**IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA**
**- Alexandria Division -**

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| **ESTATE OF SABAH SALMAN HASSOON, et al.,**<br><br>**Plaintiffs**<br><br>**v.**<br><br>**ERIK PRINCE, et al.,**<br><br>**Defendants** | **Case No. 1:09-cv-615**<br>**Case No. 1:09-cv-616**<br>**Case No. 1:09-cv-617**<br>**Case No. 1:09-cv-618**<br>**Case No. 1:09-cv-645**<br>**(consolidated for pretrial purposes)**<br>**(TSE/IDD)** |

**SUR-REPLY TO SUPPLEMENTAL EXPERT REPORT OF DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTIONS TO DISMISS**

Plaintiffs respectfully submit an opinion by Dr. Saleem Abdullah Al Juboori, attached as Exhibit A. Mr. Al Juboori has already submitted an opinion to the Court in the Plaintiffs' Opposition to Motion to Dismiss. In addition to the three expert opinions provided in the Opposition, Plaintiffs submit a fourth expert opinion by Dr. Ihsan N. Al-Soufi, an Iraqi attorney, who has reviewed the opinion of Mr. Haider ala Hamoudi, Defendants' expert witness. His most recent Declaration, dated August 26, 2009, is attached as Exhibit B and a Declaration prepared by him for another proceeding, dated January 6, 2009, is attached as Exhibit C.

Dr. Al-Soufi's opinion rebuts the claims of Mr. Hamoudi.[1] The attached opinions state that both Iraqi statutory and case law do not limit vicarious liability to state institutions or

[1] While Plaintiffs recognize that the translation of Dr. Al-Soufi's most recent work is, at times, imperfect, the opinion nevertheless sheds light on several pertinent issues. Dr. Al-Soufi was unavailable to provide an opinion for Plaintiff's Opposition to Motion to Dismiss. His opinion in

organizations that are linked to such institutions. Dr. Al Juboori supports this opinion, stating that vicarious liability is not limited to industrial or commercial institutions which have a contract with the government. Furthermore, Dr. Al-Soufi states that punitive damages are not limited by Iraqi law. In fact, the Iraqi judiciary has established the absolute authority of the judge in assessing compensation. Dr. Al-Soufi further opines that compensation is available to any relative who incurs damage because of a family member's death, even if that person is not named in an official distribution paper.

Given the clear discrepancies between the opinions of the parties' experts, Plaintiffs respectfully request that the Court hold a hearing before ruling on the content of Iraqi law. The four experts supporting Plaintiffs are willing to appear at the Court's convenience.

/s/

Susan L. Burke (VA Bar #27769)
William F. Gould (VA Bar #67002)
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this matter was produced under a rigid deadline and as such, the translation was not further refined by him. In submitting Dr. Al-Soufi's Declaration from another proceeding, Plaintiffs shed light on two issues, punitive damages and vicarious liability, which are also disputed in this case. Furthermore, Dr. Al-Soufi's credentials are fully described in that Declaration.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of August, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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# EXHIBIT A

# Language Innovations, LLC™

*Helping businesses communicate worldwide™*

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## TRANSLATION CERTIFICATION

This is to certify that the translation of the attached document, **Ref.: Letter from** Dr. **Saleem Abdullah Al Juboori,** is to the best of our knowledge and ability, a true and accurate translation of the original text delivered to Language Innovations, LLC by our client, **Burke O'Neil LLC**. The original document was translated from **Arabic** into **English** and at completion delivered to the client on **August 27, 2009.**

I hereby declare that all statements made herein are of my own knowledge and are true and that all statements made based on information or belief are believed to be true.

Language Innovations, LLC hereby agrees to keep the content of this translation confidential according to ethical and legal standards of the profession of Translation. Language Innovations, LLC agrees not to discuss, evaluate, distribute or reproduce any material included in or related to the translation of this document.

Date: August 27, 2009

Signature: _____
Lindsey Crawford
Language Innovations, LLC

Subscribed and sworn before me this 27th day of August 2009, at Washington, DC.

_____
Notary Public

My Commission expires: BRIAN FRIEDMAN
Notary Public District of Columbia
My Commission Expires July 14, 2013

**IN THE NAME OF ALLAH, MOST GRACIOUS, MOST MERCIFUL**

**Re.: Additional pleading to prove the liability of the chief for the acts of his subordinate in accordance with the Iraqi Civil Law**

We confirm what we previously mentioned with regard to the meaning of Article (219) of the Iraqi Civil Law and we add the following to it:

1- The general stipulation of Article (219) includes in addition to the government and municipalities, the institutions performing a public service, as well as one of the industrial or commercial institutions without any limitation as to whether it has a contract with the Iraqi government or not. Any mention of limitation requires a proof, since we cannot presume the matter. Moreover, the liability is of omissive and not contractual nature, and the foundation of the omissive liability relies on the damage and not the error.

2- The meaning of the company in the Iraqi law covers any natural or juristic person carrying out a commercial activity. The civil law is a public law limited by the law of companies. Besides, there are many types of companies, the companies of the public or private sector. In both types, the state could take part in them, in its capacity of state or as a natural person. The word institution in the civil law includes the commercial companies. Besides, the civil law was enacted in 1951 and used the word institution to refer to the juristic persons who engage in a commercial activity. The law of companies was legislated in 1984 and amended in 1997 to give a meaning to the commercial company without denying its characteristic as an institution subject to the civil law.

/signature/ - 8/26/2009
Dr. Saleem Abdullah Al Juboori
Member of the Iraqi Parliament
Vice-President of the Legal Committee at the Iraqi Parliament

# EXHIBIT B

# Language Innovations, LLC™

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## TRANSLATION CERTIFICATION

This is to certify that the translation of the attached document, **Ref.: Declaration of Dr. Ihsan N. Al-Soufi,** is to the best of our knowledge and ability, a true and accurate translation of the original text delivered to Language Innovations, LLC by our client, **Burke O'Neil LLC**. The original document was translated from **Arabic** into **English** and at completion delivered to the client on **August 27, 2009.**

I hereby declare that all statements made herein are of my own knowledge and are true and that all statements made based on information or belief are believed to be true.

Language Innovations, LLC hereby agrees to keep the content of this translation confidential according to ethical and legal standards of the profession of Translation. Language Innovations, LLC agrees not to discuss, evaluate, distribute or reproduce any material included in or related to the translation of this document.

Date: August 27, 2009

Signature: _____
Lindsey Crawford
Language Innovations, LLC

Subscribed and sworn before me this 27th day of AUGUST 20 09, at Washington, DC.

