No. 07-721

In The
Supreme Court of the United States

AMERICAN TELECOM CO., L.L.C.; AMERICAN TELECOM GROUP-USA, L.L.C.,
Petitioners,

v.

REPUBLIC OF LEBANON, a Foreign State,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether a disappointed bidder for a contract to be performed entirely in a foreign Nation fails to allege conduct by that Nation having a "direct effect" in the United States for purposes of the "commercial activity" exception to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(2), where the only effect that followed as an immediate consequence of the Nation's actions was the bidder's disqualification from the list of potential bidders.

II. Whether petitioners fail to show a true conflict among the various circuits' application of *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992) worthy of this Court's review, especially where any conflict would be immaterial to the outcome of the case, which the Sixth Circuit noted is "easily resolved" in Lebanon's favor regardless of which standard is used.

III. Whether review by this Court would have no practical effect on this case, since even if Lebanon is not entitled to FSIA immunity, the case still would be subject to dismissal on remand under the act of state doctrine.

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STATEMENT OF THE CASE

Petitioners American Telecom Co., L.L.C and American Telecom Group-USA, L.L.C. asserted various claims against the Republic of Lebanon arising from their bid proposals for two contracts to manage nationwide cellular phone networks in Lebanon. After the District Court entered a $420-million Default Judgment following an 11-minute hearing, Lebanon filed a special appearance and moved to set aside both the Default and Default Judgment, which the District Court granted. Lebanon then moved to dismiss the Complaint for lack of subject-matter jurisdiction based on its immunity from suit under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1604, which the court also granted.

On appeal, the Sixth Circuit took note of the differing glosses that various Circuit Courts of Appeals have put on the "immediate consequence" test of *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992), but in the end held that any differences were immaterial: regardless of *which* test was applied, American Telecom's allegations fell short of alleging that any action by Lebanon had a "direct effect" in the United States.

There is no split among the circuits that is pertinent to the resolution of this case, and the Sixth Circuit's ruling was correct. Further, alternate grounds exist for dismissal of this action should it be remanded, making this case a poor vehicle with which to address any FSIA issue. The petition should be denied.

I. The Underlying Allegations

Lebanon solicited bid proposals for contracts to manage its two GSM networks (wireless phone networks) for a four-year term. The first round of bidding involved the sale and purchase of the two wireless networks, but was canceled by Lebanon in January 2004 and a new bidding process for management of the systems was initiated. (R.1 Complaint, ¶¶ 22-23). Petitioners admit they never were awarded the contract, and also that they were not the low bidder. (*Id.,* ¶¶ 43, 46).

To qualify even to submit a bid for the management of the GSM wireless networks, petitioners were required to complete both a Non-Disclosure Undertaking (NDU) and an Expression of Interest (EOI). (R. 26, Motion to Dismiss & Ex B, ATC Bid Documents). The EOI and the NDU stated that they were not legally binding upon Lebanon in any way:

> We understand that this EoI [Expression of Interest] is not legally binding and does not oblige the Ministry in any manner towards our consortium in connection with the Tender.
>
> * * *
>
> 2(f) Neither the Confidential Information nor anything else in this letter constitutes an offer by or on the behalf of the Ministry and the Ministry will be under no obligation to accept any offer or proposal which may be made by the Applicant or on the Applicant's behalf. Neither

> the Confidential Information nor anything else in this letter will form the basis of any contract, which will be constituted solely by any final agreement(s) to be negotiated and entered into between the Applicant and the Ministry. (*Id*., pp. 2, 4).

Once an applicant took the initial steps toward qualification, it received a copy of the Tender Information & Procedures document (TIP). (R. 26, Motion to Dismiss & Ex C, 2/16/04 TIP). The TIP established the framework for all bidding, and made clear that Lebanon was not bound by any legal obligation to the applicant, and that Lebanon could reject the bidder's bid, and discontinue the Tender, at any time and for any reason. (*Id.*, pg. ii).

The successful bidder in the Tender process was to be awarded a Management Agreement for one of the wireless networks. (R. 26, Motion to Dismiss & Ex D, Management Agreement). The Management Agreement made clear that the entire contract was to be performed in Lebanon:

- It required the winning bidder (the "Manager") to form a company in the Republic of Lebanon, and defined "company" as: "a wholly owned subsidiary in Lebanon of the Selected Participant or a Lebanese joint stock company to be incorporated in Lebanon by the Selected Participant…" (R. 26, Motion to Dismiss & Ex D, Management Agreement, pg. 5).

