

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): 2d Cir. No.: [not yet assigned], E.D.N.Y. No.: 04 CV 2799 (NG)(VVP) Caption [use short title] _____

Motion for: Leave To File Amicus Curiae Brief In re ARAB BANK, PLC; Proceedings Below: Linde v. Arab Bank, plc, No. 04 CV 2799 (NG) (VVP) and all related cases (E.D.N.Y.)

Set forth below precise, complete statement of relief sought:
The Union of Arab Banks respectfully requests leave to file an
eight-page amicus curiae brief in support of Arab Bank, plc's
petition for a writ of mandamus vacating the District Court's
July 12, 2010 sanctions order.

COPY OF ORIGINAL WITH PROOF OF SERVICE

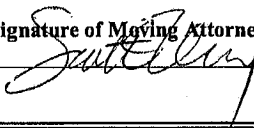
MOVING PARTY: Amicus Curiae Union of Arab Banks OPPOSING PARTY: Courtney Linde, et. al.
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Scott R. Emery OPPOSING ATTORNEY: Andrew D. Friedman
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(212) 302-2400; Emery@lawlynch.com (See Also, Attached Service List)

Court-Judge/Agency appealed from: U.S. Distirct Court for the Eastern District of New York-U.S. District Judge Nina Gershon

Please check appropriate boxes: **FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:**
Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____
Has 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: _____
Opposing counsel's position on motion:
 Unopposed Opposed Don't Know
Does opposing counsel intend to file a response:
 Yes No Don't Know

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:  Date: Nov. 4, 2010 Has service been effected? Yes No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____ By: _____

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**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

In re ARAB BANK, PLC,

Petitioner.

**MOTION OF THE UNION OF ARAB BANKS FOR LEAVE TO FILE AN
AMICUS CURIAE BRIEF IN SUPPORT OF THE PETITION OF
ARAB BANK, PLC FOR A WRIT OF MANDAMUS**

Proceeding Below: Linde v. Arab Bank, PLC, No. 04 CV 2799 (NG) (VVP) and
all related cases (E.D.N.Y.), Honorable Nina Gershon

Pursuant to Rule 29 of the Federal Rules of Civil Procedure, *amicus curiae* the Union of Arab Banks (“UAB”) respectfully requests leave to file the attached eight-page brief in support of the petition of Arab Bank, plc (“Petitioner”) for a writ of mandamus ordering the U.S. District Court for the Eastern District of New York to vacate its July 12, 2010 Decision and Order imposing sanctions against Petitioner (“Sanctions Order”). A copy of the UAB’s proposed *amicus curiae* brief is attached as Exhibit A.

STATEMENT OF INTEREST

The UAB is the largest banking and financial consortium in the Arab world with a membership roster exceeding 340 institutions located in dozens of countries and including all the major Arab banks, including Petitioner. The UAB facilitates cooperation and coordination among its members, assists them in establishing policies that promote economic development in the Arab region, and functions as a conduit through which Arab banks can enter and integrate with the international banking community and learn and adopt its rules and regulations.

Indeed, the UAB is recognized as the cornerstone of economic, financial, and banking development in the Arab world and, as its representative worldwide, has a compelling interest in alerting this Court to the District Court's misapprehension of foreign law and to the dire effects that the Sanctions Order will have on its members and on the Arab world as a whole.

SUMMARY OF BRIEF

In the attached brief, the UAB argues that the Sanctions Order should be vacated because: (i) it imposes disproportionately harsh measures against Petitioner for its rightful compliance with foreign banking privacy laws and sets an unfair precedent that allows for law-abiding foreign financial institutions to be discriminated against for their adherence to these laws in any U.S. civil action brought against them; and (ii) it will have a devastating impact on the economic,

financial, and banking stability of the Arab world and will counteract the anti-terrorism and anti-money laundering initiatives in place there.

SUMMARY OF ARGUMENT

The Sanctions Order was issued because of Petitioner's failure to provide discovery that, under the banking privacy laws of Jordan, Lebanon, and the Palestinian Territories, it is prohibited from producing under threat of criminal prosecution. As punishment for Petitioner's good-faith decision to uphold the banking privacy laws of these territories, the Sanctions Order unfairly permits a jury to draw broad adverse inferences against Petitioner at trial and precludes Petitioner from introducing exculpatory evidence at trial that would prove critical to its defense.

This Sanctions Order is a disproportionately harsh punishment for Petitioner's obvious reluctance to flagrantly disregard foreign banking privacy laws and subject itself to criminal prosecution abroad. Further, the Sanctions Order sets a discriminatory precedent against foreign financial institutions involved in U.S. civil actions that will allow a U.S. District Court to undercut their right to a full and fair opportunity to defend themselves if they refuse to disobey foreign laws that they are compelled to follow.