_____
Notary Public

My Commission expires: BRIAN FRIEDMAN
Notary Public District of Columbia
My Commission Expires July 14, 2013

**Declaration of Dr. Ihsan N. AL-Soufi**

1. I have been asked to review a supplemental expert report prepared by Mr. Haider Ala Hamoudi and provide a declaration regarding matters referred to in that report.

After reviewing the said report or pleading, it appeared that it included legal rebuttals to the previous pleadings submitted by the plaintiffs' witness. We don't want here to repeat or reiterate what was mentioned in these pleadings, but we will only shed light on the legal aspects which we hope will contribute to reaching a fair decision on one hand, and which will be consistent with the legal provisions, the jurisprudence opinion and related applications of the Iraqi judiciary on the other hand.

The rebutted pleading relied on three topics or main cores which are the following:

- Vicarious Liability,
- Punitive Damages and;
- Claims by an Estate.

2. To discuss the opinions mentioned in the rebutted pleading so as to guarantee the easy verification of the evidence mentioned in this pleading from the standpoint of the Iraqi legislation as well as the jurisprudence and judiciary's opinions, we will adopt the same method so that our rebuttal pursues the same sequence the said cores pursued and as follows:

**i. Vicarious Liability**

3- The content of what was mentioned in this section of the pleading implies that the Vicarious Liability in accordance with Article (219) of the Iraqi Civil Law is limited to the Iraqi government or any of its institutions or any other institution or juristic person owned by the state (whether fully or in its majority) or any company or juristic or natural person related to the Iraqi government by a direct contractual relation. Consequently, and as Mr. Hamoudi explains it, private companies which are not directly linked to the Iraqi government neither by a contract nor by a partnership, are not subject to

the Vicarious Liability according to the Iraqi law. This consequence was established, as mentioned in Mr. Hamoudi's pleading, based on the interpretation of the provision of Article (219) on one hand, and the conclusion drawn from the Iraqi jurisprudence opinion on the other hand. Thus, the rebutted pleading concluded that the viewpoint of the Plaintiffs' opinion witness, according to which the Iraqi legal system is close to the Vicarious Liability, lacks and is deprived of any analysis supporting and reinforcing its validity.

4- Although the Report in Baragona Case quoted the provision of Article (219) and determined the responsibility of the chief, it is valueless, as stated in the rebutted pleading, in indicating the presence of the Vicarious Liability in the Iraqi Law, because this decision acknowledged the responsibility of any person providing any commercial or industrial enterprises.

But it includes a specific explanation as to what is meant by the expression (person providing any commercial or industrial enterprises), besides it did not reinforce this conclusion.

5- Therefore, according to the viewpoint of the rebutted pleading, the court conclusion in the Baragona Case contradicts the provision of Article (219) and the jurisprudence approaches.

6- With great respect to what Mr. Hamoudi believed, his opinion is the one which needs to be supported and lacks evidence, and the opinion of the Plaintiffs' witness is the one which finds support in:-

i. Legal provisions

ii. Jurisprudence opinion

iii. The applications of the law which the rebutted pleading neglected to refer to. We will get back later on to the evidences in detail. But in this context, it is sufficient to say that these evidences are not fit or suitable to become causes to neglect the applications of the judiciary and to disregard them, as we will see later on.

7- If we look at the meanings of all the legal provisions in a way consistent with the correct legal interpretation, we will find that they extend to include the defendant in this case.

8- Let's begin with Article (219) of the Iraqi Law which stipulated in its first paragraph the following:

(The government, municipalities and other institutions performing a public service, and any person exploiting one of the industrial or commercial institutions, are liable for the damage caused by their employees, if the damage is the result of a violation perpetrated while carrying out their services.)

9- The assessment of the substantiality of this paragraph of Article (219) of the law, leads us to confirm that it is composed of two parts, both included in the Vicarious Liability. The first part includes the government, municipalities and other institutions performing a public service. This part of this article ends here.

As to the second part, it includes any person exploiting one of the industrial or commercial institutions. We notice here that the legislator did not impose as a condition that these institutions offer a public service. It is sufficient that they be an industrial or commercial company. He also did not impose as a condition that the government contributes in them in any percentage. It is sufficient that the company be industrial or commercial. If the legislator wanted to restrict them, he would have added an expression implying the restriction. Therefore, this categorical stipulation is applied without exception unless there is stipulation restricting it.

10- We may find in paragraph (2), of the same article, one reinforcement after the other and one support after the other to the stipulation of Article (219), the provisions of which are not limited to the municipalities, government institutions or companies linked by a contract to the government or in which the government contributes. Paragraph (2) of this same article stipulates the following: "2- The employer could waive liability if he proves that he took the

necessary care to prevent the occurrence of the damage or that the damage would have inevitably occurred even if he took care." From the contradictory meaning of this article, we conclude that the employer bears the liability, if he cannot prove that he took the necessary care to prevent the occurrence of the damage or that the damage would have inevitably occurred even if he took care. Here the employer was mentioned first of all in the singular form so as to include the cook and the servant. If the legislator wanted to limit the Vicarious Liability to the government and its institutions and the industrial and commercial companies having a contract with it, it would have stipulated that the government or its institutions or the industrial or commercial institutions performing a public service should be released from the liability.... etc. The stipulation did not use the expression Employer as it restricted the release of the Vicarious Liability to the government institution or the company in which the government partially takes part, but it imposed the liability of the employer for the acts of its employee and intentionally expressed it in the protection of the victim so as to be consistent with the philosophy of the legislation. It presumed the liability of the chief regardless of the general rules which require the questioning of the wrongdoer about his wrongdoing and not someone else's wrongdoing. To guarantee to the victim a real protection, as it is likely that the wrongdoer is a person who owns nothing, the law established for the victim something to compensate him with. What supports this viewpoint is the approach of the Iraqi judiciary in ruling against the employer, regardless of the type of work, for the damage his employee caused, as we will see this in the course of our talk about the Iraqi judiciary applications in this respect.

11- Although the stipulation of Article (219) is clear, it is not the only stipulation in the Iraqi legislations basically valid to claim that the Vicarious Liability exists in the case submitted before your honorable court. In addition to it, there are other stipulations which are not less explicit. Article (5) of the Iraqi Commercial Law No. (30) for the year 1984, enumerated the commercial businesses in its following stipulation (The following businesses are considered commercial businesses if they are profit-oriented and this purpose is presumed unless proved otherwise).

