

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of

ESTATE OF MICHAEL SWEIS, DECEASED;
JEANETTE SWEIS, PERSONAL REPRESENTATIVE

Claim No. LIB-I-046

Decision No. LIB-I-036

Against the Great Socialist People's
Libyan Arab Jamahiriya

Counsel for Claimant:

Richard D. Heideman, Esq.
Heideman Nudelman & Kalik, P.C.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon physical injuries said to have been sustained by the late Michael Sweis at Fiumicino Airport in Rome, Italy on December 27, 1985. Mr. Sweis died in 2003.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

On December 11, 2008, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for

adjudication a category of claims of United States nationals against Libya. *Letter from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* (“December Referral Letter”). The category of claims referred consists of

claims of U.S. nationals for physical injury, provided that (1) the claim meets the standard for physical injury adopted by the Commission; (2) the claim is set forth as a claim for injury other than emotional distress alone by a named party in the Pending Litigation; and (3) the Pending Litigation against Libya and its agencies or instrumentalities; officials, employees, and agents of Libya or Libya’s agencies or instrumentalities; and any Libyan national (including natural and juridical persons) has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 3. Attachment 1 to the December Referral Letter lists the suits comprising the Pending Litigation.

The December Referral Letter followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 14, 2008, the United States and Libya concluded the *Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008. On October 31, 2008, the Secretary of State certified, pursuant to the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008), that the United States Government had received funds sufficient to ensure “fair compensation of claims of nationals of the United States for . . . physical injury in cases pending on the date of enactment of this Act against Libya” On the same day, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Oct. 31, 2008), espousing the claims of United States nationals coming within the terms of the Claims Settlement Agreement, barring United States nationals from asserting or

maintaining such claims, terminating any pending suit within the terms of the Claims Settlement Agreement, and directing the Secretary of State to establish procedures governing claims by United States nationals falling within the terms of the Claims Settlement Agreement.

On March 23, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this Libya Claims Program pursuant to the ICSA and the December Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 12,148 (2009).

BASIS OF THE PRESENT CLAIM

On July 22, 2009, the Commission received from claimant's counsel a completed Statement of Claim and accompanying exhibits supporting the claim, including evidence of: the United States nationality of the claimant's decedent, the late Michael Sweis, and the beneficiaries of the claimant estate; the claimant estate's inclusion as a named party in the complaints filed in *Estate of John Buonocore III v. Great Socialist People's Libyan Arab Jamahiriya*, 06-cv-727 (D.D.C.), and *Simpson v. Great Socialist People's Libyan Arab Jamahiriya*, 08-cv-529 (D.D.C.), part of the Pending Litigation referred to in Attachment 1 of the December Referral Letter, in which the claimant set forth a claim for injury other than emotional distress alone; the dismissal of the *Buonocore* and *Simpson* cases; and the claimant's decedent's physical injuries.

The claimant estate states that the late Michael Sweis, who died in Illinois in 2003, was present at the Fiumicino Airport in Rome, Italy with his wife and four children at the time of the terrorist attack. According to the Statement of Claim and accompanying exhibits, the decedent suffered gunshot and shrapnel wounds to his knee joint and scalp.

These physical injuries required seven days of hospitalization in two different hospitals, where the decedent underwent emergency surgery on his right leg as a result of the gunshot wound he sustained in the attack. The claimant estate has provided evidence of its decedent's United States nationality as of the date of the incident and the U.S. nationality of the estate's beneficiaries as of the decedent's date of death and thereafter up to the time of the Claims Settlement Agreement. Additionally, the claimant estate has provided medical records, newspaper clippings describing the incident and noting the claimant's decedent's presence at the scene of the attack, and other documents in support of its claim.

DISCUSSION

As an initial matter, the Commission has reviewed the claimant's decedent's probated will and codicil thereto, which designates Aida Sweis, the late Michael Sweis's widow, as a one-third beneficiary of his entire estate, and the Aida Sweis Children Trust as the residuary beneficiary. The probated will of Aida Sweis, who died in 2004, also designates the Aida Sweis Children Trust as the beneficiary of her residuary estate. The trust itself further designates Saeid Sweis, Juliet Sweis, Jeanette Sweis, and Sayel Sweis as the beneficiaries of the trust.* The claimant estate has provided a copy of a court order appointing Jeanette Sweis as executor of the estate of Aida Sweis; as well as a sworn statement from Jeanette Sweis identifying the beneficiaries of the claimant's decedent's will, and specifically, the beneficiaries of the Aida Sweis Children Trust, referenced therein. Finally, the Aida Sweis Children Trust designates the late Michael Sweis and the late Aida Sweis as co-trustees, and an after-dated document signed by them designates

* Although the trust instrument, in Article IV(a), designates the beneficiaries only as "the child for whom the trust is named," Jeanette Sweis, the trustee, clarifies in a sworn statement that the four children of Aida Sweis, named above, are in fact the beneficiaries of the trust.

Jeanette Sweis and Sayel Sweis as successor co-trustees. Documentation in the file reflects that all four of the above-named Sweis children are United States nationals by birth. Based on this review, the Commission finds that the ESTATE OF MICHAEL SWEIS, DECEASED; JEANETTE SWEIS, PERSONAL REPRESENTATIVE, is the proper claimant in this claim.

Jurisdiction

The Commission must first consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the December Referral Letter is limited to claims of individuals who: (1) are United States nationals; (2) are named parties in a Pending Litigation case against Libya which has been dismissed; and (3) set forth a claim for injury other than emotional distress alone in the Pending Litigation. December Referral Letter, *supra* ¶¶ 2-3.

