

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 VIRGEN MILAGROS FLORES,
DECEASED;
CRUCITA FLORES SUÁREZ,
PERSONAL REPRESENTATIVE

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-065

Decision No. LIB-II-043

Counsel for Claimant:

Joshua M. Ambush, Esq.
Joshua M. Ambush, LLC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon the wrongful death of Virgen Milagros Flores at Lod Airport in Tel Aviv, Israel on May 30, 1972.

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 United States 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”).

The present claim is made under Category E. According to the January Referral Letter, Category E consists of

claims of U.S. nationals 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, provided 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. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

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 ICOSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On March 12, 2010, the Commission received from claimant estate 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 Virgen Milagros Flores, and the heirs to her estate; her presence at the scene of the terrorist incident; and her alleged wrongful death as a result of injuries sustained during the incident.

The claimant states that Virgen Milagros Flores was present in the terminal at Lod Airport in Tel Aviv, Israel on May 30, 1972, when three terrorists armed with automatic rifles began shooting and throwing hand grenades at passengers gathered in the baggage claim area. According to the Statement of Claim and accompanying exhibits, Ms. Flores suffered severe abdominal injuries during the attack and, despite immediate assistance from rescue personnel, died at the scene as a result of her injuries.

DISCUSSION

As a threshold matter, the Commission has reviewed the Court Declaration of Heirs Nunc Pro Tunc issued by the First Instance Court in Puerto Rico on November 23,

2009, indicating that Ms. Flores died intestate and identifying the heirs to her estate. Specifically, the court identifies the following persons as heirs, each of whom is a sibling of Ms. Flores: Crucita Flores Suárez, Lucina Flores Suárez, Juan Flores Suárez, José Luis Flores Suárez, and Hermes Flores Suárez. The claimant estate has also provided a copy of a Resolution issued by the court on October 27, 2010, appointing Crucita Flores Suárez as administrator of the estate. Documentation submitted by the claimant reflects that all of the above-named individuals are U.S. nationals by birth. Based on this review, the Commission finds that the ESTATE OF VIRGEN MILAGROS FLORES, DECEASED; CRUCITA FLORES SUÁREZ, PERSONAL REPRESENTATIVE (hereinafter “claimant”), is the proper claimant in this claim.

Jurisdiction

Under subsection 4(a) of the ICSA, 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) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. 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, 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 the nationality of the injured party as well as the beneficiaries of his or her estate are determinative of the nationality of the claim.¹

To meet the nationality requirement, the claimant has provided the birth certificate of the claimant's decedent, Virgen Milagros Flores Suárez, indicating her place of birth in Ponce, Puerto Rico, a Report of the Death of an American Citizen issued by the U.S. Department of State for Ms. Flores, copies of birth certificates and either current U.S. passports or recent U.S. voter registration cards/receipts for the decedent's siblings identified above, and copies of U.S. birth certificates and a Puerto Rico "Petition for Registration as Voter," dated August 1975, for each of the decedent's parents.² Based on this 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.

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral letter. January Referral

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).

² It appears that, under P.R. Laws Ann. tit. 31, §§ 2592, 2641, 2643, 2651, 2652 (1968), the decedent's estate passed first to her parents, then to her siblings upon her parents' death. For this reason, the Commission has examined the U.S. nationality of Ms. Flores' deceased parents, in addition to her siblings, for purposes of satisfying the requirement of continuous U.S. nationality.

Letter, *supra*, ¶ 7. This list includes the “May 30, 1972 attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734.” *Id.*, Attachment 2, ¶ 1. In its Statement of Claim, the claimant sets forth a claim for wrongful death based on the death of Ms. Flores during this terrorist attack. Accordingly, the Commission finds that the claimant has also satisfied this element of its claim.