In the businesses the legislator enumerated as commercial businesses, we are interested in the stipulation of the second paragraph of Article (5) of the Commercial Law, which listed the commercial businesses and among which are the (supply of goods and services). Thus, the supply of services (any service as understood from the general stipulation and not excluding from its provisions the security services) is considered among the commercial businesses pursuant to the stipulation Article (5) of the Commercial Law. The jurisprudence explained the provisions of Article (5) of the Commercial Law and summarized its opinion (Accordingly, hiring a person as an employee for the purpose of hiring out his work) is considered among the commercial businesses (Iraqi Commercial Judiciary/Judge Salman Ban/First Section/1953/Second Edition, page 22, which means "To seek profit by exchanging transactions whether he is a merchant or a non-merchant" is considered among the commercial businesses.

12- In addition to the foregoing, Article (7-First) of the abovementioned Iraqi Commercial Law stipulates the following (A merchant is every juristic or natural person who professionally carries out in his name and for his own a commercial activity in accordance with the provisions of the law). The commercial activities are specified in Article (5) of the same law, among which are the presentation of the services as we previously mentioned.

13- What makes it more explicit is the stipulation of Article (11) of the same law which came in the following wording (First: Whoever practices a modest profession is not considered a merchant, Second: A modest profession is every profession with little expenses carried out by a person using exclusively his physical energy or machines with small power). Did the defendant carry out a profession with little expenses and did she use small machines?

14- Besides, the rebutted pleading in the course of presenting its evidences to support the viewpoint that there is no Vicarious Liability in the Iraqi Law, sought to deprive of any legal value the decision issued in the Baragona case which supported the viewpoint sustaining that the Iraqi Law was close to the Vicarious Liability and claimed that the explanation of the notion of industrial and commercial project was absent in this case's decision. This conclusion in

my humble viewpoint is groundless. The court which ruled this matter is not required to explain this, especially that other legislation dealt with this issue. Most likely, if the court which ruled the Baragona case would have thought that its decision would be deprived of its essence and content for the fact that it did not indicate in its decision what was meant by the expression (the commercial and industrial projects), most likely it would have done so and would have given a detailed explanation.

15- The rebutted pleading went further than the foregoing when it mentioned that the Iraqi legislator did not use the expression (partnership). And if he would have wanted to mention the Vicarious Liability, he would have used the expression (partnership) and not the expression (industrial and commercial institutions) which indicates that he meant the industrial and commercial companies linked to the government or one of its institutions or those linked by a contract with it or in which the government takes part. The truth is that this conclusion is inappropriate. If the legislator would have wanted so, he would have restricted this expression of industrial and commercial institutions by adding to it the expression which would link to the government and its institutions... etc. Whereas he did not do so, then the categorical stipulation is applied without exception unless there is a stipulation restricting it. The fact that the legislator did not use the word (partnership) is evidence in favor of the plaintiffs and not the defendant in this case. The legislator did not use deliberately the expression (partnership) because he wanted to deny any ambiguity. Any commercial or industrial project regardless of its characteristic and owners, although it is an individual project without partnership, is accountable for the acts of its subordinates.

16- Finally, the rebutted pleading relied on what it called the historic truth according to which the economic institutions in Iraq are managed by companies the government established or took part in them. The private companies, whether commercial or industrial were and are still carrying out their commercial and industrial activities without the state having any share in them and these companies are not linked by contracts with the state. As to say that the industrial and commercial projects in Iraq are historically part of the

state institutions or are linked to them, is humbly and modestly inaccurate. It is deprived of any evidence which could constitute a proof of what it refers to, especially with the explicitness of the legal stipulations stated in a categorical form when it mentioned the industrial and commercial institutions without restricting them by the numbers of their shareholders or their legal characteristic, except that the Iraqi judiciary throughout history required the private companies which had no relation with the government to be liable for the acts of their subordinates, as we will see in our presentation of the judiciary applications.

17- The jurisprudence opinion is contrary to what was mentioned in the rebutted pleading. The jurisprudence believes in the liability of the company for the acts of its affiliates regardless whether the company is governmental or non-governmental. This is the opinion of Professor Dr. Hasan Ali Al-Zanun in his book entitled the General Theory of Liabilities / Baghdad / 1976 Edition, in which he mentioned on page (290) (If the company's director orders his office attendant[1] to not let one of the auditors come in, and this office attendant assaults this auditor, the company is liable to compensate).

Dr. Abdel Majid Hakim in his book entitled Sources of Obligation/Part One/1974 and 2007 Editions, page 574, Item 937, went further than that and deemed that the chief remained liable for the damage caused by his subordinate, even if this chief lent his subordinate to another person and he gave the example of a person lending his car with its driver to a friend, that other person is not liable for what the subordinate does, if the chief keeps his authority over his subordinate.

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[1] Office attendant is the service worker.

Dr. Ahmed Hashmat Abu Steit, in his book entitled (Theory of Obligation in Civil Law), 1945 Edition, page 350, reaches the same viewpoint (The owner of a car is liable for the wrongdoing of his driver if he doesn't know how to drive a car, and the owner of a pharmacy is liable for the wrongdoing of his pharmacist), which means that any of those is a subordinate in the sense we specified, although he is affiliated with an industrial or commercial institution.

18- We still have to indicate that the rebutted pleading did not deal with the judiciary position regarding this issue. It neglected the judiciary provisions believing that the reliance on the judicial precedents does not have room for application in Iraq on one hand and because the court of cassation does not promulgate its decisions and no one can whatsoever examine and review them. Although this is true in appearance, its essence is contrary to the reality. The Iraqi Court of Cassation, in more than a decision, revoked rulings issued by lower courts because they contradicted the principle adopted by the Court of Cassation and the latter asked the courts to go back to what its judiciary initially established. In a well-known case in which I personally represented a German company as a defendant, in 1999, and in which the litigation was worth millions of dollars[2], the First Instance Court ruled at the time against the defendant and the Court of Appeal stood by the ruling. But the Court of Cassation revoked the ruling decision and asked the Court of Appeal to refer to what its judiciary established (the Court of Cassation's judiciary) and ruled to refute the litigation and the Court of Appeal decided to refute the plaintiff's litigation pursuant to a cassation decision and the decision was approved in cassation[3].

As to deny to the judicial rulings their role of constituting judicial precedents because they were not promulgated, we would say that the non-promulgation of a decision does not lessen its value nor denies its existence, the same way

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[2] At the time, the salary of an Iraqi employee was $2 a month or the equivalent of $24 a year.

[3] The attorney for the plaintiff was at the time a former Iraqi Minister of Justice. Unfortunately, I have not been able to attach this decision to my report as my office was the object of an extensive burglary after 2003 and as many files were stolen.

the existence of inventions and discoveries leading to medicines for the treatment of an illness cannot be denied for the only reason that others did not have the opportunity of being acquainted with.

