

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

<b>Abolala Soudavar,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>Civil Action No. 00-1717 (JDB)</b>
	:	
<b>Islamic Republic of Iran, and</b>	:	
<b>Sazman-E Gostaresh Va Newsazi-Ye</b>	:	
<b>Sanaye Iran</b>	:	
	:	
<b>Defendants.</b>	:	

**FILED**


SEP 25 2002

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

**ORDER**

Upon consideration of defendants' motion to dismiss and the submissions of the parties, and for the reasons stated in the Court's Memorandum Opinion issued on this date, it is hereby ORDERED that defendants' motion to dismiss be and hereby is GRANTED; and it is FURTHER ORDERED that plaintiff's complaint be and hereby is dismissed with prejudice.

Signed this 24<sup>th</sup> day of September, 2002.

  
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 JOHN D. BATES  
 United States District Judge

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<b>Plaintiff,</b>	:	
<b>v.</b>	:	<b>Civil Action No. 00-1717 (JDB)</b>
<b>Islamic Republic of Iran, and Sazman-E Gostaresh Va Nowsazi-Ye Sanaye Iran</b>	:	
<b>Defendants.</b>	:	

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NANCY MAYER WHITTINGTON, CLERK  
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**MEMORANDUM OPINION**

Plaintiff Abolala Soudavar ("plaintiff") has sued the Islamic Republic of Iran and one of its agencies, Sazman-E Gostaresh va Nowsazi-Ye Sanaye Iran (collectively "Iran"), seeking compensation for the 1979 nationalization of his property by Iran. Subject matter jurisdiction in this Court is invoked pursuant to the Foreign Sovereign Immunities Act ("FSIA") and the Treaty of Amity. Defendants have moved to dismiss this action under Federal Rule of Civil Procedure 12(b)(1) for lack of jurisdiction over the subject matter, on the ground that this action is barred by collateral estoppel.

**Background**

In 1998, plaintiff and his son filed an action in federal court in Texas against several defendants, including the defendants in this action, also seeking compensation for the 1979 nationalization of plaintiff's property by Iran. Although the District Court dismissed the case for failure to state a claim, the Fifth Circuit instead dismissed for lack of subject matter jurisdiction. See Soudavar v. Islamic Republic of Iran, 186 F.3d 671 (5<sup>th</sup> Cir. 1999) (hereinafter "Soudavar v. Iran I"). The Court in Soudavar v. Iran I described the relevant factual background as follows:

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Abolala Soudavar and Saadi Soudavar ("Plaintiffs") were substantial shareholders in the Khawar Industrial Group ("KIG"), one of the largest industrial enterprises in Iran and a licensee of Mercedes-Benz. In 1979, Iran expropriated the Plaintiffs' property and nationalized KIG. Although the law instituting the nationalization made certain provisions for the compensation of KIG's shareholders, the Plaintiffs were never paid.

After the expropriation, the Plaintiffs moved to the United States and Saadi Soudavar has become a United States citizen. In 1991, Iran organized a gathering in New York aimed at persuading Iranian businessmen to return home. At that meeting, the Plaintiffs asked Iranian officials about the status of their property, and were told to return home if they wanted it back. In 1992, Iran adopted a resolution to compensate parties whose property had been expropriated. Under the resolution, eligible shareholders could elect to receive up to two-thirds of the shares previously owned, minus a number of fees. The Plaintiffs elected not to accept this offer. The Plaintiffs alleged that Iran later blacklisted them from this offer.

186 F.3d at 673. In this action, plaintiff alleges as well that in 1999 Iran made a compensation offer that was accepted by some of his family members but rejected by plaintiff as inadequate. Although plaintiff continues to seek precisely the same relief as was sought in Soudavar v. Iran I, he contends that this action is a new claim because of the 1999 compensation offer by Iran.

In Soudavar v. Iran I, the Fifth Circuit held that the commercial activities exception to sovereign immunity under the FSIA, 28 U.S.C. § 1605 (a)(2), was not available to plaintiff. 186 F.3d at 674. The Court observed that: "In this case, the acts complained of, whether sovereign or commercial, lack the requisite jurisdictional nexus with the United States." Id. The Court first rejected any reliance on a 1991 meeting in New York between an Iranian representative and plaintiff as a basis for jurisdiction, and then concluded as follows:

. . . the Plaintiffs' [sic] contend that we have jurisdiction over this matter because Iran's refusal to pay for the expropriated shares caused direct effect in the United States — lost income and lost tax revenue. We disagree. "[A]n effect is direct if it follows as an immediate consequence of the defendant's activity." *Republic of Argentina v. Weltover*, 504 U.S. 607, 112 S.Ct. 2160, 2168, 119 L.Ed. 2d. 394

(1992). At the time of the expropriation, the Plaintiffs lived in Iran and their property was in Iran. Hence, the financial loss, occurred in Iran. The fact that the Plaintiffs have since become United States residents does not alter this analysis.

Id. The Court also rejected the Treaty of Amity as a basis for jurisdiction, observing that "[t]he limited waiver of immunity in the Treaty of Amity 'extends only to enterprises of Iran, not Iran itself.'" Id. at 674-75 (citations omitted).

