UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 22-965(L), 22-975(CON) Caption [use short title]

Motion for: Expedited Briefing

Set forth below precise, complete statement of relief sought:

Plaintiffs-Appellants respectfully request that the Court place the consolidated appeals on the Expedited Appeals Calendar.

In re: Approximately $3.5 Billion

MOVING PARTY: William Wodenshek, et al. **OPPOSING PARTY:** The Havlish & Federal Insurance Creditors

☑ Plaintiff ☐ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Samuel Issacharoff **OPPOSING ATTORNEY:** Douglass Mitchell

[name of attorney, with firm, address, phone number and e-mail]

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Court- Judge/ Agency appealed from: SDNY, Daniels, J.

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☐ Opposed ☑ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:

/s/Samuel Issacharoff (NB) **Date:** 8/8/22 Service by: ☑ CM/ECF ☑ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IN RE APPROXIMATELY $3.5 BILLION OF ASSETS ON DEPOSIT AT THE FEDERAL RESERVE BANK OF NEW YORK IN THE NAME OF DA AFGHANISTAN BANK WILLIAM WODENSHEK, *et al.*, *Plaintiffs-Appellants* v. DA AFGHANISTAN BANK, *Defendant-Appellee*	On Appeal from the United States District Court for the Southern District of New York No. 22-965 (L)
IN RE APPROXIMATELY $3.5 BILLION OF ASSETS ON DEPOSIT AT THE FEDERAL RESERVE BANK OF NEW YORK IN THE NAME OF DA AFGHANISTAN BANK SARAH WODENSHEK, CHILD OF 9/11 DECEDENT CHRISTOPHER WODENSHEK, *ET AL.*, *Plaintiffs-Appellants* v. THE TALIBAN, *Defendant-Appellee*	No. 22-975 (Con)

DECLARATION OF SAMUEL ISSACHAROFF IN SUPPORT OF PLAINTIFFS-APPELLANTS' MOTION FOR EXPEDITED BRIEFING

SAMUEL ISSACHAROFF, pursuant to Title 28, United States Code, Section 1746, hereby declares under penalty of perjury:

1. I am an attorney licensed to practice in the State of Texas and am admitted to practice before this Court. I represent Plaintiffs-Appellants The Estate of Christopher Wodenshek, Anne Wodenshek, Sarah Wodenshek, Haley Wodenshek, Mollie Wodenshek, William Wodenshek, and Zachary Wodenshek. I respectfully submit this Declaration in support of Plaintiffs-Appellants' Motion for Expedited Briefing.

PRELIMINARY STATEMENT

2. This Motion seeks an expedited briefing schedule because the assets at the center of these consolidated Appeals may be dissipated and forever lost without the accelerated intervention of this Court.

3. Plaintiffs-Appellants have waited nearly twenty years for the opportunity to hold the Taliban responsible for the murder of their father and husband, Christopher Wodenshek, in the 9/11 terror attacks. Their prospects for recovery changed after the Taliban's takeover of Afghanistan following the U.S. military's withdrawal in 2021 and the Taliban's subsequent assertion of control over Afghanistan's Central Bank, DAB.[1]

4. On February 11, 2022, President Joseph R. Biden signed an Executive Order concerning approximately $7 billion of assets held in the name of DAB at the

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Consolidation Motion.

Federal Reserve Bank of New York ("FRBNY"). The Executive Order and an accompanying "Fact Sheet" directed that all DAB assets in the United States be consolidated in a blocked account at the FRBNY and earmarked approximately half ($3.5 billion, the "DAB Assets") to benefit U.S. victims of Taliban-sponsored terrorism. This is the first opportunity for families of victims killed on 9/11 to obtain compensation from the Taliban for the devastating harm they wrought that day.

5. Regrettably, the Executive Order spurred a race among the Taliban's victims to establish "priority" over the DAB Assets under New York State's judgment enforcement rules, and an effort by a small group of those victims to obtain the vast majority of those Assets. If successful, that effort would leave thousands of estates and families of individuals killed on 9/11 with no ability to ever recover from the Taliban.

6. The DAB Assets have been the subject of multiple simultaneous turnover and other proceedings in the Southern District of New York. First, the Assets are subject to a prejudgment order of attachment in excess of $1.3 billion in *Owens v. Taliban*, 22-cv-1949, before District Judge Valerie E. Caproni. Second, certain plaintiffs in the 9/11 MDL—the multi-district litigation into which most 9/11-related (and certain other) claims have been consolidated—have moved for turnover of the entire DAB Assets before District Judge George B. Daniels and Magistrate Judge Sarah Netburn. Third, other 9/11 victims have moved for turnover

of nearly $60 million in DAB Assets before District Judge Lewis A. Kaplan, and that action recently became part of the 9/11 MDL.

7. Within the 9/11 MDL's turnover proceedings, briefing is complete, and a small group of victims—the *Havlish* Plaintiffs (representing the families of forty-seven victims), the *Doe* Plaintiffs (representing seven individuals), and the *Federal Insurance* Plaintiffs (representing commercial insurers)—are seeking to have the MDL Court grant turnover to them of the entire corpus of Assets available to satisfy judgments against the Taliban.

8. Because individual adjudications under a "first in time is first in right" approach would dispose of the DAB Assets and substantially impair the rights of Plaintiffs-Appellants and thousands of other terrorism victims with claims on file against the Taliban, Plaintiffs-Appellants filed a limited fund Class Action pursuant to Federal Rule of Civil Procedure 23(b)(1)(B), which provides a vehicle for a mandatory equitable distribution of the DAB Assets, as opposed to the race for priority currently progressing in the turnover and attachment proceedings.

9. Although the 9/11 MDL Court characterized the Class Action as an "inappropriate" "end-run" around the turnover proceedings, and suggested that the proposed Class Action was an effort by Plaintiffs-Appellants to gain an advantage in priority, it is neither of those things. Rule 23(b)(1)(B) is a statutory solution to the highly inequitable outcome that rigid application of the New York priority rules

would create. And far from an attempt to gain priority, the Class Action would put all claimants on an equal footing and allow an equitable distribution among them. Nevertheless, on April 27, 2022, the MDL Court dismissed the Class Action Complaint *sua sponte* on the basis that the Class Action was duplicative of Plaintiffs-Appellants' claims in the 9/11 MDL—notwithstanding that, among other things, the proposed class encompassed claimants outside the 9/11 MDL. The MDL Court also held that any distribution of the DAB Assets must occur in the context of the 9/11 MDL—notwithstanding that more than one-third of the DAB Assets are encumbered by an attachment order in the separate *Owens* action.