19- The decisions of the courts, especially the Court of Cassation, are the criterion relied on to interpret the stipulation since the courts are the concerned authorities to apply the stipulations and to settle the conflicts. We could say that the jurisprudence and the judiciary complete each other and no one whatsoever could deny the jurisprudence role in enriching the judiciary and legislations. Nevertheless, this does not prevent us from saying that the judiciary would take the jurisprudence opinion or would disregard it. When we are before a conflict or rivalry, what the judiciary would decide about it, is what is carried out and not the jurisprudence opinion about all this, although the jurisprudence explains that the Iraqi law adopted the Vicarious Liability as we previously mentioned.

20- We now come to the decisions of the courts, especially the Court of Cassation, from which the other courts cannot deviate or rule against, and we indicate that the Iraqi judiciary decided to adopt the Vicarious Liability and that the commercial and industrial companies are liable for the acts of their subordinates, regardless of the fact whether they are governmental or non-governmental, companies in which the state has a share or doesn't take part in them, or whether they are linked by a contract with the government or not. There is a large amount of judicial decisions in this respect and we refer to some of them.

In the decision of the Court of Cassation, No. 1967/ Civil Third/1975, dated 11/11/1975 (promulgated in the Judicial Rulings Magazine/Number Four/Year Six/1975), the court ruled that the company is liable (jointly with its driver for compensating the damage caused to a third party, since the driver was its subordinate.... etc.)

In another decision of the Court of Cassation No. 106/M[4]/85-82, dated 10/19/1982, promulgated at the Court of Cassation in the Book of the Judge,

Mr. Ibrahim Al-Mushahedi/Legal Principles in the Judiciary of the Court of Cassation/Baghdad 1988, page 627), the court ruled for the liability (of a foreign company, pursuant to Article 204/1 of the Civil Law for the damage its driver caused to a third party, as a result of the assault he perpetrated while carrying out his duties). In this case, the foreign company is not linked to the government by a contract and the government does not take part in it.

In a third decision under No. 1227/M[3] Transferred / 1988, dated 5/26/1988 (promulgated in the Judicial Rulings Magazine/1 for the year 1988, page 25), the court ruled the following (The employer is jointly and severally liable for the damage his driver caused as a result of failing to carry out the duties of his job, pursuant to the provisions of Article (219) of the Civil Law). We notice here that the Court of Cassation in its decision ruled for the liability of the employer without taking into consideration whether the company was commercial or industrial.

In another case under No. 5165/B/988, dated 10/11/1989, the facts of which could be summarized that the plaintiff joined a group of relatives to work at the participating pavilions of Baghdad International Exhibition. While moving a large machine to put it in its allocated place, at the British pavilion, the machine lost its balance and hit the plaintiff in his leg, thus smashing it. The court ruled for the liability of the British pavilion's manager at the exhibition to compensate the victim, although the pavilion was neither a commercial nor an industrial company, but rather an information center for the promotion of British goods, in addition to the fact that the British pavilion at the exhibition was just a parcel of land dedicated to exhibit goods but not to sell or trade.

In case No. 800/M[3], Transferred 988, dated 6/31/1988 (promulgated in the Judicial Rulings Magazine/Number Two, 1988), the court ruled for the liability of the car owner for the damages his brother caused when driving), although the car owner was neither an industrial nor a commercial company.

All these decisions annul and invalidate the idea of believing that the Vicarious Liability is limited to the state institutions and the institutions in which the government takes part or is linked with by contracts.

**ii. Punitive Damages**

21- The defendant reviewed the stipulations of Articles 202, 203 and 204 of the Civil Law. There is no indication in these stipulations that the Iraqi law did not take into account the Punitive Damages, but on the contrary Article (202) stipulates the following (Any harmful act against a person whether a killing or injury or beating or any other type of harm requires compensation from the party causing the harm).

As to the stipulation of Article (203), it stated the following (In case of a killing and when death occurs due to injury or any other harmful act, whoever caused the harm is liable for compensating the persons whom the victim was sustaining and who were deprived from support as a result of the killing and death).

Article (204) also stipulated (Any violation afflicting a third party with any other harm different than what was mentioned in the previous articles requires compensation).

Therefore, we don't find any indication in these stipulations for refuting or refusing the Punitive Damages, but on the contrary Article (207) stipulates in its first paragraph the following (Under all circumstances, the court evaluates the compensation in proportion to the harm which the victim incurred and the profit he missed, provided that this be a natural result of the illegitimate act). It is very clear that there is no indication in this stipulation as well the stipulations of Articles 202, 203 and 204 that the Punitive Damages have no legal grounds.

22- Besides the defendant did not deal with the jurisprudence position which includes the judge's authority to evaluate the compensation. Mr. Khalil Jarih, in his book entitled the General Theory of Obligations, Part One, 1957 Edition, page 104, confirmed the judge's absolute authority to evaluate the compensation for damages.

23- The defendant ignored also once more the approaches of the judiciary, and moreover it deprived of legal value a decision issued by the Court of

Cassation, on the grounds of the considerations we referred to according to which Iraq does not adopt the system of judiciary precedents and the court decisions are promulgated regularly and it is not easy to any person whatsoever to review them. We discussed the weakness of these arguments and their inability of depriving the judiciary decisions of their strength and legal value.

24- Thus, we should say that the Iraqi judiciary established the absolute authority of the judge in assessing the compensation. Many cassation decisions confirm the adherence of the Iraqi judiciary to these issues among which the decision of the Court of Cassation in the ruling issued on 7/31/1968 under No. 185/Juristic/1968, which ruled that any damage incurred by the victim should be taken into consideration when assessing the compensation, regardless of the type of damage. Mr. Abdel Majid Al-Hakim in his summarized book/previous reference, pages 532 and 533 referred not only to this decision but also to the fact that the judge's authority in assessing the compensation is not subject to the control of the Court of Cassation (Judge Mohamed Abed Taees / Compensation of the Moral Damage in the Defective Liability /2008 Edition, page 80).

The Egyptian Court of Cassation reached the same opinion in many of its decisions, including its decision (Cassation 3/27/1984, Appeal 1609 for the year 1950), promulgated in the Code of Civil Law of Moawad Abdel Tawab, page 339, in which the said decision stipulated (Once the court indicated in its ruling the damage requiring compensation, the assessment of the amount of compensation is what the court deems appropriate, as long as there is no stipulation in the law binding it to any specific criteria in this respect).

**iii. Claims by an Estate**

25- The defendant indicated here that the legal distribution should be issued prior to instituting the litigation. The truth is that this opinion should be the object of consideration.

