

Taking Case Cleared for Take-Off

- [inShare0](#)

Plaintiffs, Aviation & General Insurance, Certain Underwriters, and New York Marine (collectively “Aviation”), provided \$14 million in liability coverage for aircraft used in EgyptAir Flight 648 and \$55 million for Pan Am Flight 103, both of which were blown up in terrorist attacks sponsored by the Libyan government. When the United States lifted Libya’s sovereign immunity in 1996 for its state sponsorship of terrorism, Aviation brought civil claims in the U.S. District Court for the District of Columbia for indemnification of the losses sustained in insuring the destroyed aircraft. The United States later restored Libya’s sovereign immunity in 2008, thereby terminating all pending claims against Libya, and directing the claims of U.S. nationals to be heard by the Foreign Claims Settlement Commission.

But the Commission held that it lacked jurisdiction over these claims, so Aviation filed suit against the United States in the Court of Federal Claims alleging that the United States violated their Fifth Amendment rights by taking their legal claims without compensation. The Government moved to dismiss the claims, asserting that Aviation’s causes of action were not a cognizable property interest under the Fifth Amendment. Citing two binding precedents from the Federal Circuit, the court denied the Government’s motion, stating:

[F]or the purposes of the motion to dismiss, the Court finds that Plaintiffs have alleged sufficient facts to show a property interest in the insurance contracts they sought to protect with a legal claim against Libya, which the United States subsequently extinguished.

The court also rejected the Government’s argument that Aviation’s claims involved a non-justiciable political question. The court explained that since Aviation’s claims did not challenge the President’s authority or discretion to conduct foreign relations, and instead sought “compensation for their terminated claims,” the claims were justiciable, and well within the CFC’s jurisdiction to decide takings claims.

Read the opinion [here](#).