10. The turnover proceedings are underway in the 9/11 MDL, with briefing and service complete. There is a real risk that the DAB Assets may be dissipated in whole or in part before these Appeals are adjudicated under the standard briefing schedule, and that Plaintiffs-Appellants will suffer prejudice as a result. On July 27, 2022, the 9/11 MDL plaintiffs claiming priority over the DAB Assets informed the MDL Court that their turnover motions are now "ripe for adjudication" and the MDL Court is free to grant them their manifestly inequitable relief.[2]

[2] The *Havlish* and *Federal Insurance* Plaintiffs have also moved for intervention in this Court (which motion Plaintiffs-Appellants do not oppose), arguing they would be prejudiced by reinstatement of the Class Action because they are "entitled to execution priority over the Taliban Assets[.]" 22-965, ECF No. 68, at 24.

11. Accordingly, Plaintiffs-Appellants respectfully request placement on the Expedited Appeals Calendar to allow this Court to adjudicate Plaintiffs-Appellants' Appeals while the funds to satisfy their claims remain available.

STATEMENT OF FACTS

12. Plaintiffs-Appellants respectfully incorporate by reference the Statement of Facts from their June 16, 2022, Consolidation Motion, 22-965, ECF No. 37. Plaintiffs-Appellants provide below a brief summary of the MDL Court's turnover proceedings necessitating expedition of the appeal.

A. Status of the 9/11 MDL Turnover Proceedings.

13. As described in Plaintiffs-Appellants' Consolidation Motion, on March 20, 2022, the *Havlish* and *Doe* Plaintiffs filed motions for partial turnover of the DAB Assets in amounts sufficient to satisfy their respective compensatory damages awards of approximately $2 billion and $140 million. Compl. ¶ 48.[3] On April 20, 2022, the same day they filed the Class Action, Plaintiffs-Appellants filed

[3] The "Compl.", "Apr. 26 Tr.", and "Feb. 22 Tr." cited herein were attached to Plaintiffs-Appellants' Consolidation Motion as Exhibits A, H, and I, respectively. Attached to this Motion are: the *Ashton* Plaintiffs' May 5, 2022 letter to the MDL Court, *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. May 5, 2022), ECF No. 7962, (Exhibit 1), cited herein as the "May 5 *Ashton* Ltr."; the *Havlish*/*Doe* Plaintiffs' July 27 letter to the MDL Court, *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. July 27, 2022), ECF No. 8277, (Exhibit 2), cited herein as "July 27 *Havlish*/*Doe* Ltr."; and Email from Douglass Mitchell to Noam Biale, dated Aug. 8, 2022, (Exhibit 3).

their opposition.[4] Since then, three other plaintiffs, one within the 9/11 MDL and two without, have entered the turnover proceedings in one capacity or another. All are seeking priority over the DAB Assets.

14. After obtaining damages judgments and serving a writ of execution on the FRBNY on April 20, 2022, the *Federal Insurance* Plaintiffs moved on April 29, 2022 to join the turnover proceedings.[5] Acknowledging that the *Owens* Plaintiffs had "obtained a provisional *ex parte* emergency prejudgment order of attachment . . . they had not yet sought to confirm" prior to the *Federal Insurance* Plaintiffs' service of their writ, the *Federal Insurance* Plaintiffs contended "that the *Owens* Plaintiffs' prejudgment attachment efforts are prohibited by federal sanctions law and binding Second Circuit Precedent."[6] Accordingly, the *Federal Insurance* Plaintiffs asserted that they "have priority with respect to any DAB [A]ssets not deemed subject to turnover to the *Havlish* and *Doe* Creditors."[7] Such turnover would exhaust all $3.5 billion of the DAB Assets.

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[4] *In re Terrorist Attacks on September 11, 2001*, 03-md-1570 (S.D.N.Y. Apr. 20, 2022), ECF No. 7894.

[5] *Id.* (Apr. 20, 2022), ECF No. 7937.

[6] *Id.* at 25 n.50.

[7] *Id.* at 25.

15. Three days later, however, on May 2, 2022, the *Owens* Plaintiffs moved before Judge Caproni to confirm their prejudgment order of attachment.[8] Then, on May 13, 2022, the *Owens* Plaintiffs moved to intervene in the 9/11 MDL turnover proceedings for the limited purpose of opposing the *Federal Insurance* Plaintiffs' motion to join the turnover proceedings, contending that they, rather than the *Federal Insurance* Plaintiffs, enjoy priority over any portion of the DAB Assets not used to satisfy the *Havlish* and *Doe* Plaintiffs' judgments.[9]

16. On May 18, 2022, yet another group of claimants—the *Smith* Plaintiffs—moved for turnover of nearly $60 million of the DAB Assets before Judge Lewis A. Kaplan.[10] Having served their writ of execution on the FRBNY on March 14, 2022, the *Smith* Plaintiffs conceded they stand in priority behind two other creditors (presumably, the *Havlish* and *Doe* Plaintiffs).[11] But they appeared to claim

[8] *Owens*, 22-cv-1949 (S.D.N.Y. May 2, 2022), ECF No. 48.

[9] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. May 13, 2022), ECF Nos. 8018, 8020.

[10] *Smith v. The Islamic Emirate*, 01-cv-10132 (S.D.N.Y. May 18, 2022), ECF Nos. 61-65.

[11] *Id.*, ECF No. 63, at 4, 16.

priority over the *Federal Insurance* and *Owens* Plaintiffs as to any of the DAB Assets not used to satisfy either the *Havlish* or *Doe* judgments.[12]

17. On May 27, 2022, the *Federal Insurance* Plaintiffs cross-moved the MDL Court to vacate the *Owens* Plaintiffs' March 21, 2022 prejudgment attachment order issued by Judge Caproni, and in their supporting memorandum they responded to the *Owens* Plaintiffs' motion to intervene in the MDL Court's turnover proceedings.

18. Most recently, on June 3, 2022, the *Smith* Plaintiffs filed a statement of relatedness requesting the action be filed as related to the 9/11 MDL. And on June 10, 2022, the MDL Court issued an order making the *Smith* action part of the 9/11 MDL.[13]

19. No new claimants to the DAB Assets have appeared since the *Smith* Plaintiffs joined the turnover proceedings and briefing in the proceedings appears to have concluded. Most recently, on July 27, 2022, the *Havlish* and *Doe* Plaintiffs filed

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[12] *Id.* (May 18, 2022), ECF No. 63, at 16 ("The Smith/Soulas Creditors . . . filed their Writ of Execution on 22 February 2022, after two other Creditors filed their Writs of Execution . . . [w]hen . . . there was a significant excess of funds available to judgment creditors who follow their Writ. This history supports the claim that this Writ of Execution is timely and filed well before other Judgment creditors who would otherwise exhaust the available DAB Assets held at the FRBNY.") (internal citations omitted).