Additionally, by undermining the protections afforded by foreign banking privacy laws, the Sanctions Order will discourage Arab banking customers – to

whom these laws are an essential part of banking and culture – from participating in the regulated banking system. This loss of financial activity in the regulated banking system will have a destabilizing effect on the banking and financial sectors of the Arab world and the global economy. Moreover, the removal of funds from the regulated banking system will counteract the anti-terrorism and anti-money laundering initiatives of Arab nations in that, for instance, these nations will be unable to monitor countless series of financial transactions occurring outside the regulated system for illicit activity connected to money laundering or terrorism.

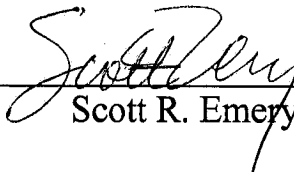
CONCLUSION

For the foregoing reasons, *amicus curiae* the UAB respectfully requests leave to file the attached eight-page brief in support of the pending petition for a writ of mandamus ordering the vacatur of the District Court's July 12, 2010 Sanctions Order.

Dated: New York, New York
November 4, 2010

Respectfully submitted,

LYNCH DASKAL EMERY LLP

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Attorneys for *Amicus Curiae*
The Union of Arab Banks

10-

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re ARAB BANK, PLC,

Petitioner.

**DECLARATION OF SCOTT R. EMERY IN SUPPORT OF THE
MOTION OF THE UNION OF ARAB BANKS FOR LEAVE TO FILE AN
AMICUS CURIAE BRIEF IN SUPPORT OF THE PETITION OF
ARAB BANK, PLC FOR A WRIT OF MANDAMUS**

Proceeding Below: Linde v. Arab Bank, PLC, No. 04 CV 2799 (NG) (VVP)
and all related cases (E.D.N.Y.), Honorable Nina Gershon

SCOTT R. EMERY declares, pursuant to 28 U.S.C. § 1746 and under the penalty of perjury, that the following is true and correct:

1. I am a member of the law firm Lynch Daskal Emery, attorneys for the Union of Arab Banks (“UAB”). I submit this declaration in support of the UAB’s motion for leave to file the attached *amicus curiae* brief in support of the petition of Arab Bank, plc (“Petitioner”) for a writ of mandamus ordering the U.S. District Court to vacate its July 12, 2010 order imposing sanctions against Petitioner.

2. Prior to filing this motion, I notified counsel for all parties represented in this action. Counsel for Petitioner have provided their consent. I do not know opposing counsel's position on this motion.

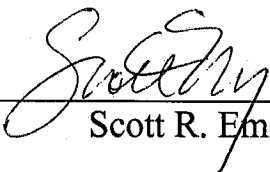
3. No previous application has been made by the UAB for the relief sought herein.

4. The reasons that the Court should grant the UAB leave to file the attached *amicus curiae* brief are set forth in the accompanying motion.

Dated: New York, New York
November 4, 2010

Respectfully submitted,

LYNCH DASKAL EMERY LLP

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Attorneys for *Amicus Curiae*
The Union of Arab Banks

Exhibit A

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United States Court of Appeals
for the
Second Circuit

In re ARAB BANK, PLC,

Petitioner.

PROCEEDING BELOW: LINDE V. ARAB BANK, PLC, NO. 04 CV 2799 (NG) (VVP)
AND ALL RELATED CASES (E.D.N.Y.), HONORABLE NINA GERSHON

**BRIEF FOR *AMICUS CURIAE* THE UNION OF ARAB BANKS
IN SUPPORT OF PETITIONER**

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The Union of Arab Banks does not have any parent corporations, and no publicly held corporation owns 10% or more of its stock.

Dated: New York, New York
November 4, 2010

Respectfully submitted,

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INTEREST OF THE *AMICUS CURIAE*

The Union of Arab Banks (“UAB”) respectfully submits this brief as *amicus curiae* to aid the Court in its consideration of the petition of Arab Bank, plc (“Petitioner”) for a writ of mandamus ordering the District Court to vacate its July 12, 2010 Decision and Order (“Sanctions Order”) severely sanctioning Petitioner for complying with the banking privacy laws of Jordan, Lebanon, and the Palestinian Territories, non-compliance with which could subject Petitioner to criminal penalties, including imprisonment.¹

Formed in 1974, the UAB is the largest banking and financial consortium in the Arab world with a membership roster exceeding 340 institutions located in all Arab countries and including all the major Arab banks, including Petitioner, and the major Arab Central Banks, including, but not limited to, the Qatari, Egyptian, Jordanian, Iraqi, and Lebanese Central Banks, which act in their full capacity on the UAB’s supervisory level. The UAB facilitates cooperation and coordination among its members, assists them in establishing policies that promote economic development in the Arab region, and functions as a conduit through which Arab banks can enter and integrate with the international banking community and learn and adopt its rules and regulations. As a quasi-regulatory body, the UAB is

¹ No party or party’s counsel authored this brief in whole or in part or contributed money intended to fund preparing or submitting the brief. No person other than *amicus curiae* the UAB, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

regarded as the foundation upon which a sustainable Arab financial and banking industry will be developed.