Pending Litigation

Finally, the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, is the *Franqui* case. Claimant has provided a copy of the First Amended Complaint in *Franqui*, which demonstrates that neither the claimant estate, nor any of the beneficiaries, were plaintiffs in the Pending Litigation. In addition, claimant, through its duly-appointed administrator Crucita Flores Suárez, has stated under oath in its Statement of Claim that it was not a plaintiff in the Pending Litigation against Libya. Based on this evidence, the Commission 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 January Referral Letter and is entitled to adjudication on the merits.

Merits

Standard for Wrongful Death

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim for wrongful death under Category E must meet the “standard .

. . . adopted by the Commission.” January Referral Letter, *supra*, ¶ 7. The Commission has not yet addressed Category “E” wrongful death claims and has, therefore, not yet established the appropriate standard that is to be applied to those claims. The Commission does so here. In so doing, the Commission has considered the facts of this and other Category E wrongful death claims before it, the provisions of the Claims Settlement Agreement, and applicable principles of international law, justice and equity.

Proof of Death

As an initial matter, it is well-settled that proof of the fact of death is a necessary element of a wrongful death claim. For example, the United Nations Compensation Commission specified that a necessary element of compensability for death claims brought under “Category B” (serious personal injury or death) was “evidence of the fact of death.” *Report and Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category “B” Claims)*, S/AC.26/1994/1, at 39 (May 26, 1994) [hereinafter *UNCC Category “B” Report*]. Likewise, the September 11th Victim Compensation Fund required “proof of death” as a prerequisite for eligibility to file a claim for compensation for death. *Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001*, p. 22.³

Where a claim was made for wrongful death, the UNCC specified that proof in the form of a “death or burial certificate, or similar document prepared by an official entity . . . was regarded as conclusive evidence of the fact of death.” *UNCC Category*

³ Available at http://www.justice.gov/final_report.pdf.

“B” Report, *supra*, at 39.⁴ Similarly, Whiteman, in her *Digest of International Law*, Volume 8 (1967), at 898, describes the Department of State’s general requirements for international death claims, noting that claimants were required to submit a sworn statement that includes the essential facts regarding, *inter alia*, “[t]ime, place, and circumstances under which the injury or death occurred” *Id.* Although there is no specific mention of a requirement for death certificates, Whiteman indicates that evidence regarding cause of death might include “records of court proceedings or other public records.” *Id.*

In light of the above, the Commission determines that proof of death is a necessary element of the Commission’s standard for wrongful death claims filed under Category E of the January Referral.

Causation

Under the terms of the Claims Settlement Agreement, Libya agreed, among other things, to settle claims of U.S. nationals arising from “death . . . caused by [certain enumerated acts]” Claims Settlement Agreement, *supra*, art. I. Although the agreement itself is silent as to the criteria to be used in determining whether a given death was “caused” by the enumerated acts, the ordinary meaning of the term “cause” – an agent or act that produces an effect or result – establishes a baseline for the necessary relationship between the act complained of and the wrongful death on which this claim is based. *See, e.g.*, Black’s Law Dictionary (9th Ed. 2009).

⁴ A similar standard was applied by the 9/11 Victim Compensation Fund, which allowed “various forms of proof of death, including a death certificate or other evidence, such as an employer affidavit and presence of a victim on an airline manifest Where death certificates could not be obtained by the claimant, other official documentation was accepted.” *Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001*, p. 22, available at http://www.justice.gov/final_report.pdf.

The issue of causation has arisen frequently in wrongful death cases at the international level; in such cases, the general standard adopted by international tribunals – further defining the necessary relationship between the act and the effect – is one of “proximate cause.” See Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* 242-45 (Cambridge University Press 2006) (1953) (citations omitted); *Administrative Decision No. II*, 7 R. Int’l Arb. Awards 23, 29-30, 32 (*U.S.-German Mixed Claims Comm’n* 1923). In other words, the harm must be the “normal and natural consequence” of the wrongful act. Cheng, *supra*, at 246. The concept of “direct” versus “indirect” damages appears to be disfavored; indeed, Cheng notes that “in the majority of cases, in which the epithets ‘direct’ and ‘indirect’ are applied to describe the consequences of an unlawful act, they are in fact being used synonymously with ‘proximate’ and ‘remote.’” Cheng, *supra*, at 242-45.