[13] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. June 10, 2022), ECF No. 8086.

a letter with the MDL Court updating it that all deadlines for the Taliban and DAB to appear in and respond to the *Havlish* and *Doe* turnover motions have passed, and that they believe the motions are "ripe for adjudication as the Court sees fit." July 27 *Havlish*/*Doe* Plaintiffs' Ltr. at 4.

20. Notwithstanding the MDL Court's prior statements that it intends to eschew the *Havlish* and *Doe* Plaintiffs' "first come first served" approach, and instead pursue an "equitable distribution" of the DAB Assets, Apr. 26 Tr. at 5:8-9, the *Havlish*, *Doe*, and *Federal Insurance* Plaintiffs have continued to demand that the MDL Court grant them absolute priority and turn over the entire $3.5 billion to them.[14] Indeed, the *Havlish* Plaintiffs have argued that the MDL Court lacks authority to distribute the DAB Assets on any basis other than pursuant to the New York CPLR's rigid priority rules, which would give them an astonishing windfall. While New York law provides a statutory exception to this absolute priority rule and allowance for an equitable distribution, and while Plaintiffs-Appellants have opposed the turnover motion on that basis, the MDL Court previously suggested that it does not have such equitable authority. *See* Feb. 22 Tr. at 27:17-28:5.

[14] *Id.* (Apr. 27, 2022), ECF Nos. 7928 (*Havlish* and *Doe*), 7937 (*Federal Insurance*).

B. The Framework Agreement.

21. While insisting on absolute priority to the DAB Assets, the *Havlish* and *Federal Insurance* Plaintiffs have told the MDL Court (and repeat to this Court in their Motion to Intervene) that there is no need to worry, because once they obtain all the DAB Assets, they intend to distribute them to 9/11 families pursuant to a "Framework Agreement" to which certain families have assented.[15] Yet these Plaintiffs have steadfastly refused to divulge the terms of the Framework Agreement to its prospective parties or the MDL Court—essentially asking the MDL Court, "Trust, but don't verify."

22. While painting Plaintiffs-Appellants as holdouts to the Framework Agreement, the *Havlish* and *Federal Insurance* Plaintiffs have never articulated why the existence of a potential settlement—after they obtain the entirety of the DAB Assets—should in any way affect Plaintiffs-Appellants' statutory *entitlement* to equitable distribution of the Assets under Rule 23(b)(1)(B).

23. Moreover, despite representations by the *Havlish* and *Federal Insurance* Plaintiffs, the Framework Agreement is *not* endorsed by the vast majority of 9/11 MDL plaintiffs. Instead, the 842 families of 9/11 victims comprising the *Ashton* Plaintiffs (including Plaintiffs-Appellants), *nearly one-third of 9/11 families*,

[15] *Id.* (Apr. 29, 2022), ECF No. 7937, at 1.

rejected the Framework Agreement in pursuit of an equitable distribution among all 9/11 families.

24. Nor is the Framework Agreement at all fair. While its terms remain secret, as set forth in a May 5, 2022 letter to the MDL Court from the *Ashton* Plaintiffs, they include:

- the forty-seven *Havlish* families and the seven *Doe* Plaintiffs will receive close to the full value of their judgments (*i.e.*, around $36 million per family), consuming a total of nearly $1.8 billion of the $3.5 billion of DAB Assets;
- the *Federal Insurance* Plaintiffs will receive nearly $600 million of DAB Assets (or nearly twenty percent of the full value of their compensatory damages judgments); and
- the families of the *2,930* other victims of the 9/11 attacks will receive only one percent of what each of the forty-seven *Havlish* families stand to receive (and, as appears likely, that small amount may be further divided amongst all family members of the victims, including spouses, children, parents, and siblings). May 5 *Ashton* Ltr. at 3.

The *Havlish* and *Federal Insurance* Plaintiffs have neither corrected the *Ashton* Plaintiffs' understanding of the Framework Agreement's terms, nor have they disclosed its actual terms to the MDL Court (or to this Court).

25. On June 3, 2022, the *Havlish* Plaintiffs filed a letter with the MDL Court informing it that, among other things, the *Smith* Plaintiffs had acquiesced to the Framework Agreement.[16]

[16] *Id.* (June 3, 2022), ECF No. 8068. How the *Smith* Plaintiffs' participation in the Framework Agreement alters its above-described terms, remains unclear.

C. Designation of Appellees and Alternative Service of Process in These Consolidated Appeals.

26. On June 28, 2022, this Court consolidated the Appeals per Plaintiffs-Appellants' Consolidation Motion, 22-965, ECF Nos. 52-3, and on July 20, 2022, this Court issued an order further responding to the Motion (the "Alternative Service Order"). 22-965, ECF Nos. 57. The Alternative Service Order (i) designated the Taliban and DAB as appellees in the consolidated Appeals, and (ii) approved service of process on the Taliban and DAB by alternative means, namely (a) the publication of notices in *The New York Times* and *Al Quds Al Arabi* once a week for at least four weeks, and (b) email and Twitter messages to Taliban and DAB representatives directing the appellees to downloadable versions of the Consolidation Motion.

27. On July 29, 2022, *The New York Times* and *Al Quds Al Arabi* began to run weekly notices of this appeal, the last of which will run on August 19, 2022, at which point the Taliban and DAB will have been served in accordance with the Alternative Service Order.[17]

28. On August 4, 2022, this Court issued an Order directing that Plaintiffs-Appellants file their merits brief on or before October 19, 2022. Because of the

[17] Prior to August 19, 2022, Plaintiffs-Appellants will message Taliban and DAB email and Twitter accounts as required by the Alternative Service Order.

urgency of the issues in these Appeals, however, Plaintiffs-Appellants are prepared to file their merits brief on an expedited schedule as set by the Court.

29. On August 5, 2022, the *Havlish* and *Federal Insurance* Plaintiffs moved to intervene in the instant Appeals on consent of Plaintiffs-Appellants. In their motion to intervene, the proposed intervenors stated that they are "prepared to respond [to Plaintiffs-Appellants' merits brief] on whatever schedule the Court enters." 22-965, ECF No. 68, at 26.

