

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 authority regarding plaintiffs' claims.

1. On June 27 the Supreme Court entered an Order denying plaintiffs' petition for a *writ of certiorari* in *El-Shifa Pharmaceutical Indus. v. United States*, __ U.S. __, 125 S.Ct. 2963, 2005 WL 699795 (U.S.), 73 U.S.L.W. 3595 (June 27, 2005). The petition sought review of the Federal Circuit's decision which held that the political question doctrine barred plaintiffs from challenging President Clinton's decision that the United States' national security and foreign policy interests required the destruction of their pharmaceutical plant. *El-Shifa Pharmaceutical Industries Co., et al. v. United States*, 378 F.3d 1346 (Fed. Cir. 2004), *reh'g and reh'g en banc denied*.

The instant suit seeks compensation from the United States for "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.) The United States has moved to

dismiss because, *inter alia*, plaintiffs' action involves nonjusticiable political questions. *See, inter alia*, Mem. in Support of Defendant's Motion to Dismiss (filed June 1, 2001) at 28-34.

The suit filed in the Court of Federal Claims arose from the same facts as this action.¹ That suit was dismissed on political question grounds by the Court of Federal Claims. 55 Fed. Cl. 751 (Fed. Cl. 2003). The Federal Circuit affirmed the dismissal, again on political question grounds.² This is the decision for which plaintiffs unsuccessfully sought a *writ of certiorari*.

Because the final judgment in their Court of Federal Claims case was rendered against plaintiffs on the ground that the political question doctrine bars judicial inquiry into President Clinton's decision to order the destruction of plaintiffs' plant, principals of issue preclusion bar plaintiffs from re-litigating that issue in this case. The political question issue was contested by the parties and submitted for adjudication in the related case where it was actually and

¹ When plaintiffs began this suit they filed a Notice of Designation of Related Case, identifying their case filed in the United States Court of Federal Claims, *El-Shifa Pharmaceutical Industries Co., et al. v. United States*, No. 00-443L, as "involv[ing] common issues of fact" and "grow[ing] out of the same event or transaction" as this action. On April 17, 2001, plaintiffs filed with this Court a copy of the Complaint they had filed in the Court of Federal Claims. *See* Notice of Filing, Docket Entry 4.

² The circuit court concluded, *inter alia*:

[W]e think that it is up to the President to determine when he has received "convincing" or "compelling" information sufficient to justify the use of force to destroy private property located outside the territory of the United States belonging to a nonresident alien. Such a determination is, in our view, "a core strategic matter[] of warmaking belong[ing] in the hands of those who are best positioned and most politically accountable for making them." *See Hamdi*, --- U.S. at ---, 124 S.Ct. at 2647 (*citing Dep't of Navy v. Egan*, 484 U.S. 518, 530, 108 S.Ct. 818, 98 L.Ed.2d 918 (1988), and *Youngstown Sheet & Tube Co.*, 343 U.S. at 587, 72 S.Ct. 863).

Moreover, we wonder how a federal court might go about testing the veracity of the intelligence relied upon by the President in deciding to attack the Plant.

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2005, the foregoing NOTICE OF SUPPLEMENTAL AUTHORITY was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following counsel of record:

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 /S/
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