Several international decisions illustrate the application of the proximate causation standard to wrongful death cases. In one decision of the Franco-Venezuelan Mixed Claims Commission, the claimant estate was awarded compensation where the decedent had died of “traumatic tetanus” that was the “natural result” of a machete wound sustained one month earlier. Cheng, *supra*, at 247 (citing *Claim of Heirs of Jean Maninat, Report of French-Venezuelan Mixed Claims Commission* 44, 77 (1905)). The Commission had framed the relevant question as follows:

When it comes to the actual trial of actions for personal injuries, there are two difficult questions One of these is how far the defendant’s negligence is responsible for some subsequently developed infirmity or disease or, in other words, how far a given injury may be said to be the *natural and proximate cause of a subsequently developed condition*”

Id. (quoting *Claim of Heirs of Jean Maninant, supra*, at 77) (emphasis added).

The limits of this test are apparent from a case before the U.S.-German Mixed Claims Commission. In applying the rule of proximate cause set forth in *Administrative Decision No. II, supra*, the Mixed Claims Commission rejected a claim in which the claimant's husband died as a result of "enlargement of the liver," which she alleged was caused by injuries suffered during the sinking of the *Lusitania* five years earlier. Marjorie M. Whiteman, *Damages in International Law*, Volume I (1937), at 659 (citing *Claim of Estate of George A. Kessler, Mixed Claims Commission United States and Germany, Opinions in Individual Lusitania Claims and Other Cases* at 553 (Feb. 18, 1925)).

More recently, the United Nations Compensation Commission (UNCC) adopted the proximate cause standard to, *inter alia*, claims for the death of a family member resulting from Iraq's invasion and occupation of Kuwait in 1990, brought by eligible survivors. *Report and Recommendations Made by the Panel of Commissioners Concerning the First Installment of Individual Claims for Damages up to US\$100,000 (Category "C" Claims)* (S/AC.26/1994/3), at 21 (Dec. 21, 1994). In so doing, the UNCC noted that, under Security Council Resolution 687, Iraq was only liable under international law for "direct loss" (as opposed to indirect loss); however, the Council cited Cheng's observation, *see supra*, that the terms "direct and indirect" had traditionally "be[en] used synonymously with 'proximate' and 'remote.'" *Id.* Significantly, the UNCC also made it clear that the location of the death is not necessarily determinative: in this regard, when considering the appropriate standard to apply in that program, the UNCC held that where a "death occurred in Iraq or Kuwait, this can more easily be attributable to Iraqi actions, whereas a claim based on an incident occurring outside

Kuwait or Iraq needs to be more fully substantiated.” *UNCC Category “B” Report, supra*, at 23.

This Commission, in previous claims programs, has also adopted the proximate cause standard in cases involving alleged wrongful death. In rejecting a death claim in the Italian Claims Program, the Commission held that, “Not only is it true that the death was not the result of Italian action but neither . . . is there any contention that the *proximate cause of death* was a violation of international law by Italy.” *Claim of Giovanni Mascioli*, Claim No. IT-10,096, Dec. No. IT-258 (1957) (emphasis added).⁵

Fourteen years later, the Commission stated, in a decision in the Cuba Claims Program, that

[t]he Commission has held that in a disability claim . . . it must be established, *inter alia*, that the disability was the proximate result of actions by the Government of Cuba in violation of international law. (See *Claim of Julio Lopez Lopez*, Claim No. CU-3259.) The same considerations apply to a claim for death.”

Claim of JENNIE M. FULLER, Claim No. CU-2803, Decision No. CU-6199 (1971).

The same standard was applied to claims in the General War Claims Program. See *LOPEZ, supra*, at 4 (citing *Claim of ROBERT NEWTON PRITCHARD*, Claim No. W-009 (1965)).