ARGUMENT

30. This Court should grant the motion and place the Appeals on the Expedited Appeals Calendar.

31. When good cause requires an expedited decision, this Court may suspend the typical briefing scheduling procedures and order expedited briefing and argument proceedings, as necessary. Fed. R. App. P. 2.

32. In the nearly twenty-year history of the 9/11 MDL, the DAB Assets are the *only* Taliban assets plaintiffs have identified as potentially available to satisfy claims against the Taliban. These assets are indisputably insufficient to satisfy the billions of dollars in judgments held by the *Havlish*, *Doe*, *Federal Insurance*, *Smith*, and/or *Owens* Plaintiffs, let alone the claims thousands of other family members of victims of the 9/11 attacks with pending motions for liquidated damages against the Taliban.

33. Consequently, should the MDL Court grant turnover of any of the DAB Assets to the *Havlish*, *Doe*, *Federal Insurance*, *Owens*, or *Smith* Plaintiffs, it would permanently dissipate this limited fund and irreparably prejudice the rights of Plaintiffs-Appellants and thousands of other victims of the Taliban.

34. Without expedited review, relief under the ordinary briefing schedule will likely come after the conclusion of the 9/11 MDL turnover proceedings. Local Rule 31.2(a)(1) permits appellees and/or intervenors up to 91 days to submit their briefs after Plaintiffs-Appellants' brief is filed and served. After accounting for time for Plaintiffs-Appellants' reply, oral argument, and this Court's consideration of the appeal, proceeding on the normal appeal schedule would likely deprive Plaintiffs-Appellants and other members of the proposed class an opportunity to obtain relief before the DAB Assets are dissipated.[18]

35. Neither of the Appellees have appeared in any proceedings related to the DAB Assets. On August 5, 2022, however, the *Havlish* and *Federal Insurance* Plaintiffs moved this Court to intervene in the Appeals, without opposition from Plaintiffs-Appellants. It is possible that the *Doe*, *Smith*, and/or *Owens* Plaintiffs may

[18] Should the MDL Court grant any of the turnover motions, Plaintiffs-Appellants will seek a stay pursuant to Federal Rule of Appellate Procedure 8(a). Likewise, they intend to seek a stay should the *Owens* court grant judgments to the *Owens* Plaintiffs.

likewise move to intervene, though they have not informed Plaintiffs-Appellants of any such intentions.

36. Intervenors will suffer no prejudice if this Court expedites the Appeals. Should this Court ultimately affirm the dismissal of the Class Action, these intervenors face only an incremental delay in adjudication of their rights pursuant to the 9/11 MDL turnover proceedings and in the *Owens* action. Further, given the extensive briefing and letter writing concerning these issues before the MDL Court and the *Owens* court, all interested parties are well-represented by counsel acquainted with the issues, and such parties would not be unduly burdened by preparing an appellate brief under an abbreviated schedule. Indeed, the *Havlish* and *Federal Insurance* Plaintiffs stated in their Motion to Intervene that they are "prepared to respond [to Plaintiffs-Appellants' merits brief] on whatever schedule the Court enters." 22-965, ECF No. 68, at 26.

37. On August 5, 2022, the undersigned advised counsel for proposed intervenors the *Havlish* and *Federal Insurance* Plaintiffs that Plaintiffs-Appellants planned to file a motion for expedited briefing. On August 8, 2022, counsel for proposed intervenors advised that proposed intervenors were "unable" to take a position on the motion at this time, but "may file a response if warranted." Email from Douglass Mitchell to Noam Biale, dated Aug. 8, 2022, Exh. 3.

CONCLUSION

38. For the foregoing reasons, this Court should schedule the Appeals according to the expedited appeals calendar pursuant to Local Rule 31.2(b).

Dated: August 8, 2022
New York, New York

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Certification of Compliance with Federal Rules of Appellate Procedure 27

(1) This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the part of the document exempted by Fed. R. App. P. 27(a)(2)(B):

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This document has been prepared in proportionally spaced typeface using Microsoft Word in size 14 Times New Roman font.

/s/ Samuel Issacharoff
Attorney for: Plaintiffs-Appellants
Dated: August 8, 2022

EXHIBIT 1

SHER TREMONTE LLP

May 5, 2022

BY ECF

The Honorable George B. Daniels
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

The Honorable Sarah Netburn
United States Magistrate Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: ***In re Terrorist Attacks on September 11, 2001***, Case No. 03-md-1570 (GBD)(SN)
In re Approximately $3.5 Billion of Assets on Deposit at the Federal Reserve Bank of New York in the Name of Da Afghanistan Bank, Case No. 22-cv-03228 (GBD)

Dear Judge Daniels and Judge Netburn:

We write on behalf of our clients, the estates of 842 victims killed in the 9/11 Terror Attacks and their family members (the *Ashton* Plaintiffs)—nearly one-third of 9/11 victim families—who have not joined the "Framework Agreement," to address developments following the April 26, 2022 conference. At that conference, this Court on several occasions stated that it intends to proceed with any distribution of DAB Assets in an "equitable" manner, should those funds be available to satisfy judgments against the Taliban. Despite this, immediately following that conference, certain counsel continued to urge the Court to take actions necessary to effectuate their Framework Agreement, which would substantially and inequitably advantage the families of forty-seven victims of the 9/11 Terror Attacks (the *Havlish* Plaintiffs) and insurance companies (the *Federal Insurance* Plaintiffs) over the other 2,930 9/11 families. This proposal is not endorsed by the "vast majority of plaintiffs," as counsel for the *Havlish, Doe*, and *Federal Insurance* Plaintiffs incorrectly assert.[1] That is so because the Framework Agreement is unfair, inequitable, and shrouded in secrecy, and it puts these counsel—rather than the Court—in charge of determining what is fair. Whether the Court proceeds with an equitable distribution pursuant to the turnover proceedings or whether, as we have advocated, it were to do so in the context of an in rem action, we respectfully request that the availability of the DAB Assets be addressed first. Should the DAB Assets be available to satisfy judgments against the Taliban, and should the Court undertake the distribution of the DAB Assets, we ask that the process be overseen by a neutral special master,

[1] *See, e.g.*, *In re Terrorist Attacks on September 11, 2001*, 03-md-1570 (S.D.N.Y. Apr. 29, 2022), ECF No. 7937, at 1.

answerable to the Court, to avoid unfairly advantaging a very small number of families and insurance companies over all others, as the Framework Agreement currently does.

