

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 ELIZABETH L. ROOT, DECEASED;
JAMES G. ROOT & DAVID H. ROOT,
PERSONAL REPRESENTATIVES

Claim No. LIB-II-040

Decision No. LIB-II-026

Against the Great Socialist People's
Libyan Arab Jamahiriya

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the Estate of Elizabeth L. Root (the "claimant"), based upon physical injuries said to have been sustained by Mrs. Root during the terrorist attack at Fiumicino Airport in Rome, Italy on December 27, 1985. Mrs. Root died in 1992 of causes unrelated to the attack.

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 January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication six categories of claims of U.S. nationals against Libya. *Letter dated January 15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* ("January Referral Letter"). Category E consists of

claims of U.S. nationals who for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 ("Covered Incidents"), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provide that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

Id. at ¶ 7.

The January Referral Letter, as well as a December 11, 2008 referral letter ("December Referral Letter") from the State Department, 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 4, 2008, the President signed into law the Libyan Claims Resolution Act ("LCRA"), Pub. L. No. 110-301, 122 Stat. 2999, and 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 President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008), which, *inter alia*, espoused the claims of U.S. nationals coming within the terms of the Claims Settlement Agreement,

barred U.S. nationals from asserting or maintaining such claims, terminated any pending suit within the terms of the Claims Settlement Agreement, and directed the Secretary of State to establish procedures governing claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On October 1, 2009, the Commission received from claimant a completed Statement of Claim and accompanying exhibits supporting the claim, including evidence of: the U.S. nationality of the claimant's decedent, the late Elizabeth Root, and the residuary legatees of the claimant estate; and the injuries suffered by Mrs. Root.

The claimant states that Elizabeth Root, who died in Ohio in 1992, was present at the Fiumicino Airport in Rome, Italy at the time of the terrorist attack. According to the Statement of Claim and accompanying exhibits, Mrs. Root suffered a gunshot wound to the chest that passed through her right lung, requiring three weeks of hospitalization, during which time she underwent surgery to treat her wounds and briefly fell into a coma. The claimant has provided evidence of Mrs. Root's U.S. nationality as of the date of the incident, and the U.S. nationality of the estate's residuary legatees, James G. and David H. Root, as of the decedent's date of death and thereafter up to the time of the Claims Settlement Agreement. Additionally, the claimant has provided medical records, newspaper clippings describing the incident and

noting Mrs. Root'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 probated will, which provides general bequests to various family members and certain named charities, and designates her sons, James G. Root and David H. Root, as the beneficiaries of the residuary estate. The claimant estate has also provided a copy of letters testamentary issued by the probate court appointing James and David Root as co-executors of their late mother's estate, in accordance with her Last Will and Testament. Documentation in the file reflects that both James and David Root are U.S. nationals by birth. Based on this review, the Commission finds that the ESTATE OF ELIZABETH L. ROOT, DECEASED; JAMES G. ROOT & DAVID H. ROOT, PERSONAL REPRESENTATIVES, is the proper claimant in this claim.

Jurisdiction

Under subsection 4(a) of the ICOSA, the Commission's jurisdiction here is limited to the category of claims defined under the January Referral Letter; namely, claims of individuals who: (1) are U.S. nationals; (2) were not plaintiffs in a Pending Litigation case against Libya; and (3) set forth a claim for wrongful death or physical injury resulting from one of the Covered Incidents. January Referral letter, *supra* ¶ 7.

Nationality

In the *Claim of* ^{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 the nationality requirement to

have been met, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. In the case of claims brought by estates on behalf of beneficiaries, it is a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors, the War Claims Commission and the International Claims Commission, that, for purposes of determining the nationality of a claim, the nationality of the injured party as well as the beneficiaries of his or her estate must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.¹

To meet this requirement, the claimant has provided: the birth certificate of the claimant's decedent, Elizabeth Root, née Linton, showing her place of birth in Columbus, Ohio; a letter from the State Department, dated February 26, 2010, detailing the decedent's U.S. passport history from 1969 through 1995; and copies of both current and prior U.S. passports for David H. Root and James G. Root, showing their place of birth in Ohio. Based on this evidence and other evidence in the record, the Commission determines that the claim was owned by a U.S. national at the time of the incident continuously through the effective date of the Claims Settlement Agreement.

¹ See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

Claim for Death or Injury Resulting From a Covered Incident

To fall within Category E of the January Referral Letter, the claimant must assert a claim for wrongful death or physical injury which resulted from one of the Covered Incidents listed in Attachment 2 to the January Referral letter, and the claimant must not have been a plaintiff in the related Pending Litigation. January Referral Letter, *supra*, ¶ 7. Listed in Attachment 2 to the January Referral letter are the “Covered Incidents” for purposes of Category E, including the “December 27, 1985 attack at the Leonardo da Vinci Airport^[2] in Rome, Italy, as alleged in *Estate of John Buonocore III v. Great Socialist Libyan Arab Jamahiriya* (D.D.C.) 06-cv-727/*Simpson v. Great Socialist People’s Libyan Arab Jamahiriya* (D.D.C.) 08-cv-529.” January Referral Letter, *supra*, Attachment 2, ¶ 6.

