



This Court does not possess jurisdiction to entertain claims by a plaintiff that is a foreign corporate entity unless that plaintiff shows that United States corporate entities possess a reciprocal right to sue the plaintiff's government in plaintiff's country's courts. 28 U.S.C. § 2502. "Citizens or subjects of any foreign government which accords to citizens of the United States the right to prosecute claims against their government in its courts may sue the United States in the United States Court of Federal Claims if the subject matter of the suit is otherwise within such court's jurisdiction." Id. See also El-Shifa Pharm. Indus. Co. v. United States, 55 Fed. Cl. 751, 756 (2003); Humphries v. United States, 51 Fed. Cl. 35, 35 (2001); Humphries v. United States, 44 Fed. Cl. 81 (1999); Pottawatomie Nation in Canada v. United States, 27 Fed. Cl. 388, 390 (1992).

Demonstrating reciprocity is the plaintiff's burden. El-Shifa Pharm. Indus. Co., 55 Fed. Cl. at 756; Humphries, 44 Fed. Cl. at 82 ("[T]o maintain a suit against the United States an alien plaintiff must affirmatively demonstrate that citizens of the United States are accorded the reciprocal right to sue the alien's sovereign in its courts."); Humphries, 51 Fed. Cl. at 35. To establish reciprocity, it is not necessary to demonstrate that claims of the precise nature brought before this Court may be prosecuted against the foreign government. It is only required that American citizens are entitled to prosecute claims against the foreign government and enjoy an equal standing with that country's citizens in the foreign state's court system. See Nippon Hodo Company v. United States, 152 Ct. Cl. 190, 193, 285 F.2d 766, 767-68 (1961). However, the Court should "carefully measure the scope of [its] jurisdiction in a situation where a rule in a foreign law book permits Americans free access to the courts but where it appears in practice that Americans are barred from the courts." Nippon Hodo, 152 Ct. Cl. at 193, 285 F.2d at 768.

As asserted in the complaint, "Plaintiff BMMI is a Bahraini stockholding company (B.S.C.) whose shares are publicly traded on the Bahrain Stock Exchange, Plaintiff BMMI is

incorporated in the Kingdom of Bahrain, and Plaintiff BMMI is registered there with the Ministry of Industry and Commerce under Commercial Registration Number 10999.” Compl. at ¶ 4. Plaintiff’s operations are located in Bahrain, Qatar, Djibouti, Gabon, Mali, Sudan and Ghana, but not the United States. Id. As a Bahraini corporate entity, BMMI bears the burden to affirmatively demonstrate reciprocity between the courts of the United States and Bahrain in order to be permitted to sue the United States in this Court. See 28 U.S.C. § 2502. Plaintiff’s complaint, however, does not even allege that United States corporate entities are permitted to prosecute claims against the Bahraini government in Bahraini courts, let alone whether American corporate entities have real access to Bahrain’s courts. Instead, plaintiff’s complaint is entirely silent on the issue of reciprocity. Absent a demonstration of reciprocity, this Court lacks subject matter jurisdiction over plaintiff’s claims.

At this time, the Government takes no position regarding reciprocity with Bahrain as it is not the Government’s burden to demonstrate that this Court does not possess jurisdiction to entertain plaintiff’s claims. That we take no position regarding whether the requisite reciprocity exists for purposes of the Reciprocity Act does not confer jurisdiction. See Dunkleberger v. Merit Sys. Protection Bd., 130 F.3d 1476, 1480 (Fed. Cir. 1997); Son Broadcasting, Inc. v. United States, 42 Fed. Cl. 532, 536 (1998) (parties cannot overcome lack of jurisdiction by stipulation).

As plaintiff’s complaint fails to plead jurisdiction sufficiently, the Government could properly move to dismiss plaintiff’s complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the RCFC. At this stage of the litigation, however, it is more appropriate to move pursuant to Rule 12(e) of the RCFC for the issuance of an order requiring BMMI to set forth a basis for the Court’s jurisdiction that satisfies the Reciprocity Act. See BMY-Combat Sys. Div. of Harsco Corp. v. United States, 26 Cl. Ct. 846, 850 (1992) (court did not dismiss

counterclaim but rather required more detailed explanation of the charges). Should BMMI subsequently fail to meet its pleading burden, this Court should dismiss BMMI's complaint for lack of subject matter jurisdiction. See Humphries, 51 Fed. Cl. at 36.

CONCLUSION

For the reasons set forth above, we respectfully request that the Court grant our motion for a more definite statement and issue an order requiring plaintiff to provide the Court with a more definite statement of the basis for the Court's jurisdiction in accordance with 28 U.S.C. § 2502(a).

Respectfully submitted,

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CERTIFICATE OF FILING

I hereby certify that, on this 26<sup>th</sup> day of February, 2010, a copy of the foregoing DEFENDANT'S MOTION FOR A MORE DEFINITE STATEMENT was filed electronically.

I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Russell J. Upton  
RUSSELL J. UPTON