- It required that the new Lebanese company would hire all of the current Lebanese network workers wishing to remain in their current positions:

  > The Manager shall, by no later than the date of signature of this Agreement, offer to all employees of the Interim Manager named in schedule 6 hereto …employment for a minimum of four years on the same or better terms as those provided by the Interim Manager . . . . (*Id.*, pp. 21-22, ¶ 12.1).

- It imposed the obligation to honor employees' vested rights pursuant to Article 60 of the Lebanese Labor Code. (*Id.*, pg. 22, ¶ 12.2).

- It required that all management fees earned from the contract would be paid in Lebanon by the Lebanese Company through a Lebanese bank. The winning bidder was required to open a bank account in Lebanon into which all user service fees were to be deposited. It also was expected to withdraw its own management fee from that account and then transmit the remaining funds to the Lebanese government. The winning bidder would:

  > pay or cause MIC [1/2] and/or the Company to pay (as applicable) to the Republic of Lebanon the Net Revenues in

respect of the immediately preceding month by means of a banker's check drawn on the Central Bank of Lebanon. (*Id.*, pg. 19, ¶ 8.2).

- The Agreement gave Lebanon the right of prior approval for proposed replacement members of the management team, and permitted Lebanon to demand the replacement of any management team member for, among other things, violating any provision of Lebanese criminal law. (*Id.*, pg. 21, ¶¶ 11.4-11.5).

- It required retention of auditors licensed to practice in the Republic of Lebanon for the purpose of conducting annual audits and submitting them to the Lebanese Ministry of Telecommunications in Beirut. (*Id.*, pg. 26, ¶ 18.1).

- It provided that disputes were to be governed by and construed in accordance with Lebanese law, and would be settled through arbitration proceedings in either Switzerland or the Netherlands – not the United States. (R.29, Ex. R to American Telecom's Answer to Motion to Dismiss, pp. 36-37, ¶¶ 40.1 & 40.2).

- It imposed upon the Company a wide variety of reporting and disclosure requirements, and directed that any such notices required under the contract be sent to the Lebanese

> Ministry of Telecommunications on Riad El Solh Street in Beirut's Central District. (*Id.*, pp. 25-28, 36).

Under the TIP guidelines, bidders were required to secure various financial assurances from a Lebanese bank, including a $2 million performance bond for the bidding process ("Tender Bond") that was required to be submitted with each offer. (R.26, Motion to Dismiss & Ex C, pg. ix). When petitioners proved unable to secure such assurances from a Lebanese bank, they were allowed to try to obtain them from an American bank. (In the District Court they submitted an unsigned, unexecuted document purporting to be their Tender Bond and argued that the Tender Bond provided a means by which a "direct effect in the United States" could be shown, though they dropped that claim on appeal).

Neither the Tender Bond, nor any of the other financial guarantees that Lebanon would require of the successful bidder – the $10 million Management Performance Bond and the $20 million Monthly Collection Guarantee – in any way obligated Lebanon to pay any money into the United States. (R.26, Motion to Dismiss & Ex. C, pp. vii-viii). To the contrary, they guaranteed that if the successful bidder could not follow through on its obligations, money would be paid *to Lebanon*. (*Id.*).

Though petitioners tell this Court they were "shock[ed]" to be disqualified, Petition at 5, in their Complaint they admitted that they were disqualified because their bid was not submitted in compliance

with Lebanon's required specifications. (R.1, Complaint, ¶¶ 41-46). They also admitted that for the two networks comprising the GSM contract, their original bid was at $6.16 million per month for the four-year contract duration for each (an amount that totals $591 million). (R.1, Complaint, ¶ 43). In contrast, the winning bidders submitted bids of $4.2 million per month ($201 million total) and $4.25 million per month ($204 million total) for a combined total of $405 million. With the benefit of hindsight, however, petitioners now claim they would have dropped their bid to $3.99 million for each network, a four-year total of $383 million. Petition at 6.