In its Statement of Claim, the claimant sets forth a claim for physical injury suffered by the late Elizabeth Root as a result of the December 27, 1985 Fiumicino Airport terrorist attack. Additionally, the claimant has averred under oath in its Statement of Claim, and Commission records confirm, that it was not a plaintiff in the Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has satisfied these elements of its claim.

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

² Leonardo da Vinci Airport is also referred to as Fiumicino Airport, as referenced throughout this decision.

Merits

Standard for Physical Injury

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category E must meet “the standard . . . adopted by the Commission” for purposes of this referral. January Referral Letter, *supra*, ¶ 7. The December Referral Letter similarly requires that, in order to qualify for compensation, a claimant asserting a claim for physical injury pursuant to the December Referral Letter must meet the standard for physical injury adopted by the Commission. In order to develop the appropriate standard, the Commission considered both its own jurisprudence and pertinent sources in international and domestic law. The Commission concluded in the *Claim of* ^{5 U.S.C. §552(b)(6)} , *supra*, at 8-9, 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.

In the *Claim of* ^{5 U.S.C. §552(b)(6)} , Claim No. LIB-II-039, Dec. No. LIB-II-015, at 6-7, the Commission held that this standard, with minor modification, would also apply to claims for physical injury pursuant to Category E of the January Referral Letter; thus, in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant (or claimant’s decedent, as applicable):

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; 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 the Statement of Claim and accompanying documents, the decedent suffered physical injuries on December 27, 1985, while in the terminal at the Fiumicino Airport in Rome, Italy. Specifically, the late Elizabeth Root suffered a gunshot wound from a bullet that passed through her chest, piercing through and destroying much of her right lung, fracturing several ribs, and ultimately leaving her “in state [sic] of circulatory collapse” She was immediately taken to Forlanini Hospital in Rome, where she received a blood transfusion and underwent emergency surgery to treat her wounds. Following her surgery, Mrs. Root’s heart stopped and she fell into a coma. Surgeons were able to resuscitate her; however, she continued to require drainage tubes in her throat and a respirator to prevent blood from filling her left lung.

The decedent was subsequently transferred to San Camillo Hospital, also in Rome, where she remained in intensive care until she returned to the United States, accompanied by her Italian doctor, on January 8, 1986, at which point she was admitted to Riverside Methodist Hospital in Columbus, Ohio, where she stayed until January 18, 1986.

Based on the evidence submitted, the Commission finds that the decedent’s injuries meet the standard for physical injury set forth above. Accordingly, claimant ESTATE OF ELIZABETH L. ROOT, DECEASED; JAMES G. ROOT & DAVID H.

ROOT, PERSONAL REPRESENTATIVES, is entitled to compensation as set forth below.

COMPENSATION

In the *Claim of* ^{5 U.S.C. §552(b)(6)} _____, *supra*, the Commission held that, in light of the Commission's decision in *Claim of* ^{5 U.S.C. §552(b)(6)} _____, *supra*, \$3 million is an appropriate amount of compensation for physical injuries that meet the Commission's standard under Category E. In addition, the Commission held in *Claim of* ^{5 U.S.C. §552(b)(6)} _____, as it had held in *Claim of* ^{5 U.S.C. §552(b)(6)} _____, *supra*, that compensable physical injury claims in this claims program are not entitled to interest as part of the awards granted therein. Accordingly, the Commission determines that the claimant, ESTATE OF ELIZABETH L. ROOT, DECEASED; JAMES G. ROOT & DAVID H. ROOT, PERSONAL REPRESENTATIVES, 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. §§ 1626-1627 (2006).

AWARD

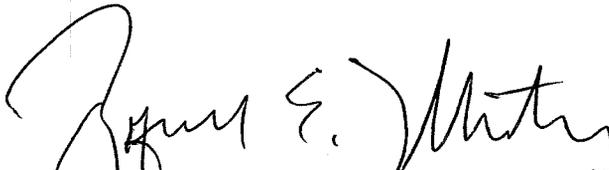
Claimant ESTATE OF ELIZABETH L. ROOT, DECEASED; JAMES G. ROOT
& DAVID H. ROOT, PERSONAL REPRESENTATIVES, is entitled to an award in the
amount of Three Million Dollars (\$3,000,000.00).

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

APR 07 2011



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

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

MAY 13 2011

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) (2010).