26- The truth is that the distribution does not establish a right for the heir who gets his right to the inheritance from the death of his legator and not from the distribution. The distribution is not more than a document proving the relation of the legator to the heir, therefore it discloses the right to the inheritance and not its origin. Consequently, if an heir does not issue a distribution to his legator, the estate of the legator will become his property from the day of death and not from the day the distribution was issued.

27- It should be mentioned that the right of the legator to compensation derives from the fact that the damage resulting from the death of the legator affected directly the heir and the material damage is inflicted to his beneficiary because of the absence of the deceased, not because he is the heir and the moral damage occurs as a result of the sadness he is inflicted with. Therefore, it is possible that a person is inflicted with moral damage from the death of his relative and it entitles him to compensation, although he is not his heir, this if he could prove that he incurred damage as a result of the death. The distribution is a legal document limited to identifying the heirs. This opinion is supported in the Iraqi judiciary, as the Court of Cassation in its decision No. 177/First Civil/1980 (promulgated in the series of Judicial Rulings/Year Eleven/1980, page 13, in which the court ruled to include the fourth degree relatives of the deceased) which ruled for moral compensations of those who deserve compensation for the moral damage they incurred, although they were not among the heirs and won't be referred to or mentioned in the distribution.

In the case No. 229/First Civil/1975, dated 11/12/1975 (promulgated in the Judicial Rulings Magazine/Number Four/Year Six) the court reached the following (To rule for the material compensation for the damage afflicting the body and properties, and moral compensation for the damage affecting the feeling of those the deceased was sustaining. The moral compensation is paid to the deceased's spouse and relatives from his family), although not all the relatives from his family will be mentioned in the distribution.

The Court of Cassation confirmed this in another of its decisions under No. 844/First Civil/1977, dated 8/3/1978, promulgated in the Judicial Rulings Magazine, for the year 1978 stating that (the compensation deserved by

relatives of a person deceased in a stamping incident is a personal right and not a property in an estate..... etc.).

In another decision for the General Authority of the Court of Cassation, the court concluded that the request for compensation is a personal right and it should not be denied. If the victim prior to his death would have asked for a compensation and it was ruled for him, the compensation is considered an estate after his death and distributed to his legal heirs. If the damage that occurred is death as a result of a killing or injury or any harmful act, as stipulated in Article (203) of the Civil Law, the compensation is paid to those he sustained and the jurisprudence opinion is similar to the one of the Court of Cassation. Mr. Abdel Majid Al-Hakim in his summarized book/First Section/previous reference/page 534 concluded the following (We should note that the compensation deserved by the persons whom the victim was sustaining is confirmed to them as of a certain date not through inheritance, therefore the court will rule for them what it deems appropriate.

These decisions and the jurisprudence position clearly reveal that the moral compensation is not limited to the heirs but is owed to any relative from his family, although his name is not mentioned in the distribution (for not being an heir), as long as he incurred damage because of his death which indicates that the distribution is not the document establishing the right to a compensation, but death itself entitles to this right.

Finally, I declare that the foregoing is true and was drafted on this twenty-sixth day of August, 2009.

/signed/
Dr. Ihsan N. AL-Soufi
26 August 2009

# EXHIBIT C

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## TRANSLATION CERTIFICATION

This is to certify that the translation of the attached document, **Ref: Declaration of Dr. Ihsan N. Al-Soufi** is to the best of our knowledge and ability, a true and accurate translation of the original text delivered to Language Innovations, LLC by our client, **Burke O'Neil LLC**. The original document was translated from **Arabic** into **English** and at completion delivered to the client on **January 11, 2009.**

I hereby declare that all statements made herein are of my own knowledge and are true and that all statements made based on information or belief are believed to be true.

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Date: 1-11-09

Signature: _____

Brian Friedman, Director
Language Innovations, LLC

Subscribed and sworn before me this 11th day of January 2009, at Washington, DC.

JAMES M. REED
Notary Public District of Columbia
My Commission Expires June 30, 2012

James M. Reed
Notary Public

My Commission expires: _____

GREENBELT DIVISION

| | |
|---|---|
| WISSAM ABDULLATEFF SA'EED AL-QURAISHI,et al.<br><br>Plaintiffs<br><br>v.<br><br>ADEL NAKHLA, et al.<br><br>Defendants | Civil Action No. 8:08-cv-01696-PJM |

Declaration of Dr. Ihsan N. Al-Soufi

1. I, Dr. Ihsan Naji al-Soufi, am the main shareholder in Dijlah Law Firm, an Iraqi firm.

2. I completed my Baccalaureate studies in Law at the College of Law, Baghdad University, in 1963. I received a Master's Degree in Law from Baghdad University in 1973. I also studied private law for one year in 1971 and public law for a full academic year in 1975 at Baghdad University. I was then admitted to the University of Glasgow in the United Kingdom, where I received a Ph.D. in 1980.

3. I am an Iraqi attorney and a member of the Iraqi Lawyers Union.

4. In the early stages of my career, I worked as a legal advisor and attorney for a number of government institutions in Iraq. At that time, I managed a major legal bureau in Iraq. A number of Iraqi attorneys worked in this bureau under my supervision. I then established the Dijlah Law Firm, in which I own 80 percent of the shares. The remaining shares are owned by a number of Iraqi attorneys. A number of attorneys who are not partiers also work in the firm, some full time, some part time. I was among the founders of two banks in Iraq and served as legal counsel for a number of banks and a large number of domestic and foreign companies. Currently, I am a member of the board of directors of a private bank in Iraq, and I serve as legal counsel for another bank and a large number of domestic and foreign companies.

I have represented a large number of foreign and domestic companies and persons before the Iraqi courts and am well known in commercial circles and by financial institutions and businessmen as a prominent legal advisor in Iraq. I also participated in legal proceedings in a famous case against a foreign company that imported contaminated blood into Iraq, which afflicted more than 100 persons with AIDS, most of whom have died as a result of being injected with contaminated blood. In short, I have practiced law as an attorney and legal advisor regarding Iraqi law for more than 40 years.

5. Today, I was asked to review, and provide my opinion on, a pleading filed by L-3's lawyers that is extracted from the L-3 lawyers' statement submitted to the honorable court under no. 55-14 of 21 November 2008, concerning responses to the following questions:

a. Does Iraqi law provide for punitive damages in civil actions?

b. Does Iraqi law provide for civil conspiracy or aiding and abetting liability as grounds for civil liability?

c. Finally, what are the principles and elements that govern the establishment of grounds for the master's civil liability [for the acts of his servant] in Iraqi law?