1. *Havlish*, *Doe*, and *Federal Insurance* Continue to Advocate for a "First Come First Served" Approach

The *Havlish* and *Doe* April 27 reply brief and the *Federal Insurance* April 29 joinder make clear that, even following the Court's statements that "an equitable distribution is [not] first come first served,"[2] the Framework Agreement's proponents maintain that the Court lacks the authority to undertake an equitable distribution. They instead argue the Court has no choice but to give the *Havlish* Plaintiffs and *Doe* Plaintiffs (seven victims of a 2016 Taliban-supported terrorist attack) approximately $2.22 billion of the total $3.5 billion—*i.e.*, more than two-thirds of the DAB Assets—and to give the *Federal Insurance* Plaintiffs the remainder.[3] They claim that this is in the best interests of all 9/11 families, but that is not so.

Prior to the April 26 conference, when this Court first expressed its commitment to an equitable distribution process, attorneys for some of the non-*Havlish* 9/11 families had endorsed the Framework Agreement. However, there is every reason to believe that this decision was motivated by fear that any potential distribution of the DAB Assets would occur on a "first come first served" basis and that the non-*Havlish* 9/11 families would recover nothing. In other words, our understanding is that many 9/11 families agreed to accept a disproportionately small share of the DAB Assets because they were explicitly threatened with zero recovery.[4] The *Ashton* Plaintiffs, representing a substantial portion of 9/11 families, opposed the lawyer-driven Framework Agreement not to be obstructionist or to gain any unfair advantage, but because of a well-founded belief that for all non-*Havlish* 9/11 families, the Framework Agreement is massively inequitable.

2. The Framework Agreement is Highly Inequitable and *Not* Endorsed by a "Vast Majority" of 9/11 Families

Indeed, the Framework Agreement depends on judicial action and endorsement because it requires this Court to give that handful of plaintiffs absolute priority, granting turnover of the entire $3.5 billion in DAB Assets to them, and thereby delegating to a small contingent of attorneys the

[2] *Id.*, Apr. 26, 2022 Hr'g Tr. at 5:8–9.

[3] *Id.* (Apr. 27, 2022), ECF No. 7928, at 2 ("[A]s a matter of governing law, the Havlish Creditors are entitled to satisfy their compensatory damages before other creditors . . . ."); *id.* (Apr. 29, 2022), ECF No. 7937, at 24–25 (requesting the Court turn over to the *Federal Insurance* Plaintiffs "any DAB Assets not deemed subject to turnover" to the *Havlish* and *Doe* Plaintiffs). Of course, whether any of the DAB Assets remain, and whether the Framework Agreement is viable at all, depends on the *Owens* Plaintiffs failing to maintain their right to approximately $1.3 billion. In this regard, we note that the *Owens* Plaintiffs recently moved to confirm their attachment. *Owens v. Taliban*, 22-cv-1949 (S.D.N.Y. May 2, 2022), ECF Nos. 47–51.

[4] *See In re Terrorist Attacks* (Mar. 22, 2022), ECF No. 7792, at 2 ("It has come to our attention . . . that the attorneys representing these plaintiffs may seek to divide this money in a way that does not consider the fair and equitable distribution of these limited funds to all the 9/11 victims and their families.").

authority to distribute the DAB Assets as they see fit.[5] Notably, the agreement's formal terms remain undisclosed, but our understanding is that under the Framework Agreement:

- the forty-seven *Havlish* families and the seven *Doe* Plaintiffs will receive close to the full value of their judgments (*i.e.*, around $36 million per family), consuming a total of nearly $1.8 billion of the $3.5 billion of DAB Assets;

- the commercial insurers constituting the *Federal Insurance* Plaintiffs will receive nearly $600 million of DAB Assets (or nearly twenty percent of the full value of their compensatory damages judgments); and

- the families of the 2,930 other victims of the 9/11 Terror Attacks will receive **only one percent** of what each of the forty-seven *Havlish* families stand to receive (and, as appears likely, that small amount may be further divided up amongst all family members of the victims, including spouses, children, parents, and siblings).[6]

That is, contrary to this Court's statement that its "main goal is to make sure that all plaintiffs can recover as much of the available funds as possible in an equitable way,"[7] counsel for the *Havlish*, *Doe*, and *Federal Insurance* Plaintiffs ask the Court to make it so that the DAB Assets are available to 2,930 9/11 families only if they agree to participate in a private Framework Agreement with highly inequitable terms and forgo any judicial oversight of distribution decisions. This private agreement can only proceed if this Court accepts the priority arguments.[8]

Contrary to claims made to this Court in recent filings, the 9/11 families do not overwhelmingly support the Framework Agreement.[9] Instead, the nearly one-third of 9/11 families comprising the *Ashton* Plaintiffs have consistently argued for equity. And if given the choice between an equitable distribution of the DAB Assets and the Framework Agreement, we are confident that most, if not all, of the families of the 2,930 non-*Havlish* 9/11 victims would reject the Framework Agreement. Simply put, the Framework Agreement is at odds with the Court's stated intention to distribute the DAB Assets equitably.

---

[5] *See id.* (Apr. 27, 2022), ECF No. 7928, at 2 ("To implement the Framework Agreement, it is necessary that the Court grant the Havlish Creditors' turnover motion. That motion should be granted not only because the implementation of the Framework Agreement will lead to an equitable and fair result . . . ."); *id* (Apr. 29, 2022), ECF No. 7937, at 25 ("The turnover of these assets will be distributed pursuant to the Framework Agreement, in order to provide broad relief to the 9/11 Community, a manifestly fair and equitable result.").

[6] Insofar as these may not be the Framework Agreement's current terms, it is the secrecy surrounding the Agreement that makes it difficult, if not impossible, to describe its terms with absolute accuracy.

[7] *See id.*, Apr. 26, 2022 Hr'g Tr. at 36:19–21.

[8] This Court noted at the April 26, 2022 conference that it was not "even aware of what the agreement is" and that the "appropriate place to resolve those issues and understand how we [are] ultimately going to proceed is in this forum, in this courtroom." *Id.* at 19:9–14. Given the need for judicial action to proceed with the Agreement, we respectfully ask that the formal terms of the proposal be placed on the record.

[9] *See, e.g.*, *id.* (Apr. 29, 2022), ECF No. 7937, at 1.

