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## Families Who Sued Libya See Their Victory Voided

U.S. Pact Nullifies \$6 Billion Award in '89 Bombing Over Africa

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Tuesday, December 23, 2008; A03

As the [State Department](#) reviews hundreds of claims from people who lost family members in Libyan-sponsored terrorist attacks, controversy is building over a case that is so low-profile it is sometimes called "the forgotten flight."

The case stems from the Sept. 19, 1989, bombing of the French-operated UTA Flight 772, which crashed in the Niger desert after a suitcase bomb exploded in the cargo hold, killing 170 passengers and crew, including seven Americans.

Family members of the American victims made history in January by becoming the first and only group to successfully sue Libya in federal court. After hearing the Pugh case -- named for the family of one of the victims -- U.S. District Judge Henry H. Kennedy found Libya responsible for the attack and awarded 44 relatives a collective \$6 billion.

Plaintiffs in the case became incensed in August when the United States reached an agreement with Libyan leader [Moammar Gaddafi](#) to dismiss all lawsuits for victims of state-sponsored terrorism. Gaddafi agreed to turn over \$1.5 billion, and the U.S. government started setting up a process for reviewing survivor claims and distributing the money.

To the outrage of families involved in the lawsuit, their gut-wrenching court victory was nullified as the United States agreed to use the settlement to reestablish diplomatic relations with Libya. And many family members learned they would have to prove again that they are victims who are entitled to payments from Libya.

"We fought this fight. We stood up to terrorists who took our loved ones and we did so in federal court," said Anne Carey, whose mother, wife of then-Ambassador to Chad Robert Pugh, died in the attack. "We felt we accomplished something. For it to be dismissed is beyond comprehension. Surely, you can't just disregard what a federal court has decided."

The State Department contends that its process treats Flight 772 victims as fairly as other victims of state-sponsored terrorism. An assistant legal adviser in the department, Linda Jacobson, said named beneficiaries of the seven victims will receive \$10 million settlements and be eligible to appeal for more to the Justice Department's Foreign Claims Settlement Commission, which is reviewing claims.

"The other Pugh claimants," she said in a statement, "will be able to seek compensation for their emotional distress in the same manner as family members of other victims of terrorism."

The issues involved in the dispute date to the 1980s, when Libya was implicated in a spate of

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international terrorism incidents. The highest-profile case was the bombing 20 years ago of [Pan Am Flight 103](#) over Lockerbie, Scotland, which killed 270 people, including 180 Americans. In 1986, the bombing of the La Belle disco in Berlin killed three people, including two Americans. Among the 229 wounded were 79 Americans.

Then, there was UTA Flight 772. The dead on the flight were from 17 countries. Bonnie Barnes Pugh, Anne Carey's mother, was among them.

France claimed 54 of the victims, and government investigators there took the lead in going after Libya. They spent eight years reconstructing the bombing, using the remains of detonator wires that were traced back to Libyan intelligence agents.

A 1999 case in French criminal courts resulted in the conviction of six Libyan officials in absentia. In 2004, Libya settled with France and agreed to pay \$170 million in compensation, \$1 million to each victim on Flight 772, including those from Africa and the United States.

In exchange, the families had to sign off on any further claims against Libya.

The relatives of the seven American victims who came together in the Pugh case refused to accept Libya's offer.

"We purposely chose to not take the money," said Stuart H. Newberger, the attorney for the families. "My clients wanted more than money; they wanted to hold Libya accountable in a court of law."

The three-day civil trial last year before Judge Kennedy in [U.S. District Court](#) in Washington brought forward mothers, fathers, sisters, brothers to describe their devastation after the killing of their loved ones. Some victims died without wills, so their sudden deaths left many relatives without legal claims on the estates.

The testimony detailed the suffering of survivors such as Carey, who was preparing to pick up her mother from the airport when she learned that Flight 772 had gone down. Carey and her brother, Malcolm, waited to hear from State Department officials, who ultimately told her that the plane had been found and that her mother was dead.

