

# THE FPTR NEWS

“. . . useful information for clients and prospective clients.”

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Attorneys at Law

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## **THE ACHILLE LAURO**

### ***First Action Against a Terrorist Group***

In early October of 1985, the calm sailing of the aging cruise ship Achille Lauro off the coast of Egypt was shattered by the hijacking of the ship by four terrorists from the Palestine Liberation Front (the “PLF”), a constituent member of the Palestine Liberation Organization (the “PLO”). Many of the 700 passengers had left the ship in Alexandria to visit Egyptian historical sites and were scheduled to meet up with the ship in Port Said. Remaining on board were about 100 passengers of various nationalities, including a group of Americans some of whom had been friends before the voyage. The terrorists threatened to kill the passengers, beginning with the Americans, if 50 fellow terrorists were not released from Israeli jails.

Included in the American group was 66-year-old Leon Klinghoffer, a wheel chair bound stroke victim, and his wife of many years Marilyn, who together had homes in New York City and Long Branch, New Jersey. Early in the hijacking, the hijackers segregated the American passengers from the others. While Mrs. Kinghoffer was forced to the upper deck with the other Americans, Mr. Kinghoffer and his wheel chair presented a logistical problem, which the hijackers resolved by shooting him and throwing him and his wheel chair into the Mediterranean.

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## **BUYING A HOUSE?**

### ***Shopping for a Loan is Easier***

Despite the expiration of the federal homebuyer’s credit, low interest rates and new federal regulations make it is still a good time to buy a home. The new regulations make it easier for consumers to shop for loans and to have more certainty about the actual closing costs. A lender must now issue a Good Faith Estimate (“GFE”), which is the estimate of the overall cost of your loan, including settlement fees (closing costs). The GFE must issue within three business days of your application and remain open for an additional ten business days, subject to “changed circumstances” (e.g. value of home, amount of loan, changed credit score). If changed circumstances occur, the lender can reissue the GFE but only as to those charges impacted by the changed circumstances.

#### **Understanding The GFE**

The actual GFE form has 11 sections or “Blocks.” Blocks 1 and 2 quote the cost of getting your loan such as whether you are paying points. Blocks 3-11 quote the charges for things that must be paid at or before the closing such as title insurance and transfer taxes. In an effort to create certainty, the Government built into these quotes the concept of tolerances. Certain charges cannot increase at all; others can not *increase* more than 10%; and others can increase.

At the closing, you will receive a newly revised closing statement (HUD-1), which will show if there is an overall tolerance violation. If so, the lender must provide, at the lender’s option, an instant credit at

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*The Achille Lauro (continued from page 1)*

After several days of sailing around the eastern Mediterranean and being denied entry at other ports, the Achille Lauro found itself back just outside Port Said. With no apparent indication of the fate of Mr. Klinghoffer, negotiations began. PLO leader, Yassir Arafat, sent a PLF leader, Abu Abbas, to “negotiate” with the hijackers, Abbas worked out a deal whereby the hijackers would be removed from the ship and given safe passage to Tunisia in exchange for release of the ship and the hostages. It does not clear whether his men advised Abbas of Klinghoffer’s murder or whether the Italian and Egyptian governments with whom Abbas was negotiating knew. Klinghoffer’s murder only came to light after the hijackers had left the ship and the American Ambassador went on board to check on the passengers and discovered the gruesome truth.

Despite the Ambassador’s demands, the Egyptians allowed an Egypt Air flight carrying the hijackers to take off for Tunis. The plane was eventually intercepted by United States air forces who forced the plane to land at a NATO base in Sicily. This part of the saga and subsequent actions taken by the Italian authorities must be left for another day. Meanwhile,

back on board the Achille Lauro, Marilyn Klinghoffer learned for the first time that her invalid husband was dead.

**Search for Justice Begins**

When Mrs. Klinghoffer arrived in the United States, she immediately set out to discover who was responsible for her husband’s murder. Her daughters asked that family friend and our partner, Jay Fischer, be the first to meet her. Fischer first advised that certainly the owners of the cruise ship were responsible because they did not provide adequate security for a cruise ship sailing into what was (and still is) technically a war zone. For example, the media were reporting that the ship-bound luggage was not searched for weapons, the hijackers were using stolen Norwegian passports, and no security personnel were on board ship, allegations that later proved to be true. The cruise ship owners settled early with Mrs. Klinghoffer early in the litigation that ensued.

After further reflection and seeing that the PLO had an office building in New York City, Fischer further advised Mrs. Klinghoffer that the PLO should also be held responsible. Thus began a twelve year litigation battle with the PLO, who was ably represented by former Attorney General, Ramsey Clark. Since no group has ever been sued for causing death during the commission of an act of terrorism, the issues raised were (i) the nature of the PLO; (ii) the jurisdiction of the United States Courts over the PLO; (iii) the relationship of the hijackers to the PLO; and (iv) how service under the New York General Association Law could be made. On the major issue of the jurisdiction, the critical questions were whether the PLO was doing business in New York under CPLR 302 (the long arm statute) and the significance of it being an “observer” at the United Nations.