3. Under These Circumstances, Addressing Threshold Legal Questions Before Distribution Decisions Would be Most Efficient

Moreover, the question of how to distribute the assets depends on this Court's determination of the threshold question whether the assets are even available to pay judgments against the Taliban. Accordingly, we respectfully request, consistent with the Court's statement at the April 26 conference that it is still considering the threshold question of the DAB Assets' availability, that this determinative legal question be answered before the Court undertakes any secondary determination as to how the DAB Assets should be distributed.[10]

4. A Special Master to Oversee Equitable Distribution Would Ensure Neutrality and Transparency

In addition, we respectfully request the Court grant the *Ashton* Plaintiffs' pending motions for liquidated damages (and others that are ripe for determination) so that all plaintiffs' claims are ready for equitable distribution.[11] We would also support the Court's suggestion of appointing a special master with whom the parties and the Court can work to ensure that the DAB Assets are indeed distributed equitably (even including the *Owens* claims in this process, given their recent motion to confirm their attachment before Judge Caproni; an issue that may present a continuing

[10] *See id.*, Apr. 26, 2022 Hr'g Tr. at 4:23–5:1. In their turnover reply, the *Havlish* and *Doe* Plaintiffs argue that their choice "not to participate in the" United States Victims of State Sponsored Terrorism (USVSST) Fund should be a factor weighing in favor of strict application of priority rules. *See id.*, ECF No. 7928, at 9–10. The fact is, however, that the estates, spouses, and dependents of those killed in the 9/11 Terror Attacks have generally received only 0.76% of the value of their judgments from the USVSST Fund. To the extent that the *Havlish* or *Doe* Plaintiffs should receive an incrementally greater distribution of any DAB Assets to achieve parity with victims who accepted USVSST distributions, that is not accomplished by granting them priority for payment of all or most of their judgments to the great cost of all other 9/11 families. Rather, equity counsels in favor of determining a common percentage of the judgments all 9/11 Families should receive in order to ensure that each person is treated fairly. In this regard, a special master would be helpful to address all plaintiffs' concerns about what constitutes "equity" under the circumstances here.

[11] In December 2021, the *Ashton* Plaintiffs filed motions seeking to extend to the Taliban the same damages awards ordered against Iran. *See id.* (Dec. 20, 2021), ECF No. 7489, *et seq.* And this Court has "encourage[d] all plaintiffs to continue to meet and propose strategies for an efficient and fair process to adjudicate pending default damages motions." *Id.* (Apr. 6, 2022), ECF No. 7833, at 2. Because, however, the *Havlish*, *Doe*, and *Federal Insurance* Plaintiffs now have liquidated damages judgments that, they contend, would consume the entirety of the DAB Assets, the coercive pressure on all others to accede to the opaque Framework Agreement, or risk receiving nothing (should the Court ultimately credit the *Havlish*, *Doe*, and *Federal Insurance* Plaintiffs' contention that priority controls, without regard to equity) has increased.

obstacle to this Court fairly and equitably resolving all claims in the context of the current turnover proceedings).[12]

Respectfully submitted,

KREINDLER & KREINDLER LLP */s/ Megan Benett* Megan Benett	SHER TREMONTE LLP */s/ Theresa Trzaskoma* Theresa Trzaskoma

[12] To be clear, we continue to believe that the Wodensheks' Rule 23(b)(1)(B) in rem action is the best mechanism for fashioning an equitable distribution. For that reason, they are appealing the Court's dismissal of the in rem action and the request for preliminary injunctive relief. Should the DAB Assets face imminent dissipation pursuant to the turnover proceedings or otherwise, they intend to move expeditiously for a stay of any such dissipation from this Court and the Second Circuit.

EXHIBIT 2

1155 AVENUE OF THE AMERICAS, NEW YORK, NY 10036-2711

JENNER&BLOCK LLP

July 27, 2022

VIA ECF

The Honorable George B. Daniels
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

The Honorable Sarah Netburn
United States Magistrate Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: ***In re Terrorist Attacks on September 11, 2001***, No. 03-md-1570 (GBD) (SN)
Havlish et al. v. Bin Laden et al., No. 03-cv-9848 (GBD) (SN)
John Does 1 through 7 v. the Taliban et al., No. 20-mc-740 (GBD) (SN)
Deadlines for Taliban and DAB to Respond

Dear Judges Daniels and Netburn,

On behalf of Judgment Creditors Fiona Havlish, *et al*. (the "Havlish Creditors") and Judgment Creditors John Does 1 through 7 (the "Doe Creditors), we submit this letter to update the Court on the status of service on the Taliban and Da Afghanistan Bank. As of July 25, 2022, all deadlines for these parties to appear in and respond to the Havlish and Doe turnover proceedings have now passed. That is the case regardless of which of several acts of service the Court deems to have perfected service, and it is the case regardless of whether DAB is treated as an agency or instrumentality of a foreign state and thereby entitled to a sixty-day response deadline under 28 U.S.C. § 1608(d). As a result, the Havlish and Doe Creditors' turnover motions are now ripe for adjudication as the Court sees fit.

I. Service of the Havlish and Doe Creditors' Turnover Motions

The day the Havlish and Doe turnover motions were filed—March 20, 2022—the Havlish and Doe Creditors personally served DAB by serving Dr. Shah Mehrabi, a U.S.-based member of DAB's highest decision-making body, the Supreme Council. *See* Dkts. 7776, 7777; *see also* Dkt. 7784 at 11-13 (explaining why such service was effective on DAB under the Federal Rules of Civil Procedure, New York law, and the Foreign Sovereign Immunities Act ("FSIA")).

The following day, on March 21, 2022, the Havlish and Doe Creditors each requested that the Court authorize alternative service on the Taliban and DAB, proposing to do so by publication, email, and social media. *See* Dkt. 7780 (Doe alternative service motion); Dkt. 7784 (Havlish

alternative service motion).[1] The Havlish Creditors' motion explained that they sought, out of an abundance of caution, to serve the Taliban and DAB in accordance with all potentially applicable rules, including Rule 4 of the Federal Rules of Civil Procedure, Article 52 of the NY CPLR, and—with respect to DAB—FSIA Section 1608(b), which governs service on agencies or instrumentalities of foreign states.[2] (The motion also explained why service of DAB via Dr. Mehrabi conformed with Section 1608(b)(2), to the extent it applies.) While awaiting the Court's ruling, the Doe Creditors served the Taliban (including multiple Taliban officials) and DAB via Twitter, and served DAB by email, which DAB acknowledged on April 3, 2022. *See* Dkts. 7812, 7813, 7819, 7820, 7824, and 7828.