II. Procedural Background

In July 2004, petitioners filed a six-count Complaint against Lebanon, alleging breach of contract and quasi-contractual claims. (R.1, Complaint). They sought and obtained from the District Court a default in February 2005, then filed a motion seeking entry of a default judgment for $420 million. (R.5, Motion for Default Judgment).

The District Court held an 11-minute hearing on the motion, at which it heard from two witnesses. (R.11, TR 3/9/05). Issam Beydoun, petitioners' chairman, testified that he had read the (25-page, 111-paragraph) Complaint and that "to the best of his knowledge" it was true and accurate, and also that he had prepared a "pro forma" describing how much money he felt the company would make from the contract and what its expenses would have been. (*Id*., pp. 4-5). Jack Zwick, petitioners' accounting expert,

testified as to his damage figure, which he based solely on Beydoun's "pro forma," and which he set at $420 million. (R.11, TR 3/9/05, pp 6-7). The District Court entered a default judgment in that amount. (R.8 Default Judgment).

Lebanon subsequently filed a limited appearance and then a motion to set aside the default judgment, which the District Court granted. (R.12, Notice of Limited Appearance; R.32, TR 5/9/05, pg. 16; R.23 Order). Lebanon then filed a motion for summary judgment based on its sovereign immunity. After full briefing and argument, the District Court granted the motion. (R.33, Opinion and Order Granting Defendant's Motion to Dismiss Pursuant to FED. R. CIV. P. 12(b)(1); R.34 Judgment). On appeal, the Sixth Circuit affirmed.

REASONS FOR DENYING THE WRIT

Petitioners try to inflate this case into one presenting "a profoundly important question" regarding the scope of the "commercial activity" exception under the FSIA, Petition at 9, but it is nothing of the sort. The Sixth Circuit's ruling that Lebanon's actions had no "direct effect" in the United States rests on a straightforward application of the FSIA's "commercial activity" exception that was entirely faithful both to the statutory text and to this Court's decision in *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992). The supposed circuit conflict to which petitioners point, if it even exists, has existed for a decade with no discernible negative impact on FSIA jurisprudence, and in any event simply is not

relevant to this case: as the Sixth Circuit correctly noted, petitioners lose under *any* standard.

Finally, review would have no impact on the outcome of this case. Even if this Court were to rule that Lebanon does not enjoy immunity under the FSIA, the Republic on remand would be entitled to summary judgment under the "act of state" doctrine.

I. The Sixth Circuit's Ruling That Lebanon's Alleged Actions Did Not Have a "Direct Effect" In the United States For Purposes of 28 U.S.C. 1605(a)(2), Does Not Warrant Review By This Court.

Though petitioners portray the Sixth Circuit's ruling as a radical reconfiguration of FSIA jurisprudence, it is anything but that. Far from giving the green light to foreign states to defraud Americans with impunity, Petition at 9, the ruling simply recognizes that under 28 U.S.C. 1605(a)(2), a foreign Nation's immunity from suit for its commercial activity abroad cannot be breached unless that activity had a "direct effect" within the United States. That particular aspect of FSIA jurisprudence was settled by this Court in *Weltover,* and nothing about this case warrants review, or reopening, of that decision.[1]

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[1] Petitioners' inflammatory accusations of "fraud" by Lebanon are ironic, given that Beydoun, their principal, was convicted of fraud under the Lebanese criminal code relating to his business activities in the late 1990s, and spent two years in a Lebanese prison. *Beydoun v Clark Construction Int'l.*, 2003 U.S. App. Lexis 14838, **5-6 (4th Cir. 2003).

A. Petitioners' Concession That *Weltover* Controls This Issue Leaves Nothing for This Court to Review.

As petitioners admit, the proper standard for determining whether a foreign Nation's conduct had a "direct effect in the United States" for FSIA purposes is that set forth in *Weltover*. Petition at 11-12. But that concession leaves nothing for this Court to review, for the Sixth Circuit squarely based its ruling on *Weltover*. The court first quoted *Weltover*'s central holding that "an effect is direct if it follows as an immediate consequence of the defendant's activity," then noted how various circuit courts of appeals have put a different gloss on that standard in applying it, *Id*., Apx. 10a-12a. But the Sixth Circuit ultimately held that any distinction among the circuits was immaterial here, since this case could be resolved "easily" with a straightforward application of *Weltover*:

> In truth, this case is far easier than any of the cases cited above, and is perhaps the rare case in which the Supreme Court's holding in *Weltover* requires no elaboration: "an effect is direct if it follows as an *immediate consequence* of the defendant's activity." *Weltover*, 504 U.S. at 618, 112 S. Ct. 2160. [Opinion, Apx. 12a (emphasis added by Sixth Circuit)].