In addition to developing and adapting the functions of Arab banks and financial institutions with an eye toward universal banking, the UAB has also introduced new banking and financial instruments to the Arab-banking marketplace and has worked toward ensuring a prudent supervisory culture designed to promote stability in the Arab banking sector.

In the past few years, the UAB has also begun to promote trade, investment and tourism in the Arab region, as these economic fields have become an integral part of Arab banking practice and economic development in the Arab world.

On the international level, the UAB has engaged extensively with global financial institutions and international economic organizations in both the public and private sectors. Indeed, one such engagement was the establishment of "The US-MENA Private Sector Dialogue" MENA PSD Initiative, an eminent event organized by the UAB in joint venture with the U.S. Department of the Treasury and in cooperation with the Federal Reserve Bank of New York and the Arab Bankers Association of North America. This initiative brought officials from around the world to the Federal Reserve Bank of New York in 2006, and to the U.S. Department of the Treasury in Washington DC in 2008. It focused on

presenting recommendations on AML/CFT practices, Risk Management and Assessment and other such important topics.

This year, in light of the recent developments of the international financial systems and practices in the world economy, the UAB, with the support of the U.S. Department of the Treasury, will hold the PSD event in New York, and the conference will primarily focus on U.S.-Arab Economic Relations on Global Cooperation for Economic Recovery. The conference will facilitate a direct dialogue between the banking sectors in the U.S. and MENA regions, and will focus on the progress and challenges of U.S.-Arab economic relations and the institutional development and implementation of regulatory and supervisory controls in the banking sectors.

In addition, the UAB is highly engaged in multiple projects with the World Bank Group – Washington, the International Finance Corporation (IFC) – Washington, the Global Association of Risk Professionals – New York, the Financial Times, and several other organizations that have a great deal of influence in the world economy and banking industry.

Indeed, the UAB is recognized as the cornerstone of economic, financial, and banking development in the Arab world and, as its representative worldwide, has a compelling interest in alerting this Court to the District Court's misapprehension of

foreign law and to the dire effects that the Sanctions Order will have on its members and on the Arab world as a whole.

SUMMARY OF ARGUMENTS

The District Court issued the Sanctions Order in response to Petitioner's non-compliance with its Order to produce certain discovery that Petitioner is prohibited from (and could be subject to criminal prosecution for) producing under the banking privacy laws of Jordan, Lebanon, and the Palestinian Territories. As punishment for Petitioner's understandable reluctance to blatantly violate these privacy laws, the Sanctions Order permits a jury to draw broad adverse inferences against Petitioner at the trial of this case and precludes Petitioner from introducing exculpatory evidence that would prove critical to its defense at trial.

The UAB respectfully submits that the Sanctions Order should be vacated because: (i) the District Court erred in sanctioning Petitioner so harshly for its respect for and adherence to foreign laws, *i.e.*, the banking privacy laws of Jordan, Lebanon, and the Palestinian Territories with which Petitioner is obligated to comply under threat of criminal liability, and (ii) in the long run, the Sanctions Order would have a disastrous effect on the economies and overall stability of the Arab world that likely would lead to conditions that facilitate terrorist activity that the Sanctions Order may have been designed to prevent.

ARGUMENTS

I. THE DISTRICT COURT SHOULD NOT HAVE IMPOSED DRACONIAN SANCTIONS DESIGNED TO PUNISH PETITIONER FOR ITS JUSTIFIED UNWILLINGNESS TO IGNORE THE BANKING PRIVACY LAWS (AND CRIMINAL PENALTIES) OF JORDAN, LEBANON, AND THE PALESTINIAN TERRITORIES

The UAB recognizes and, indeed, respects the District Court's need to maintain equity in its proceedings and, as such, understands that the District Court may deem it necessary to take *appropriate* measures to correct evidentiary imbalances that may result from Petitioner's inability to disclose certain documents in the face of criminally enforceable foreign banking privacy laws. However, under the circumstances, the Sanctions Order is not appropriate, but draconian.

Pursuant to the Sanctions Order, the price of Petitioner's principled decision to comply with foreign banking privacy laws is the sacrifice of its constitutional right to a fair defense at the trial of a United States civil action – an exorbitant price, especially considering the fact that ignoring these foreign privacy laws could subject Petitioner to criminal prosecution and imprisonment.