6. The aforesaid questions concern civil liability. They address negligence liability, which is one of the two branches of civil liability. Prof. Abd-al-Majid al-Hakim in his book, *al-Mujiz* [cited below] states that the law may establish an individual's liability for his actions that violate the law. The provisions of this liability are established by criminal law (criminal liability) and civil law (civil liability). Civil liability may stem from the breach of an obligation arising from a contract (which has no bearing on the case being examined by the Honorable Court) or from an act that causes damage to a third party, which is negligence liability (Abd-al-Majid al-Hakim, *al-Mujiz fi Sharh al-Qanun al-Madani,* [Concise Explanation of Civil Law] Vol. 1, 5th ed., p. 459*)*.

The pleading did well to limit the discussion to negligence liability, as contractual liability has no bearing on the plaintiff's action.

7. The pleading is devoted to reviewing the plaintiff's arguments against the defendant in the second amended complaint. The pleading states that Iraq, like other Arab countries, uses a system of codified law, and that the Egyptian jurist who legislated most of the civil laws in the region (Abd-al-Razzaq al-Sanhuri) contributed to the legislating of Iraqi Civil Code No. 40 of 1951 and is considered one of the most prominent jurists of civil law in the region (Abd-al-Razzaq al-Sanhuri, *al-Wasit fi Sharh al-Qanun al-Madani* [The Intermediator in the Explanation of Civil Law], 1952).

8. Paragraph 6 of the pleading discusses the plaintiff's arguments against the defendant, first stating that if there is no legal provision that specifically regulates an aspect of liability, reference must be made to jurisprudence to seek relevant references and writings that interpret the legal provisions to thereby identify a sound legal position, because legal precedents are not used in Iraqi civil law. This view is partially correct in that Iraq's legal system is not subject to legal precedents in the sense prevailing in common law. However, with all due respect, the rulings of Iraq's Court of Cassation, particularly those issued by the general panel or its plenary panels, are a source to which the Iraqi judiciary refers and to which it has always adhered. The Court of Cassation has frequently reversed decisions of the judiciary that deviate from this principle, and the Court of Cassation requires the courts to refer to its rulings.

9. The pleading states that articles 186-232 of the Civil Code treat liability for an illegal act. The pleading explains the provisions that regulate each of these articles, particularly articles 202 and 204, citing a translation of the provisions thereof. It then states the elements of the tortuous act in terms of the offense and damage and the relationship of causation between them. After paragraph 9, the pleading states that punitive damages have no basis in the law. To support this view, the pleading cites articles 205 and 207 of the Iraqi Civil Code, citing Prof. Abd-al-Majid al-Hakim's book al-*Mujiz al-'Iraqi [sic?] fi Sharh al-Qanun al-Madani* mentioned above.

This view, which denies the existence of punitive damages in the Iraqi Civil Code, lacks any jurisprudential or legal support. The provisions of articles 205 and 207 mentioned above do not stand as evidence in support of this view. It is useful to remember that article 207, paragraph 1, stipulates, "The court shall assess damages in all cases in the amount of the damage incurred and the gain lost by the damaged party, which must be a natural consequence of an illegal act." This provision obviously makes no reference to the absence of legal grounds for punitive damages. The condition that damages requiring compensation must result from an illegal act, which the legislator required as grounds for compensation, does not negate punitive damages. The jurisprudential and judicial position on punitive damages is thus contrary to what is stated in the pleading. The judge has broad authority to assess damages. This authority is unrestricted with respect to the award amount. Moreover, the judiciary's authority to assess damages is not subject to the oversight of the Court of Cassation (Judge Muhammad Abd Tu'ays, *Compensation for Psychological Damage regarding Negligence Liability* [in Arabic], 2008 edition, page 80). The court's discretional authority is also prominent in the assessment of damages by competent experts. The judge implicitly takes into account external factors under and outside the rubric of justice, e.g., the magnitude of the damage and offense of the liable party or any circumstances which the judge derives from the facts of the case. The judge need not state such factors and circumstances in his ruling, as they are subject solely to his discretion. Iraq's Court of Cassation ruled—in Ruling No. 185 of 31 July 1968, no. 185, *Huquqiyah*,[1] 1968—that any damage incurred by a damaged party shall be taken into account when determining damages, regardless of the type of damage. Prof. Abd-al-Majid referred to this ruling in his book, al-*Mujiz*, ibid., pp. 532-533. Thus, Iraqi law and the applications of the Iraqi judiciary clearly contain nothing that would indicate that Iraqi law does not provide for punitive damages.

The Egyptian Court of Cassation was of the same opinion. It held that "the assessment of damages and determination of restorative compensation are solely within the judge's discretion and do not require the Court of Cassation's oversight, as long as the judge's decision is reasonably grounded" (Cassation, Session of 19 May 1965, p. 17, Arguments of a Civil Technician, p. 1201, as cited by Mu'awwad Abd-al-Tawwab in his book, *Mudawwanat al-Qanun al-Madani* [The Civil Law Code], Vol. 1, 1987, p. 449).

In another decision, the Egyptian Court of Cassation held the following: "It has been established that when the court determines, in its administration of the law, that there exist elements of damage requiring compensation, the court alone may determine the

[1] [Name of an Iraqi journal]

restorative compensation sum, as long as the law contains no provision requiring the court to follow specific criteria regarding such compensation" (Cassation of 27 March 1984, Appeal 1609 of [Judicial Year] 50, as cited by Mu'awwad Abd-al-Tawwab in his book, *Mudawwanat al-Qanun al-Madani*, ibid., p. 339).

Damage is the natural consequence of the liable party's offense when the damaged party cannot avoid such damage by making a reasonable effort. The Egyptian courts have ruled that "compensation for damages includes losses and loss of gain incurred by the damaged party, provided the loss is the natural consequence of the liable party's offense. Damage is regarded as a natural consequence if it is not possible to protect against it by exerting a reasonable effort (Cassation, Session of 8 November 1966, Judicial Year 12, Argument of Civil Technician, p. 1629, as cited by Mu'awwad Abd-al-Tawwab in his book, *Mudawwanat al-Qanun al-Madani*, ibid. p. 451.)

Khalil Jurayj refers to this opinion in his book, *al-Nazariyah al-'Amah lil-Mujibat* [General Theory of Causes], Vol. 1, 157 edition, p. 104.

All of the preceding contains no reference to the absence of liability for punitive damages.