Applying that rule, the Sixth Circuit noted that even under petitioners' (somewhat incomprehensible) theory, the only "immediate consequence" of Lebanon's alleged wrongdoing was petitioners' elimination from

the list of bidders – everything else was derivative of that act. Opinion, Apx. 13a.

Petitioners' struggle to avoid summary judgment is nothing less than a struggle to avoid *Weltover*. They would have this Court apply the "foreseeability" standard used in *Gould, Inc. v. Pechiney Ugine Kuhlmann*, 853 F.2d 445 (6th Cir. 1988). (Opinion, Apx. 11a-12a & fn. 8). (Indeed, through careless editing, they incorrectly attribute *Gould* to this Court. Petition at 10-11). But as the Sixth Circuit's Opinion in this case notes, *Gould*'s test not only predates *Weltover* but is "at direct odds" with it – *Weltover* directly rejected a foreseeability or substantiality test. (Opinion, Apx. 11a-12a & fn.8). Thus, this Court already has decided that issue, and in a manner adverse to petitioners. The ruling below constitutes a straightforward application of *Weltover*, and does not merit review by this Court.

B. The Sixth Circuit's Decision Was Correct.

Review by this Court also is unnecessary because the ruling below was correct.

1. Applying the statutory requirement that a defendant's extraterritorial act cause a "direct effect in the United States," 28 U.S.C. 1605(a)(2), the Sixth Circuit noted that "an effect is direct if it follows as an immediate consequence of the defendant's activity," and that that effect must be more than trivial. (Opinion, Apx. 10a, *citing Weltover*, 504 U.S. at 618. Petitioners' allegations do not meet that test because

the only thing that followed as an "immediate consequence" of Lebanon's action was their removal from the list of bidders. (*Id*). Certainly, that had no "direct effect" in the United States, as this Court has interpreted that statutory phrase. The Sixth Circuit's ruling was entirely correct.

2. The documents relating to the Republic's bidding process and management of its GSM networks in Lebanon underscore the lack of any "direct effect" in the United States. The bid documents made clear that the entire transaction was to take place within the borders of Lebanon: the Management Agreement stated unequivocally that the successful bidder would be required to establish a Lebanese company to perform the management of the wireless networks, hire all of the existing Lebanese employees, and collect the revenue and pay all fees and wages, and its own management fees, through a Lebanese bank, in Lebanon. (R.26, Motion to Dismiss & Ex D, pp. 5, 19, and 21-22). Petitioners simply avoid mention of these clear terms. The fact is, the contract was to be formed, executed, and performed wholly within Lebanon.

3. Lebanon is not aware of any case where a "direct effect" was found merely by a disappointed bidder speculating as to the secondhand financial ramifications that the contract might have had in the United States. If anything, the facts of this case are even less amenable to a finding of "direct effect in the United States" than the facts of *RSM Production Corp. v. Petroleos de Venezuela Societa Anonima (PDVSA)*, 338 F. Supp. 2d 1208, 1214 (D. Colo. 2004), *Dominican Energy Ltd., Inc. v. Dominican Republic*, 903 F. Supp.

1507, 1515 (M.D. Fla., 1995), *In re Stone & Webster*, 276 B.R. 360 (Bankr. D. Del. 2002) and the cases cited in them. Lebanon did not form any type of contract or agreement with petitioners, nor was it obligated to pay them money in the United States or anywhere else in the world. In fact Lebanon was under no obligation whatsoever to petitioners, at any time: "We understand that this **EOI (Expression of Interest) is not legally binding and does not oblige the Ministry in any manner towards our consortium in connection with the Tender**." (R.26, Motion to Dismiss & Ex B, pg. 2) (emphasis added). Petitioners knew or should have known that because this was a bidding process – one in which Lebanon could reject any bid for any reason – any expenditures on their part were made at their own risk. As such, no direct effect in the United States can be found as a result of anything allegedly done by Lebanon.