By opinion dated April 5, 2022, Judge Netburn (1) granted the Havlish and Doe Creditors' requests to serve the Taliban by publication; (2) directed them to additionally serve the Taliban by Twitter; and (3) authorized supplemental service on DAB by publication, email, and Twitter. Dkt. 7830.[3] The Court made clear that its opinion "[did] not address DAB's status," and noted that "there is no need to do so because the procedures for supplemental service are, for practical purposes, identical regardless of whether service on DAB must be authorized under the Rule 4 procedures for a foreign entity or the 28 U.S.C. § 1608(b) procedures for service on the instrumentality of a foreign sovereign." *Id*. at 10. In authorizing alternative and supplemental service, the Court found that both the Taliban and DAB already had actual notice of these proceedings, based on their representatives' public comments on the proceedings. *Id*. at 7, 13.

The Havlish and Doe Creditors proceeded to implement the alternative and supplemental service provided for in Judge Netburn's opinion. On April 20, 2021, the Doe Creditors effected Twitter service on the Taliban and DAB, and email service on DAB. Dkt. 7910. On April 24, 2022,

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[1] To be clear, at issue is not service of process required for a complaint but rather service of the notice required by Article 52 of the N.Y. CPLR.

[2] Although the Havlish Creditors maintain that TRIA preempts the FSIA in all respects relevant to these proceedings, they acknowledged that "they must provide DAB with notice and an opportunity to be heard and that multiple procedures could potentially govern the sufficiency of notice in a TRIA proceeding." Dkt. 7784 at 8-9. They recognized the United States' position that DAB—regardless of whether it is an agency or instrumentality of *the Taliban*—arguably remains, as the Afghan central bank, "an agency or instrumentality of the State of Afghanistan" under the FSIA and that, as a consequence, the parties should consider providing notice using procedures contained in Section 1608, even while maintaining that TRIA controls. *See* Dkt. 7661 at 21, 25 n.8. Without conceding that the United States is correct, the Havlish and Doe Creditors have, as the Court recognized, provided notice to DAB in various ways that would satisfy Section 1608(b). *See* Dkt. 7830 at 10-13.

[3] The Court also authorized, per the Havlish Creditors' request, personal service on DAB at its offices in Kabul, but noted that "[g]iven the precarious security situation in Afghanistan, personal service on DAB appears neither viable nor advisable." *Id*. at 14. The Court noted that "any failure to achieve personal service on DAB will not negatively affect the validity of service." *Id*. After further investigating avenues for personally serving DAB in Afghanistan, the Havlish and Doe Creditors have refrained from attempting such service for the reasons identified by Judge Netburn.

the Havlish Creditors did the same. *See* Dkt. 7904. Then, in conformity with Judge Netburn's order and as provided in CPLR § 316, the Havlish and Doe Creditors jointly served the Taliban and DAB by publication in the *New York Times* (both the U.S. and international editions) and *Al-Quds Al-Arabi.* Dkt. 8059. Notices with links to a website containing the turnover motion papers were published in the U.S. edition of the *New York Times* on April 26, 2022; May 3, 2022; May 10, 2022; and May 17, 2022; in *Al-Quds Al-Arabi* on April 28, 2022; May 4, 2022; May 11, 2022; and May 18, 2022, and in the international edition of the *New York Times* on April 28, 2022; May 5, 2022; May 12, 2022; and May 19, 2022. *Id*. ¶ 11.

II. All Potentially Applicable Deadlines for the Taliban and DAB to Respond to the Havlish and Doe Motions Have Now Passed

A calculation of the deadlines by which the Taliban and DAB must respond to the turnover motions depends on (1) when service is deemed to be complete; and (2) the amount of time each entity is afforded under the applicable rules. For both the Taliban and DAB, the deadline to respond has now passed even under the latest possible date of completed service, and even with the longest possible deadline to respond.

The Havlish and Doe Creditors served the Taliban in two ways, as directed in Judge Netburn's order. They first effected Twitter service on April 20, 2022 and April 24, 2022. *See* Dkts. 7904, 7910. They then served the Taliban by publication. Dkt. 8059. Per CPLR § 316(c), "[s]ervice by publication is complete on the twenty-eighth day after the day of first publication." The first day of publication was April 26, 2022, making service by publication—and all service on the Taliban—complete no later than May 24, 2022. Calculating the Taliban's response deadline from May 24, 2022, the last date of service among the various means used to serve them, the Taliban had either 21 days to respond under the Federal Rules (Fed. R. Civ. P. 12(a)(1)(A)(i)) or 30 days to respond under the New York state rules (CPLR § 320(a)). Under either regime, the latest possible deadline for the Taliban's appearance would have been in mid-to-late June and has now passed.

The Havlish and Doe Creditors served DAB in multiple ways designed to comport with both federal and state law, as well as with the FSIA to the extent it applies. First, and foremost, effective service was complete on DAB on March 20, 2022, when they personally served Dr. Shah Mehrabi, who is an officer or agent of DAB, in the State of Virginia. *See* Dkt. 7784 at 11-13 (explaining that such service comported with New York law, Rule 4 of the Federal Rules of Civil Procedure, and the FSIA, to the extent those rules apply). Therefore, service on DAB was complete and effective on March 20, 2022. If DAB is not treated as an agency or instrumentality of the State of Afghanistan, its last day to appear would have been either April 11, 2022, under the Federal Rules of Civil Procedure, or April 19, 2022 under New York law. If DAB is treated as an agency or instrumentality of the State of Afghanistan, its last day to appear would have been May 19, 2022, sixty days after service via Dr. Mehrabi. *See* 28 U.S.C. § 1608(d). All those dates have now passed.

Even if the Court were to deem one of the supplemental methods as the effective date of service for purposes of determining when DAB was required to appear, DAB's opportunity to appear in the turnover proceedings has now passed. The Havlish and Doe Creditors supplemented

service on Dr. Mehrabi by serving DAB via email and Twitter in April 2022. *See* Dkts. 7904, 7910. Thereafter, the Havlish and Doe Creditors also served DAB by publication. Dkt. 8059. As with service on the Taliban, service by publication, which would have been the last of all possible dates of service, was complete on May 24, 2022, 28 days after the first publication.