Article 205 of the Iraqi Civil Code deals with moral damage. The provision in this regard is unrestricted, namely anyone who causes moral damage is required to pay compensation. This article adds "[in] every offense," and we note here that the word "offense" appears without restriction. Article 205 does not treat the amount of compensation, the elements and criteria for calculating compensation, or punitive damages. The absence of such treatment in this article does not serve as evidence that there is no room for a provision on compensation for punitive damages. Paragraph 11 of the [defendant's] declaration quotes text from page 244 of Volume 1 of the book *al-Mujiz fi Sharh al-Qanun al-Madani* by Prof. Abd-al-Majid Abd-al-Karim, which is mentioned in paragraph 4 of the declaration. I have two editions of the aforesaid book, the fifth edition and another edition published in 2007. The page number mentioned [in the declaration] contains no provision at all in this sense. Moreover, the contents of this page deal with another subject that has no bearing on compensation, or a tortious act, or negligence liability. This may be due to a difference between editions, although the contents of each page in each of the two editions available to me correspond completely to the contents of the same page with the same number in the other edition (I attach a photocopy of page 244 of the aforesaid two editions as documentation). In any case, it is worth commenting on the statement [in defendant's pleading] that the Iraqi Civil Code, like other codes in the region, is based on the Islamic Sharia principle that compensation must be limited to restoration of damage or tortious act and is not intended to enrich the plaintiff. The provisions of the Iraqi Civil Code, as stated above, contain no support for this opinion. In addition, the position of the Iraqi judiciary and Iraqi jurisprudence are contrary to this opinion. The prevailing jurisprudential and judicial opinion is that assessment of damages is left to the judiciary's discretion, as we indicate above and in the following paragraph.

10. Paragraphs 12 and 13 of the declaration state that compensation must be limited to direct damage and should therefore not exceed the amount of the losses incurred by the damaged party (compensatory damages). This view is incorrect. On the contrary, all jurists agree that the legal provisions state that direct damage includes two essential elements: the loss and lost gain incurred by the damaged party. Prof. Abd-al-Razzaq al-Sanhuri provides an example of this, stating, if a person damages a car owned by another person, and the car owner purchased the car for 1000 and obtained a promise from another person to purchase the car from him for 1200, the 1000 is the loss incurred by the car owner, and the 200 is the gain lost by the car owner. Both damages are direct damages that must be compensated (Prof. Abd-al-Razzaq al-Sanhuri, ibid., p. 821). The judicial and jurisprudential positions on this matter are similar. We refer above to the Egyptian Court of Cassation decision, which states, "It has been established that when the court determines, in its administration of the law, that there exist elements of damage requiring compensation, the court alone may determine the restorative compensation sum, as long as the law contains no provision requiring the court to follow specific criteria regarding such compensation" (Cassation of 27 March 1984, Appeal 1609 of [Judicial Year] 50, as cited by Mu'awwad Abd-al-Tawwab in his book, *Mudawwanat al-Qanun al-Madani*, ibid., p. 339).

11. Paragraphs 14 and 15 of the pleading deny that Iraqi law recognizes the establishment of liability for civil conspiracy or aiding and abetting liability, except for the case of the master's liability for the acts of his servant. This view is to be criticized, because the Iraqi judiciary has established liability for a tortious act committed as a result of conspiracy or aiding and abetting in other than a case of the liability of a master for the acts of his servant. The Administrative Court in Iraq ruled that "article 217 of the Civil Code stipulates that multiple parties responsible for an illegal act shall be jointly liable for compensation of the damage [resulting therefrom], without distinction between the primary perpetrator, accomplice, or abettor" (File No. 1821, Administrative, 1982-1983, published in *Majallat al-Qada'* [Journal of the Judiciary], 37, 1982, p. 396).

12. Paragraphs 16 and 17 of the pleading speak of the commission of a tortious act by a number of persons and hint or suggest that under Iraqi law, in order for the liability of the perpetrators of a tortious act to be determined, it is necessary to prove that each one of the perpetrators of the act committed an offense, and that the same offense led directly to the same damage that occurred. In this regard, the pleading relies on what was stated on pages 924-925 of the book, *al-Wasit fi Sharh al-Qanun al-Madani*, Vol. 1, by Prof. Abd-al-Razzaq al-Sanhuri.

Here, it should be said that Prof. al-Sanhuri held the opposite view. In his aforesaid book, 2004 edition, page 754, in the context of his discussion of multiple liable parties, he sates, "If one of two offenses does not absorb the other, both offenses exist, and each offense is considered to be a cause of the damage. This is the case of multiple liable parties. If another person participated with the defendant in causing damage, there is more than one liable party." Article 169 of the new law mentioned above provides for this case, as follows: "If multiple parties are liable for a tortious act, they shall be jointly liable for compensation of the damage, and they shall share such liability equally among

themselves...etc." The Egyptian judiciary took the same approach. In a judgment issued by the Court of Cassation, it sufficed for the court to hold liable a master if his servant is proven to have abetted an offense by a servant of him [i.e., of the first servant], even if it was impossible for him [i.e., the second servant] to have been hired among his [i.e., the master's] servants" (Appeal No. 8, Session of 22 July 1943, Judicial Year 14, as cited by Mu'awwad Abd-al-Tawwab in his book, *Mudawwanat al-Qanun al-Madani*, ibid., p. 362).

13. Paragraphs 18 and 19 of the pleading all speak of the liability of the master for the acts of his servant as stipulated in article 219 of the Iraqi Civil Code. The aforesaid article specifies the requirements for determining the master's liability, including that the master has actual authority that empowers him to supervise and direct the servant and to issue orders to him. This type of authority suffices to prove the subordination stipulated by the law, and the source of such authority, or whether the master enjoys the freedom to choose the servant, are of no concern thereafter. Moreover, "It suffices for this authority to be moral," which is the opinion of Prof. Abd-al-Majid al-Hakim in his book, *al-Mujiz fi Sharh al-Qanun al-Madani*, 5th edition and 2007 edition, pp. 572 and 573). Transfer of actual authority to another master occurs when the master lends his servant to another person (Prof. Abd-al-Majid al-Hakim, ibid., p. 574). There is no room to apply this possibility to the case being heard, as the master in this case enjoyed actual authority in directing the servant and in issuing orders to him.