4. Petitioners essentially would write the "commercial activity" exception out of the FSIA. Under petitioners' theory, where an American company wins a bid from a foreign government, money flows to the U.S., and when it loses a bid, money does not flow to the U.S. – either way, creating a "direct effect in the United States." Likewise, when a foreign Nation decides not to even put a contract out for bids, a "direct effect" is created in the U.S., as long as a U.S. company would have bid. As the Sixth Circuit correctly noted, petitioners' proposed standard cannot possibly be the correct one, for it essentially removes the "direct effect" requirement from the FSIA. (Opinion, Apx. 14a). Such a move effectively would vitiate the notion of sovereign immunity in *all*

commercial transactions, not just those "caus[ing] a direct effect in the United States."

Under petitioners' theory, their exclusion from the bidding process by Lebanon had a "direct effect" in the United States because they otherwise would have received "the lucrative contracts at issue which derive [*sic*] hundreds of millions of dollars in revenue for the contract holder," from which they would have paid taxes to the United States. Petition at 16. Petitioners also assert that their employees would have paid such taxes, thereby constituting another direct effect in the United States. *Id*. But leaving aside the significant intermediate issue of whether petitioners ever would have gotten the contracts – since they admittedly submitted a "highball" bid at the first stage, Petition at 6 – their theory creates a "commercial activity" exception effectively without limits.

II. Even If a Circuit Conflict Exists, This Case Presents a Poor Vehicle for Resolving It.

Lower courts have produced varying formulations of *Weltover*'s "immediate consequences" test. (Opinion, Apx. 10a-12a). While the Sixth Circuit accurately referred to those variations merely as different ways to frame the issue, (*Id*., 11a), petitioners elevate them into a full-blown circuit split. But even assuming (though not conceding) that a split exists, this case does not provide the Court with a vehicle with which to address it: as the Sixth Circuit correctly held, petitioners lose regardless of *which* iteration of the "immediate consequences" is employed. (*Id*., 12a).

1. The Sixth Circuit noted that petitioners' case under the "commercial activity" exception is so weak that it may be resolved with the plain language of *Weltover* – "an effect is direct if it follows as an *immediate consequence* of defendant's activity." (Opinion, Apx. 12a, citing *Weltover*, 504 U.S. at 618 (emphasis added)). The only "immediate consequence" of Lebanon's challenged conduct was to remove petitioners from the list of contract bidders. Regardless of whether a "legally significant act" in the United States is required, *Filetech SA v. Fr. Telecom SA.*, 157 F.3d 922 (2d Cir. 1988), or whether the statutory test is satisfied merely by a defendant's failure to pay promised funds into a U.S. account, *Keller v. Central Bank of Nigeria*, 277 F.3d 811 (2002), this case presents neither scenario. Lebanon never promised to pay funds into any account, much less a U.S. account, and indeed its interactions with petitioners never progressed to the contractual level. And, had a contract ever been formed, it would have been performed entirely in Lebanon, not in the U.S. The only direct effect of Lebanon's alleged action was to knock petitioners from the list of bidders seeking to be awarded a contract that would be performed entirely within Lebanon.

2. If there is conflict among the circuits, by petitioners' own account it has existed since 1993, the year after *Weltover* was issued. Petition at 17 & nn. 4-9 (citing cases). Indeed, other than the 2002 decision in *Keller*, the cases petitioners cite as creating the "split" all date from the last century. *Id*. In those 15 years, there has not been widespread confusion or lack of uniformity in the Federal system with regard to the

FSIA's "commercial activity" exception. This case does not present the "compelling reasons" required by SUPREME COURT RULE 10 for the grant of certiorari.

3. Finally, where the facts are so one-sided that the case would be decided in favor of the respondent no matter how the conflict was resolved, the case presents a "poor vehicle" with which for this Court to resolve a circuit conflict. Gressman, Geller et. al., SUPREME COURT PRACTICE (9th ed. 2007) 504. That is precisely the situation presented here. As the Sixth Circuit noted, this is the "rare case" where the plain wording of the FSIA and *Weltover* compel that petitioners' case be dismissed based on sovereign immunity, regardless of *what* standard of the "commercial activity" exception is applied. (Opinion, Apx. 12a). If this Court wishes to address any conflict among the circuits' application of *Weltover*, it should wait for a case where resolution of that issue actually would make a difference in the outcome.