Nationality

In the *Claim of* Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that in order for a claim to be compensable, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, from the date the claim arose until the date of the Claims Settlement Agreement. Based on the evidence submitted with this claim, the Commission determines that this claim was held by a United States national at the time of the injury on which the claim is based, that it was continuously held thereafter by the claimant's decedent until his death in 2003, and that it has been continuously held from that point until the effective date of the Claims Settlement Agreement by U.S. nationals.

Pending Litigation and its Dismissal

To fall within the category of claims referred to the Commission, the claimant must also be a named party in the Pending Litigation listed in Attachment 1 to the December Referral Letter and must provide evidence that the Pending Litigation against Libya has been dismissed. December Referral Letter, *supra*, ¶ 3. The claimant estate has provided a copy of the Order of Dismissal in Cases No. 06-cv-727 and 08-cv-529, filed in the United States District Court for the District of Columbia, which shows that these cases were ordered dismissed on December 24, 2008. Based on this evidence, the Commission finds that the claimant was a named party in the Pending Litigation and that the Pending Litigation has been properly dismissed.

Claim for Injury Other than Emotional Distress

The December Referral Letter also requires that the claimant must have set forth a claim for injury other than emotional distress alone in the Pending Litigation. December Referral Letter, *supra* ¶ 3. The Commission's records reflect that the claimant asserts in the complaints in the Pending Litigation that its decedent suffered "personal injury" as a result of the defendants' actions, terrorist acts, and activities. In addition, the Commission notes that the claimant states causes of action for, *inter alia*, battery and assault under Counts II and III of the complaints. The Commission therefore finds that the claimant has satisfied this element of its claim.

In summary, therefore, the Commission concludes, on the basis of the foregoing, that this claim is within the Commission's jurisdiction pursuant to the December Referral Letter and is entitled to adjudication on the merits.

Merits

Standard for Physical Injury

As stated in the December Referral Letter, to qualify for compensation, a claimant asserting a claim for physical injury must meet a threshold standard for physical injury adopted by the Commission. In order to develop such a threshold standard for compensability, the Commission has considered both its own jurisprudence and pertinent sources in international and domestic law. After careful and thorough consideration, the Commission held in the *Claim of* Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6), *supra*, that in order for a claim for physical injury to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of an incident related to the Pending Litigation; and
- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

Physical Injury

According to its Statement of Claim and accompanying documents, the claimant's decedent suffered physical injuries on December 27, 1985, while in the terminal at the Fiumicino Airport in Rome, Italy; specifically, Mr. Sweis suffered an "extensive" gunshot wound with "excessive drainage" to his right knee joint, as well as a wound to his scalp, caused by bullets or shrapnel from the explosion of hand grenades. Mr. Sweis was immediately taken to the emergency room surgery department at St. Eugenio Hospital in Rome, where the wound to his leg was irrigated and sutured; he also received a blood transfusion. He was subsequently transferred to the CTO Hospital, also in Rome,

where he stayed until his release on January 3, 1986. In support of its claim, the claimant estate has provided documentation including medical records, newspaper clippings, a narrative description of the decedent's injuries, and other materials to corroborate the statements regarding its decedent's injuries and treatment.

Based on the evidence submitted, the Commission finds that the claimant's decedent's injuries meet the standard for physical injury set forth above. Accordingly, claimant ESTATE OF MICHAEL SWEIS, DECEASED; JEANETTE SWEIS, PERSONAL REPRESENTATIVE is entitled to compensation as set forth below.

COMPENSATION

In the *Claim of* Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6), *supra*, the Commission held that \$3,000,000.00 is an appropriate amount of compensation for physical injuries that meet the Commission's standard in this claims program. The Commission also held that compensable physical injury claims in this claims program are not entitled to interest as part of the awards granted therein. *Id.* Accordingly, the Commission determines that the claimant, ESTATE OF MICHAEL SWEIS, DECEASED; JEANETTE SWEIS, PERSONAL REPRESENTATIVE, is entitled herein to an award of \$3,000,000.00 and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

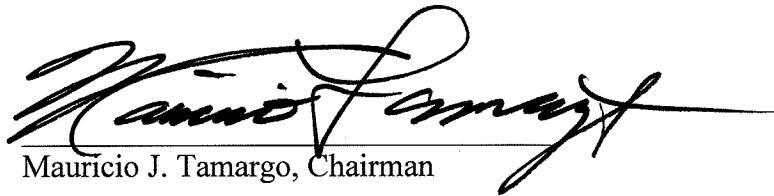
The Commission therefore enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27 (2006).

AWARD

Claimant ESTATE OF MICHAEL SWEIS, DECEASED; JEANETTE SWEIS,
PERSONAL REPRESENTATIVE is entitled to an award in the amount of Three Million
Dollars (\$3,000,000.00).

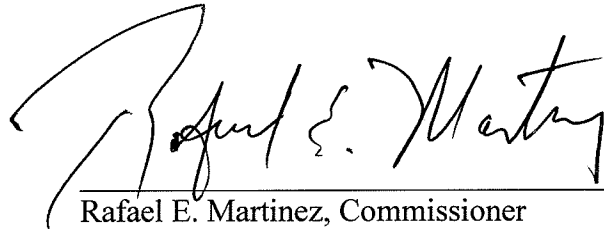
Dated at Washington, DC, and
Entered as the Proposed Decision
Of the Commission.

JAN 12 2010



Mauricio J. Tamargo, Chairman

**This decision was entered as the
Commission's Final Decision on
FEB 24 2010**



Rafael E. Martinez, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2008).