Such a disproportionately severe punishment for adherence to legitimate and important foreign banking privacy laws will have devastating effects on foreign banking and financial industries. For example, law-abiding foreign financial institutions that are not only required but should be encouraged to comply with and enforce banking privacy laws will (particularly in light of the precedential effect of

the Sanctions Order) suffer *de facto* (not to mention *de jure*) discrimination in any civil action brought against them in United States, regardless of the merits of a given plaintiff's claims.

In sum, the Sanctions Order should be vacated because it sets an extraordinarily discriminatory standard that permits a United States District Court to force foreign financial institutions that are compelled to comply with foreign banking privacy laws to choose between respecting and honoring those laws abroad, on the one hand, and having a full and fair opportunity to defend themselves in United States civil actions, on the other. United States rules permitting the imposition of discovery sanctions could not have been intended to present foreign financial institutions with such a choice or result in sanctions which are so disproportionate and severe as those imposed on Petitioner in this case.

II. IF NOT VACATED, THE SANCTIONS ORDER WILL DESTABILIZE THE ECONOMY IN THE ARAB WORLD AND UNDERMINE THE ABILITY OF ARAB BANKS AND NATIONS TO PREVENT AND PROSECUTE TERRORISM-RELATED ACTIVITY

The Sanctions Order sets a clear and dangerous precedent that a plaintiff in a United States civil action may circumvent foreign banking privacy laws through the discovery process. The UAB is gravely concerned that, if this precedent is upheld, the customers of the banks of foreign nations, including those of the more than three hundred and forty member banks of the UAB, will be faced with a hard truth, *i.e.*, that the banking privacy laws in which they have placed their trust and under which

they have willingly conducted business can no longer ensure the protection of their confidential information.

As the representative of the banking and financial industry in the Arab world, the UAB is intimately aware of the importance of banking privacy laws to Arab banking customers – and Arab culture – and is concerned (and confident) that many honest, law-abiding customers will be unwilling to continue to transact business through the regulated banking system as a consequence of the Sanctions Order's nullifying effect on those laws. The resulting exodus of customers and their funds from regulated banking systems in the Arab world will have a destabilizing effect on the banking and financial sectors of that world and on the economy of the region as a whole, which necessarily would have an adverse effect on the world economies.

Furthermore, the removal of funds from the regulated banking systems of Arab nations will dull the impact of the anti-money laundering and anti-terrorism initiatives of those nations in that, for example, Arab nations will lack the ability to monitor countless series of financial transactions (that more often than not include those of customers having no knowledge of any illicit activity running through their accounts) occurring outside the regulated system for connections to money laundering or terrorism.

The UAB thus urges this Court to order the District Court to vacate its Sanctions Order with an eye toward properly balancing any discovery violation

committed in this case against the interests of foreign cultures and institutions in criminally enforceable banking privacy laws and imposing sanctions, if any, that are proportionate to the violation.

CONCLUSION


For the foregoing reasons, the UAB respectfully requests that the Court issue a writ of mandamus ordering the District Court to vacate its Sanctions Order against Petitioner.

Dated: New York, New York
November 4, 2010

Respectfully submitted,

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By: _____


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, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On November 4, 2010

deponent served the within: **Motion for Leave to File Amicus Curiae Brief**

upon:

SEE ATTACHED SERVICE LIST

the address(es) designated by said attorney(s) for that purpose by depositing 1 true copy(ies) of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Overnight Express Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of New York, and by electronic service via e-mail.

Sworn to before me on November 4, 2010



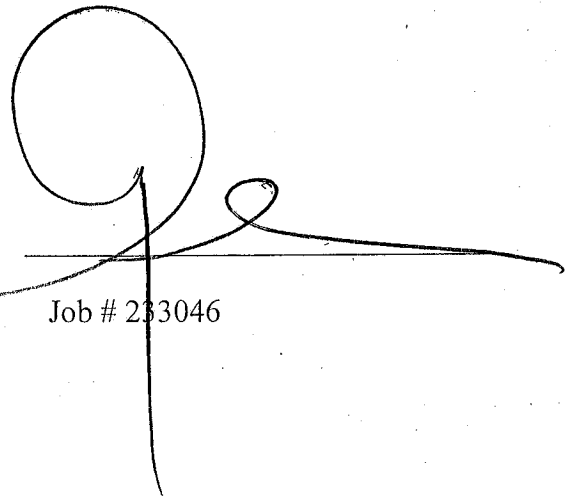
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No. 01BR6004935

Qualified in Richmond County

Commission Expires March 30, 2014



Job # 233046

UAB Service List

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**IN *ALMOG, ET AL. v. ARAB BANK, PLC*, CV 04-5564 & *AFRIAT-KURTZER, ET AL. V. ARAB BANK, PLC*, CV 05-388 & *LEV, ET AL. V. ARAB BANK, PLC*,
CV 08-3251**

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IN AGURENKO, ET AL. v. ARAB BANK, PLC, CV 10-626

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