III. Granting the Writ Would Serve No Practical Purpose, Since the Act of State Doctrine Provides a Separate and Independent Basis for Dismissal of the Lawsuit.

Even where a clear conflict exists among circuits, certiorari may be denied where resolution of the conflict would be irrelevant to the ultimate outcome of the case. Gressman at 248, *citing Sommerville v. United States*, 376 U.S. 909 (1964) (certiorari denied despite government's concession that a live conflict existed as to whether Federal or State law controlled;

petitioner would be liable under Federal or State law regardless of how conflict was resolved). Here, the act of state doctrine provides another reason why petitioner's case against Lebanon would be dismissed, even if the Sixth Circuit's application of the FSIA was incorrect.[2]

The act of state doctrine requires American courts to presume the validity of "an official act of a foreign sovereign performed within its own territory." *Republic of Austria v. Altmann*, 541 U.S. 677, 713 (2004) (citations omitted) (Breyer, J., concurring). The *sine qua non* of the doctrine is action by a foreign sovereign within its own territory: "In every case in which we have held the act of state doctrine applicable, the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory." *W.S. Kirkpatrick & Co., Inc. v. Environmental Tectonics Corp., Int'l.*, 493 U.S. 400, 405 (1990) (citing cases). It "is not some vague doctrine of abstention but a '*principle of decision* binding on federal and state courts alike.'" *Id*. at 406, *citing Banco Nacional de Cuba v. Sabbaino*, 376 U.S.

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[2] On remand, Lebanon would be free to assert the act of state doctrine as a defense, since it has not yet answered the Complaint – it raised the jurisdictional defense of sovereign immunity via motion under FED. R. CIV. P. 12(b)(1). *See*, *World Wide Minerals, Ltd. v. Republic of Kazakhstan*, 296 F.3d 1154, 1161 (D.C. Cir. 2002), *citing In re Papandreou*, 139 F.3d 247, 254-56 (D.C. Cir. 1998) (jurisdiction must be resolved before applying the act of state doctrine, because that doctrine is "a substantive rule of law").

398, 427 (1964). "The act within its own boundaries of one sovereign State…becomes…a rule of decision for the courts of this country." *Id.*, *citing Ricaud v. American Metal Co.,* 246 U.S. 304, 310 (1918).

The doctrine acts entirely independently of the FSIA – Congress in enacting the latter made clear that it "in no way affects existing law on the extent to which, if at all, the 'act of state' doctrine may be applicable." *Altmann*, 541 U.S. at 713 (Breyer, J., concurring), *citing* H.R. REP. NO. 94-1487, pg. 20 (1976) and S. REP. NO. 94-1310, pg. 19 (1976)).

Even if the Sixth Circuit's ruling presented an FSIA issue worthy of this Court's review, the act of state doctrine makes this case a poor vehicle with which to address it. Petitioners admit, as they must, that the first auction tender was run by a "Lebanese official," and that the New Public Tender was run directly by the Ministry of Telecommunications in Beirut. Petition at 4. By petitioners' own account, all of the alleged tortious conduct was undertaken by "the Minister of Telecommunications and other Lebanese officials…." *Id*. It was "a Lebanese government employee" who allegedly misinformed them that an email document would suffice rather than an original, *Id.*, and when the "shocking" word came of petitioners' disqualification, the bearer of that news was the Lebanese government. *Id.* at 4-5.

Lebanon's act of seeking bidders to manage its nationwide wireless phone systems is the precise sort of sovereign action that the act of state doctrine protects. Indeed, short of defense-related spending, it

is hard to imagine an act more central to a sovereign Nation's ability to function than choosing an operator for such a critical component of national infrastructure. Even assuming Lebanon did anything improper in running the bid process (which it did not), it plainly did so in its capacity as sovereign.

Further, its actions undisputedly took place entirely *in Lebanon*, as even petitioners admit. Under the act of state doctrine, it simply is not the place of an American company to try to impose liability in an American court on a sovereign Nation acting in its own territory. Even if this Court were to reverse the Sixth Circuit's ruling as to the "commercial activity" exception to the FSIA, this case on remand still would be subject to summary judgment in Lebanon's favor – the exact position in which it now rests. Granting the writ will serve no practical purpose.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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