If DAB is not treated as an agency or instrumentality of the State of Afghanistan, then, like the Taliban, DAB would have had either 21 days from the completion of service to respond under federal law or 30 days from the completion of service to respond under state law. Under either regime, the latest possible deadline for DAB's appearance would have been in mid-to-late June and has now passed. If, by contrast, DAB is treated as an agency or instrumentality of a foreign sovereign, Section 1608(d) of the FSIA would entitle it to a sixty-day response deadline. In such a scenario, and even if the Court determines that service on DAB was not complete until service by publication was complete on May 24, 2022, the latest possible deadline for DAB to appear would have been July 25, 2022, which has now passed.

Because all potentially applicable deadlines for the Taliban and DAB to appear and respond to the turnover motions have now passed, the Havlish and Doe Creditors' turnover motions are ripe for adjudication as the Court sees fit. The Havlish and Doe Creditors thank the Court for its consideration of this matter.

Respectfully submitted,

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Counsel for Judgment Creditors John Does 1-7

cc: All counsel of record (by ECF)

EXHIBIT 3

Max Tanner

From: Mitchell, Douglass A. <DMitchell@jenner.com>
Sent: Monday, August 8, 2022 5:51 PM
To: Noam Biale; Theresa Trzaskoma
Cc: Wolosky, Lee; Carter, Sean; Max Tanner; Benett, Megan; samuel.issacharoff@nyu.edu; Kate Ghotbi; Andrew J. Maloney
Subject: RE: Taliban: Motion to Intervene in In re Approximately $3.5 Billion

Noam,

The Havlish Creditors and Federal Insurance Creditors are unable to take a position on your motion at this time, but may file a response if warranted.

From: Noam Biale <NBiale@shertremonte.com>
Sent: Friday, August 5, 2022 4:26 PM
To: Theresa Trzaskoma <TTrzaskoma@shertremonte.com>; Mitchell, Douglass A. <DMitchell@jenner.com>
Cc: Wolosky, Lee <LWolosky@Jenner.com>; Carter, Sean <SCarter1@cozen.com>; Max Tanner <MTanner@shertremonte.com>; Benett, Megan <mbenett@kreindler.com>; samuel.issacharoff@nyu.edu; Kate Ghotbi <KGhotbi@shertremonte.com>; Andrew J. Maloney <AMaloney@kreindler.com>
Subject: Re: Taliban: Motion to Intervene in In re Approximately $3.5 Billion

Dear Counsel,

We plan to file a motion in the Court of Appeals seeking an expedited briefing schedule on the merits. We will request to be placed on the Expedited Appeals Calendar, which would make our brief due 35 days from the date of the order on the motion, and any response brief due 35 days after that. Since you have now moved to intervene, we would like to advise the Court of your position on the motion. Could you please let us know your position and whether you plan to file a response?

Thank you,

Noam

From: Theresa Trzaskoma <TTrzaskoma@shertremonte.com>
Date: Tuesday, August 2, 2022 at 4:13 PM
To: "'Mitchell, Douglass A.'" <DMitchell@jenner.com>
Cc: "Wolosky, Lee" <LWolosky@Jenner.com>, "Carter, Sean" <SCarter1@cozen.com>, Noam Biale <NBiale@shertremonte.com>, Max Tanner <MTanner@shertremonte.com>, "Benett, Megan" <mbenett@kreindler.com>, "samuel.issacharoff@nyu.edu" <samuel.issacharoff@nyu.edu>, Kate Ghotbi <KGhotbi@shertremonte.com>, "Andrew J. Maloney" <AMaloney@kreindler.com>
Subject: RE: Taliban: Motion to Intervene in In re Approximately $3.5 Billion

Counsel,

We do not oppose your motion.

Regards,
Theresa

From: Mitchell, Douglass A. <DMitchell@jenner.com>
Sent: Tuesday, August 2, 2022 10:46 AM
To: samuel.issacharoff@nyu.edu; Benett, Megan <mbenett@kreindler.com>; Noam Biale <NBiale@shertremonte.com>; Theresa Trzaskoma <TTrzaskoma@shertremonte.com>
Cc: Wolosky, Lee <LWolosky@Jenner.com>; Carter, Sean <SCarter1@cozen.com>
Subject: Taliban: Motion to Intervene in In re Approximately $3.5 Billion

Dear counsel,

The Havlish and Federal Insurance Creditors will be jointly moving to intervene in the consolidated In re Approximately $3.5 Billion appeals in the Second Circuit (Nos. 22-965 and 22-975). Per CA2 Local Rule 27.1(b), could you please let us know by close of business today if your clients take a position with respect to our motion to intervene, and whether you intend to file a response.

Thank you.

Douglass A. Mitchell

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IN RE APPROXIMATELY $3.5 BILLION OF ASSETS ON DEPOSIT AT THE FEDERAL RESERVE BANK OF NEW YORK IN THE NAME OF DA AFGHANISTAN BANK WILLIAM WODENSHEK, *et al.*, *Plaintiffs-Appellants* v. DA AFGHANISTAN BANK, *Defendant-Appellee*	On Appeal from the United States District Court for the Southern District of New York No. 22-965 (L)
IN RE APPROXIMATELY $3.5 BILLION OF ASSETS ON DEPOSIT AT THE FEDERAL RESERVE BANK OF NEW YORK IN THE NAME OF DA AFGHANISTAN BANK SARAH WODENSHEK, CHILD OF 9/11 DECEDENT CHRISTOPHER WODENSHEK, *ET AL.*, *Plaintiffs-Appellants* v. THE TALIBAN, *Defendant-Appellee*	No. 22-975 (Con)

DECLARATION OF SERVICE

NOAM BIALE, pursuant to Title 28, United States Code, Section 1746, hereby declares under penalty of perjury:

1. I am an attorney licensed to practice in the State of New York and am admitted to practice before this Court. I represent Plaintiffs-Appellants The Estate of Christopher Wodenshek, Anne Wodenshek, Sarah Wodenshek, Haley Wodenshek, Mollie Wodenshek, William Wodenshek, and Zachary Wodenshek. I respectfully submit this Declaration in support of Plaintiffs-Appellants' Motion for Expedited Briefing.

2. Plaintiffs-Appellants are in the process of serving the Taliban and Da Afghanistan Bank by the alternative means authorized in the Court's July 20, 2022 Order.

3. Pursuant to that Order, on August 8, 2022, I caused Plaintiffs-Appellants' Motion to Expedite the Appeals and related exhibits to be posted at https://www.shertremonte.com/DABAssets, the website at which Plaintiffs-Appellants will post all documents filed in connection with the consolidated Appeals.

Dated: August 8, 2022
New York, New York

/s/Noam Biale
Noam Biale
SHER TREMONTE LLP