Article 219 (2) of the Iraqi Civil Code concerns the master's right to deny his liability for the acts of his servant when the master can prove that he exercised sufficient care to prevent the occurrence of the damage or that the damage was unavoidable even if he had exercised care. Such a right does not exist in this case. The mere offense of the servant, the occurrence of the offense as a result of the servant, and the master's actual authority—as long as all these facts are established in the case being heard—serve as evidence that the master did not exercise sufficient care to prevent the occurrence of the damage. [In other words,] the master should have held training courses and lectures to raise awareness and educate in the method by which those in charge of administering the prisons were to treat the prisoners placed under their guard. The servant's offense in the case is confirmed beyond any doubt, and the damage resulting from his offense is undisputed. In my view, the defendant's subordination to his superior and his subjection to his superior's will and directives is undeniable. Jurisprudence and the judiciary have established the above-mentioned principle, namely that as long as the offense by the servant occurred and resulted in damage to a third party, the master's liability is determined. This view is held by Prof. Abd-al-Majid al-Hakim, who stated, "The servant's commission of an offense during his performance of his work is definitive proof of the master's negligence. As long as the master enjoys authority in directing the servant and supervising him, the servant's commission of an offense during the servant's performance of his work is evidence of the master's failure to supervise and direct as he should have; otherwise, the servant would not have committed the offense." To support his view, Prof. al-Hakim cites the Iraqi Court of Cassation's ruling that "a passenger transport agency is liable for the damage caused by drivers of the agency's car, inasmuch as the agency has actual authority entitling it to supervise and issue orders to the drivers.

The master's liability for the acts of its servant is based on an assumed offense, and proof to the contrary shall be inadmissible" (Abd-al-Majid al-Hakim, *al-Mujiz fi Sharh al-Qanun al-Madani*, Vol. 1, 5th edition, p. 583).

This view is also held by Dr. Ahmad Hishmat Abu-Satit, who attributes it to two causes: the master's failure to supervise and direct, and an error in the selection of the servant (Dr. Ahmad Hishmat Abu-Satit, *Nazariyah al-Iltizam fi al-Qanun al-Madani al-Misri* [Theory of Liability in Egyptian Civil Law], 1945 edition, p. 360).

The judicial position does not differ from the jurisprudential position on this issue. The Iraqi courts have issued many rulings determining the liability of the master even though the master pled that he had exercised sufficient care to prevent the occurrence of the damage, including Decision No. 542, First Plenary Panel, 1980, 4 April 1981, which states: "The Ministry of Defense is liable to compensate for the damage that its driver caused because of his recklessness, heedlessness, and carelessness while driving, even if the driver had received a certificate for passing a driving course and even if the car handed over to him was in good operating condition (Article 219 of the Civil Code) (published in *Majallat al-Ahkam al-'Adliyah* [Journal of Justice Rulings], No. 2, 12th year, 1981, p. 29.

Another decision with the same significance (No. 198/M1/1981 of 2 September 1981) states: "The government agency is liable to compensate the damage caused by its driver as a result of his driving with recklessness at high speed in a crowded area while intoxicated. The fact that the government agency holds that the driver was licensed to drive and that the car was in working order does not exempt the agency from liability as long as the offense of the driver is proven, which determines the agency's liability for its clear neglect in supervising the driver" (published in *Majallat al-Ahkam al-'Adliyah*, No. 3, 12th year, 1981, p. 13, cited by Court of Cassation Judge Ibrahim al-Mushahidi in his book, *al-Mabadi' al-Qanuniyah fi Qada' Mahkamat al-Tamyiz* [Legal Principles in the Administration of Justice by the Court of Cassation], 1988, p. 626).

In another decision, the Iraqi Court of Cassation held that "the employer is jointly liable for the damage caused by a driver subordinate to it for his negligence during his performance of the duties of his position under the provisions of article 219 of the Civil Code, and the Court may not deny the claim against the master despite the master's argument that the driving apparatuses of the car which the servant drove were in working order at the time of the accident" (Decision 1227, M3 transcribed/1988, 26 May 1988, published in *Majallat al-Ahkam al-'Adliyah*, No. 2, 1988, p. 25).

Another decision, No. 106/M4/82-85 of 19 October 1982, states: The foreign company is liable, under article 204(1) of the Civil Code, for the damage caused by its driver to another party due to the driver's offense during his performance of his duties" (published in *Majallat al-Ahkam al-'Adliyah*, No. 4, 13th year, 1982, p. 13, cited by Court of Cassation Judge Ibrahim al-Mushahidi, ibid., p. 627).

In a similar decision, the Court of Cassation ruled that the director of the Land Registry was jointly liable with a surveyor of the Registry for compensating the owner of land that was built on according to boundaries established by the surveyor, after which a survey error that emerged led to the destruction of the building due to its encroachment on the adjacent land (Decision No. 1211/First Civil [Chamber], 1981, 6 March 1982, published in *Majallat al-Ahkam al-'Adliyah*,, No. 1, 13th year, 1982, p. 29).

There is also an abundance of decisions issued by the Egyptian judiciary, including a decision cited by Mu'awwad Abd-al-Tawwab, which was issued by the Egyptian Court of Cassation, which stated: "In all accidents in which a person is held liable for the act of another person, the assumption of an offense must be primary, because the occurrence of the accident is in itself evidence of the breach of the duty of control and supervision" (Session of 19 November 1934, Appeal No. 1386, Judicial Year 4, published in the Civil Code, Mu'awwad Abd-al-Tawwab, Vol. 1, p. 357).

In another decision by the Egyptian Court of Cassation, the court was of the opinion that "the application of Article 152 of the Civil Code is not required unless the offense giving rise to the damage was committed by an employee during his performance of his work, for when this condition is fulfilled, the liability of the master is established under the law, regardless of whether the master did well or badly in choosing or supervising his servants, and regardless of whether the servant violated or obeyed the master's orders in committing the act that the servant committed, because this liability is imposed by the law as a requirement that must be undertaken at all times" (Appeal No. 37 of Judicial Year 6, Session of 12 November 1936, Mu'awwad Abd-al-Tawwab, ibid., p. 357).

In another decision, the Court of Cassation held that "the master is liable for the offense of his servant, even if the offense was committed during the servant's exceeding of the boundaries of his position if the position disposed him to commit the offense deserving of liability" (Appeal No. 2482, Session of 22 March 1937, Judicial Year 6, published in the Civil Code, Mu'awwad Abd-al-Tawwab, Ibid., p. 357).

The court adopted the same view in another decision, explaining that "since Article 174 of the Civil Code stipulates that the master shall be responsible for damage which is caused by his servant in an illegal act in the performance of this work or because of his work, the code establishes liability for an assumed offense on the part of the master, and proof to the contrary shall be inadmissible" (cited by Mu'awwad Abd-al-Tawwab, *Mudawwanat al-Qanun al-Madani,* ibid., p. 363.

Finally, I declare that all of the aforementioned is accurate and was prepared today, 6 January 2009.

[Signature]
Dr. Ihasan N. Al-Soufi
6 January 2009