### **Discussion**

Defendants' motion to dismiss is based on the argument that the jurisdictional issues resolved by the Fifth Circuit are identical to those presented here, and thus this action is barred by collateral estoppel. The Court agrees and therefore grants defendants' motion.

Collateral estoppel, or issue preclusion, precludes parties from contesting or relitigating issues already determined by a court of competent jurisdiction. Allen v. McCurry, 449 U.S. 90, 94 (1980); Montana v. United States, 440 U.S. 147, 153-54 (1979). Plainly, collateral estoppel applies to issues of jurisdiction as well as to the merits. See Cutler v. Hayes, 818 F.2d 879, 888 (D.C. Cir. 1987) (res judicata and collateral estoppel apply to questions of jurisdiction); Safir v. Dole, 718 F. 2d 475, 481 n. 4 (D.C. Cir. 1983) (collateral estoppel applies to jurisdictional issues); Dozier v. Ford Motor Co., 702 F.2d 1189, 1191 (D.C. Cir. 1983) (res judicata applies to decisions relating to jurisdiction); see also Underwriters Natl. Assurance Co. v. North Carolina Life & Accident Ins. Guar. Ass'n, 455 U.S. 691, 706-07 n. 16 (1982); Stoll v. Gottlieb, 305 U.S. 165, 172 (1938). Importantly, a "valid jurisdictional judgment has preclusive effect, we note, even if erroneous." Cutler, 818 F.2d at 888.

Here, the only bases alleged by plaintiff upon which this Court could have subject matter jurisdiction over this action are the FSIA and the Treaty of Amity. Defendants contend that both

those jurisdictional issues were resolved against plaintiff by the Fifth Circuit and thus subject matter jurisdiction is precluded by the application of collateral estoppel.

The Fifth Circuit unequivocally held that the commercial activity exception to sovereign immunity under section 1605(a)(2) of the FSIA was not available to plaintiff because the requisite jurisdictional nexus with the United States was lacking. The primary basis for that decision was that the Iranian nationalization of plaintiff's property had no "direct effect" in the United States, relying on Republic of Argentina v. Weltover, 504 U.S. 607, 618 (1992). The Fifth Circuit observed:

At the time of the expropriation, the Plaintiffs lived in Iran and their property was in Iran. Hence, the financial loss, occurred in Iran. The fact that the Plaintiffs have since become United States residents does not alter this analysis.

186 F.3d. at 674. Plaintiff's only response to that clear holding is that Iran's 1999 offer of compensation creates a new claim that makes the "direct effect" analysis of the Fifth Circuit inapplicable. The Court disagrees. There is no meaningful distinction between Iran's failure to pay any compensation, which occurred prior to the first suit, and the alleged inadequacy of the subsequent compensation offer by Iran. In each instance, plaintiff seeks a judgment for the full value of property allegedly taken from him in Iran, and in each circumstance, the Fifth Circuit's finding of a lack of "direct effect" is fully applicable because the expropriation and financial loss occurred in Iran when plaintiff lived there and had his property there. Nothing relating to the 1999 Iranian offer of compensation constitutes an assumption by Iran of an obligation in the United States that would change the "direct effect" analysis under section 1605 (a)(2). Whether the Fifth Circuit was right or wrong in its conclusion that the commercial activity exception to sovereign immunity was unavailable to plaintiff is immaterial. See Cutler, 818 F.2d at 888.

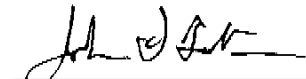
What matters is that the issue was decided conclusively against plaintiff in the earlier action, which it was, and plaintiff has raised no new facts or claims which undercut the validity of that prior determination by the Fifth Circuit that subject matter jurisdiction under the FSIA is lacking.

Plaintiff's assertion of jurisdiction under the Treaty of Amity fares no better. The Fifth Circuit rejected that basis for subject matter jurisdiction as well, holding that "[t]he limited waiver of immunity in the Treaty of Amity "extends only to enterprises of Iran, not Iran itself." 186 F.3d at 674-75 (citations omitted). Hence, collateral estoppel precludes relitigation of that jurisdictional issue in this action as well.<sup>1</sup>

#### **Conclusion**

For the foregoing reasons, defendants' motion to dismiss is granted. The precise jurisdictional issues under both the FSIA and the Treaty of Amity were resolved against plaintiff by the Fifth Circuit, and collateral estoppel or issue preclusion thus precludes plaintiff from relitigating those issues. Accordingly, this Court lacks subject matter jurisdiction over this action. A separate order will be issued on this date.

Signed this 24<sup>th</sup> day of September, 2002.

  
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JOHN D. BATES  
United States District Judge

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<sup>1</sup> To the extent that plaintiff argues that this action invokes Articles III and IV of the Treaty of Amity, while other articles were invoked in Soudavar v. Iran I, that issue is addressed further in the Court's decision entered today in the companion case of Soudavar v. Islamic Republic of Iran, Civil Action No. 00-2506 (D. D.C.).