

SCARY CAR BROKER PLOT AND THE FIFTH AMENDMENT

I've always been skeptical of the Scary Car Broker Plot—the suit against a bunch of used car brokers and others based on the claim that the entire thing is a money laundering operation for Hezbollah. At the core of the complaint is the allegation that entities that weren't listed on Treasury's sanctions list until early last year transferred money between 2007 and early last year (that is, until they were listed) to purchase used cars in the US.

Between approximately January 2007 and early 2011, at least \$329 million was transferred by wire from accounts held in Lebanon at LCB, Federal Bank of Lebanon ("Federal Bank"), Middle East and Africa Bank ("MEAB"), and BLOM Bank ("BLOM") to the United States through their correspondent bank accounts with U.S. financial institutions located in the Southern District of New York and elsewhere for the purchase of used cars.

But one of the main targets of the complaint—one they don't actually get to until page 46 of a 65-page complaint—are thirty seemingly Lebanese-American owned car brokers in the US.

In describing these brokers, the complaint seems to offer little perspective on how this business—a perfectly legitimate business designed to get clunkers into countries where they still have market value—normally operates.

The businesses of these Car Buyers typically have little or no property or assets other than bank accounts that are used to receive wires from overseas to buy cars, and to purchase used cars at auction. These cars are then transported to shipping ports, where they are

shipped to West Africa. The Car Buyers typically do not have offices, car lots, or an inventory of used cars other than cars that are in transit to the ports. Some of the Car Buyers purchase cars for their own account, but others simply retain a fee of a few hundred dollars for each car that they buy.

That is, the complaint suggests that the marginal nature of these businesses, by itself, makes these businesses sketchy. But it offers no proof for that fact (and I believe that a lot of these businesses are sketchy by design—they're the automotive equivalent of recyclers who pick through trash to try to find things with ongoing value).

In the section laying out the individual descriptions of the middle men who dealt with the car brokers, there are a lot of assertions of direct and more attenuated ties to Hezbollah with little or no proof.

Nevertheless, the goal of this complaint is to seize money from the auto brokers, about whom the complaint makes no claims of knowledge of ties to Hezbollah.

Since the complaint, I've just been assuming that maybe the government has better evidence to tie the American businesses they're effectively shutting down to Hezbollah (nevermind that the ties have always been closer to Colombian drug cartels).

But yesterday, Al-Jazeera had a long article poking a bunch more holes in the case. In it, Josh Dratel suggests the government is probably taking this approach because they don't have the evidence to do it through criminal channels.

Joshua Dratel, a criminal defence lawyer based in New York, pointed out that filing it as a civil complaint rather than a criminal case immediately lowers the bar in terms of standard of proof necessary to prove the case.

"Some of their evidence may not be sufficient to meet the criminal standard," Dratel – who has worked on several terrorism cases including the Holy Land Foundation case, and represented Guantanamo detainee David Hicks – told Al Jazeera. "A lot of it sounds like material not directly related to the people [named in the complaint] and the evidence is less than compelling."

By filing a case *in rem*, the prosecutors do not have to demand the presence of individuals, but instead focus on certain assets, which Dratel pointed out was "very convenient in terms of getting assets without getting the people in court. It is part of a notion that you can sue a 'thing', which is a more difficult case to defend."

Furthermore, it has been filed under Section 981, title 18 of the US Code of Laws, meaning for the government to win the case the Hezbollah connection is irrelevant. "They have to prove the other stuff, such as the money laundering and drug trafficking, in court, but the Hezbollah connection is immaterial," explained Dratel. "Statute 981 has nothing to do with terrorism."

Yet the document is presented in such a way that makes Hezbollah the focal point. "They spend 20-odd pages on Hezbollah but they never link it up to the specific conduct which they are trying to identify for [the] forfeiture of assets case," said Dratel.

And it notes what I did—the evidence tying this scheme to Hezbollah is based on vague terms with little support (note that Salhab, described here, is one of the people who paid the car brokers, so if his tie to Hezbollah is weak, then so is that of the car brokers).

On numerous occasions the complaint highlights individuals as either being “members”, “operatives”, or “supporters” of Hezbollah, but fails to provide evidence of these alleged connections, or clarify what defines the characteristics of these terms.

“It is being deliberately vague with these terms because they don’t have anything to connect it to Hezbollah,” said Dratel. “When it talks of ‘associations with Hezbollah’, what does this mean? Some construction worker who helped in the reconstruction efforts following the 2006 war?”

On one occasion the complaint does go into detail of how one individual, Oussama Salhab, was a Hezbollah “operative”. “During a border inspection of a fingerprint-encrypted laptop Salhab carried with him, [Customs and Border Protection] officers found, among other things, images of Hizballah Secretary General Hassan Nasrallah; audio of the Hizballah anthem; images of Hizballah militants stomping on an Israeli flag...” it stated.

According to Amal Saad-Ghorayeb, political analyst and author of *Hezbu’llah: Politics and Religion*, the material found in Salhab’s possession only goes to prove he is not a member or operative of the movement.

“This is the best way of knowing they are not Hezbollah members,” she told Al Jazeera. Members would not compromise themselves “by actually carrying this stuff around”.

“These items are those of a groupie.

In short, the government appears to be seizing the assets of 30 businesses based on really attenuated ties to Hezbollah, without even

offering proof the business owners themselves knew of any tie to Hezbollah (and remember, the larger marketing companies involved weren't listed under Treasury's sanctions until after the transfers basically stopped).

Now it's possible this really is a money laundering operation to get money to Hezbollah (though the al-Jazeera article raises several more challenges to that claim). But thus far, the government hasn't shown proof. Based on these accusations, however, it seems prepared to seize the businesses involved.

At best, it seems like an attempt to spin a criminal organization with drug links and ties to Lebanese into a Hezbollah plot. At worst, it appears to criminalize doing business as a Lebanese-American. Add in the way it follows on the Scary Iran Plot, and car broker Manssor Arbabsiar's possible cooperation at a time he had no lawyer, and I really would like to see more evidence before the government starts taking businesses based on these claims.