"She was coming home to help me with the final preparations for my wedding, which was three weeks away," Carey said in an interview. "We went ahead with the wedding. It was a terribly sad event. For years I asked myself, 'Would she still be alive if I had picked a different date?' "

It wasn't the Pugh family's first brush with terrorists. In 1983, an attack on the U.S. Embassy in Beirut had nearly killed her father. He survived the bombing, then helped pull the living and the dead from the wreckage.

Carey testified that her mother worked by her father's side to deal with the trauma and to help those who had lost loved ones. (Her efforts were recognized when she was buried in [Arlington National Cemetery](#).)

Robert Pugh told the court that the loss of his wife caused him to be "[a]drift and devastated." Carey described her father as a "shell of a human being."

The trauma ended Robert Pugh's career in the Foreign Service. Carey also saw her brother slip into a deep depression. Three years later, inconsolable, Malcolm killed himself.

Libya sent a team of attorneys to fight the lawsuit. After Kennedy ruled in favor of the survivors in January, Libya's attorneys immediately filed an appeal.

The Pugh lawsuit made use of the 1996 Anti-Terrorism Act, which allows individuals to sue countries that sponsor terrorism and hold them financially liable. The law also allows the [Justice Department](#) to freeze and collect assets for the victims -- a financial threat that experts say serves as a deterrent.

Experts say the success of the Pugh case helped bring Libya to the negotiating table. Faced with the court judgment, Libya had to take into account two dozen pending civil lawsuits that made similar claims about involvement in other terrorist attacks.

"They didn't want to get called up before the court time and time again. There is no understanding of an independent judiciary -- they see it as a personal insult every time they have to show up," said Dana Moss, a Libya expert and Next Generation fellow at the Washington Institute for Near East Policy.

Libya's settlement offer of \$1.5 billion was a far cry from the \$6 billion Kennedy awarded the Pugh victims, but collecting any money from Libya had proved difficult. Congress approved the agreement, called the Libyan Claims Resolution Act, in July after four days of private deliberations among members. Bush signed it into law in August.

The agreement completed the Bush administration's year-long effort to upgrade relations with Libya, which included confirmation of a U.S. ambassador and a visit by Secretary of State [Condoleezza Rice](#) in September. The visit was the first time a secretary of state had visited Libya since 1953.

"I've been in town 25 years and I've never seen a major foreign policy decision made this way: not so much as a public hearing," said Andrew Cochran, a lobbyist and editor of the Counterterrorism Blog, which tracks federal policy decisions on terrorism-related issues.

Now, Newberger is being asked by the State Department to work with the Libyan attorneys to formally dismiss the Pugh case. The department has agreed to allot \$10 million to the estates of the seven Americans killed on Flight 772, an amount equal to payments to victims of the Lockerbie and the disco bombings.

Beyond that, an internal State Department memo obtained by [The Washington Post](#) shows that department officials intend to allow the 14 named beneficiaries to go before the claims commission to "seek additional compensation to take account of the stage their litigation had achieved in the U.S. courts."

Then there are the 30 remaining family members. They cannot understand why the State Department has declined to forward to the commission Kennedy's written statements, summarizing evidence presented in court that detailed their suffering.

"The State Department assisted with the case -- the first time they've ever done so in a civil issue," Newberger said. "Now, this very same government is saying they have to start over again. It's not enough that a federal court judge said they are victims of Libya terrorism."

Terrorism experts say the handling of the case by the State Department has implications that reach far beyond the individual family members.

Victor Comras, a retired Foreign Service officer and expert on terrorism financing, called the decision to

dismiss the Pugh case a "bad precedent." He said other countries -- such as Iran and Sudan -- that want to be removed from the State Department's list of state sponsors of terrorism will now point to the deal with Libya and ask for the same treatment.

"It deflates the value of the Anti-Terrorist Act of 1996," said Comras, who served on a [United Nations](#) committee that monitored implementation of required measures against [al-Qaeda](#) and the [Taliban](#). "This takes us back to the old way of doing things, creating a claims commission. It takes away power that was given to American citizens."

For those such as Carey, the State Department's treatment of the Flight 772 families has resurrected excruciating memories.

For many years after the attack, Carey dreamed that her mother was not dead, but rather lost, wandering in the desert.

"To think I will have to drudge this up again, make this journey again, is difficult to understand," she said.

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