**What Kind of Entity Was the PLO?**

The legal nature of the PLO was easily resolved. Not only did it seem to have the indicia of an unincorporated association under New York law, but the PLO ironically had taken that position with regard to the American Jewish Committee in papers the PLO filed in a previous in an unrelated matter in Surrogates Court. So, what was good for the “goose” was good for the “gander.” The description “association” was supported by the testimony of the PLO Permanent Representative to the United Nations who was forced to appear for deposition by the U.S. District Court. He

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## OUR LAW FIRM IN THE NEWS

### Work for No Pay

#### *So Your Boss Can Live the High Life*

Employers cherish the loyalty of their employees. But some do not reward that loyalty. In fact, some scandalously mislead them. As reported in the Record on June 10, real estate developer James Bovino of Woodcliff Lake, New Jersey, is such an employer. His sales staff worked tirelessly to drive sales in Bovino's numerous development projects in New Jersey. Even when the real estate market went sour, the staff continued to work in reliance on Bovino's promise to pay them the salaries and commissions due. Such loyalty has been rewarded with nothing but broken promises. Bovino even failed to pay the health insurance premiums from the money he deducted from the employees' paychecks he did send out. To add insult to injury, Bovino breached a settlement agreement with his former employees. Fischer Porter Thomas & Reinfeld, P.C. is pursuing Bovino and his wife to overturn conveyances between them.

### Not Just Any Fish Story

#### *The African Wild is Lost*

When you spend years of research on rare fish in Africa and you want specimens to examine in your own research facilities, you would expect a major airline to deliver the specimens when you pay the going rate. Unfortunately, for New York's world-famous American Museum of Natural History, American Airlines failed to deliver. Despite assurances of delivery to the Museum, the Airline first lost the parcel and then treated the specimens as just another piece of garbage and threw them away. As reported in *The New York Daily News* and *The New York Post*, the Museum seeks to recoup costs in obtaining and transporting the specimens. Fischer Porter Thomas & Reinfeld, P.C. has been retained to represent the famed Museum. The airline, of course, thinks it lost luggage and wants to limit its liability. Aaron Albert of the firm is lead counsel and is aggressively pursuing the airline for the Museum's damages. "The liability limit does not apply," says Albert. "They destroyed the fish intentionally."

## BUYING A HOUSE? (Continued from Page 1)

closing for the excess above the tolerance amount; send you a check for the difference within thirty days; or apply that amount to the principal of the loan. Lists of the charges that can and cannot change are listed below.

In summary, an informed consumer is a better

consumer. By requiring clearer disclosure and creating the concept of tolerance violations, potential Borrowers should be able to more effectively calculate the cost of buying a home. Unquestionably, this is a welcome improvement. - *Joel J. Reinfeld*

### GFE Blocks That Cannot

#### Increase

- Lender's Origination Fee
- Points
- Transfer Taxes

### GFE Blocks That May Increase

#### Up to 10%

- Required services selected by Lender
- Government recording charges
- Title Services and lender's title insurance  
(If company is on lender's list)
- Owner title insurance  
(If company is on lender's list)
- Required services selected by Borrower  
(If provider is chosen from Lender's list)

### GFE Blocks That May Increase

#### By Any Amount

- Initial deposit for escrow account
- Daily interest charge
- Homeowner's Insurance
- Required services selected by Borrower  
(If provider is NOT chosen from lender's list)
- Title services and lender's title insurance  
(If companies selected are NOT chosen from lender's list)

## The Achille Lauro *(continued from page 2)*

testified that the PLO was not “incorporated” anywhere and that the membership in the PLO consisted of all Arabs displaced from Israel-Palestine. Membership was automatic and there was no way to cease being a member of the group.

### **Jurisdiction**

Under international law, nations enjoy sovereign immunity from suit by citizens from other nations and the PLO claimed it was entitled to the same protection. Its primary arguments were that it enjoyed the status of “Observer” at the United Nations, its New York office was an embassy or consulate, and that it was recognized as a government by over 100 countries around the world (but not the United States or most U.S. allies). Fischer and his legal team successfully argued that the PLO could not be a “sovereign” since it did not and had never governed a single inch of territory any place. As to its status as the United Nations, the building owned by the PLO was not recognized by the U.N. as an embassy or consulate and was used to conduct not only United Nations activities, but a second business in which the PLO engaged the solicitation of support and money from the American public. It was the latter activity (business) that the Court, affirmed by the Court of Appeals, concluded that the New York long armed statute gave U.S. Courts jurisdiction.

### **Service**

The question of proper service proved more complicated since the New York Secondary Law provides that service on an Association had to be made upon its President or Treasurer. Obviously, even if the location of such persons were obtainable, they would not likely be approachable by a process server considering the security that typically surrounded PLO officials, especially Arafat. Fischer argued the next best thing. Specifically, the

Summons and Complaint were served on a person answering the door at the PLO building, the documents were sent to Arafat, Arafat instructed his New York office to get an attorney, and the attorney appeared in the case. Fischer argued that this was sufficient under the law and the District Court agreed.

### **Final Stages**

It took many years, including two arguments before the Court of Appeals and one denied petition to the United States Supreme Court to resolve the jurisdictional issue. Once that was accomplished, preparations were made for the deposition of Arafat and other PLO officials. After years of stalling, Arafat’s deposition was set for his office in Gaza, but he cancelled it at the last minute. Unwilling to tolerate any more delays, the Court set a trial date, and the matter was settled shortly thereafter.

### **“EVERYMAN”**

This was the first law suit ever brought against a terrorist group, and it was successful. Leon Klinghoffer represented “Everyman.” Blowing up the ship would have been a great tragedy, but the death of nameless hundreds or more would not have had the same impact on our collective psyche as the murder of a single, non-offending, wheelchair-bound victim. We knew his name and learned about his family life. The impact of his vulnerability was felt by everyone. – Jay D. Fischer

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