises from "the destruction of the El-Shifa pharmaceutical plant (the "Plant") in North Khartoum, Sudan on or about August 20, 1998 by the armed forces of the United States" (Complaint, ¶ 1.) Before the Court is the United States' Motion to Dismiss which raises, *inter alia*, the Foreign Country exception to the Federal Tort Claims Act. 28 U.S.C. § 2680(k). Plaintiffs have argued that:

This exception does not apply to plaintiffs' damage claims because those claims arise out of the government's negligent handling of the soil sample and resulting targeting of the El-Shifa pharmaceutical plant, all of which occurred primarily, if not exclusively, in the United States.
. . . [A] claim arises for purposes of the foreign country exception where the wrongful or negligent conduct of the government occurred, not where the injury resulting from that conduct is felt.

(Plaintiffs' Mem. in Opposition to Defendant's Motion to Dismiss at 12.)

Last week the United States Supreme Court reached the opposite conclusion, holding that such "headquarters" claims fall within the protection of § 2680(k). It stated:

We therefore hold that the FTCA's foreign country exception bars all claims based on any injury suffered in a foreign country, regardless of where the tortious act or omission occurred.

Sosa v. Alvarez-Machain, ___ U.S. ___, 2004 WL 1439873 (June 29, 2004), slip op. at 17.

Respectfully submitted,

Peter D. Keisler
Assistant Attorney General
Civil Division

Kenneth L. Wainstein
United States Attorney
District of Columbia

/S/

Paul F. Figley (No. 308247)
Deputy Director
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 888, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-4270
Facsimile: (202) 616-5200

Dated: July 8, 2004

Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2004, I caused a copy of the foregoing
NOTICE OF SUPPLEMENTAL AUTHORITY, to be served via first-class U.S. mail, postage
prepaid, on the following individuals.

Stephen J. Brogan, Esq.

Timothy J. Finn, Esq.

Daniel. H. Bromberg,

Jones, Day, Reavis & Pogue
51 Louisiana Avenue, N. W.
Washington, D.C. 20001

/S/

Paul F. Figley