The Commission may also look to domestic sources in determining issues of causation in wrongful death cases.⁶ In this regard, the Commission takes note of the standard for causation applied by the September 11th Victim Compensation Fund of 2001 (“9/11 VCF”), which, in its regulations, limited death claims to Personal Representatives

⁵ See also *Claim of ANNA ROSA DI CIOCCIO and SALVATORE DI CIOCCIO*, Claim No. IT-10,145, Dec. No. IT-527 (1958); *Claim of EMELIA (NEE WUKOTICH) JEAN*, Claim No. IT-10,328, Dec. No. IT-848 (1959); *Claim of ALESSANDRA BORRIONE LEONI, CARLOS ALLESANDRO LEONI, A MINOR, & PATRICIA AGNES LEONI*, Claim No. IT-10,833, Dec. No. IT-879 (1959).

⁶ “As to what constitutes a normal and natural consequence of an act, an arbitrator or judge may seek guidance and authority from ‘usages, customs and laws of civilized countries.’” Cheng, *supra*, at 246-47. See also, Statute of the International Court of Justice, Art. 38(1)(b).

of individuals who died as a “direct result of the terrorist-related aircraft crash[es].” 28 C.F.R. § 104.2 (2002). In applying this rule, the Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001 notes that 45 claims were denied because of “(1) lack of proof of death; (2) lack of proof of presence at the site; or lack of proof that the death was related to the September 11th attacks.”⁷

In summary, consistent with the terms of the Claims Settlement Agreement, and the international law precedents relevant to the question, the Commission determines that it will apply a proximate cause test to the Category “E” claims for wrongful death that are before it.

Based upon the foregoing, the Commission holds that in order for a claim for wrongful death under Category E to be considered compensable, the claimant must:

- 1) provide evidence sufficient to establish the fact of death in the form of a death certificate or other similar document; and
- 2) provide evidence sufficient to establish that the decedent died as the proximate result of a Covered Incident.

Moreover, in accordance with the Commission’s regulations, the claimant will bear “the burden of proof in submitting evidence and information sufficient to establish” these necessary elements. 45 C.F.R. § 509.5(b) (2010).

Wrongful Death

According to the Statement of Claim and accompanying documents, Virgen Milagros Flores died on May 30, 1972 while in the baggage claim area at Lod Airport in Tel Aviv, Israel; specifically, the claimant states that Ms. Flores suffered fatal wounds to

⁷ *Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001*, p. 22, available at http://www.justice.gov/final_report.pdf.

her abdomen after the attackers began firing and throwing hand grenades at waiting passengers. In support of its claim, the claimant has submitted a copy of a Report of the Death of an American Citizen issued by the U.S. Department of State on July 7, 1972, which confirms that Ms. Flores died at Lod Airport on the date of the incident while on a "Tour of Israel." The report also cites an Israeli death certificate issued for Ms. Flores on June 2, 1972, which states the cause of death and notes that her remains were repatriated to Puerto Rico on June 4. Numerous newspaper reports from the days following the incident, copies of which were provided with this claim, also confirm that Ms. Flores was one of the fatalities in the attack.

The claimant has also provided a first-hand account of the incident from Ms. Flores' niece, Maria del Carmen Diaz Pagán,⁸ who was with Ms. Flores at the time of the terrorist incident. Additional documents submitted with this claim confirm that Ms. Flores died during the Lod Airport attack, including, *inter alia*: records from the Israeli National Insurance Institute reflecting benefits payable to Ms. Flores' father; a copy of a Puerto Rican Senate resolution from June 2009, commemorating the Lod Airport massacre and listing Ms. Flores as one of those who died; and affidavits from each of Ms. Flores' siblings noting her death in the incident.

Based on the evidence submitted, the Commission finds that this claim meets the standard for wrongful death. Accordingly, claimant ESTATE OF VIRGEN MILAGROS FLORES, DECEASED; CRUCITA FLORES SUÁREZ, PERSONAL REPRESENTATIVE, is entitled to compensation as set forth below.

⁸ The Commission notes that Ms. Diaz Pagán has filed a claim in her own right for physical injury under Category E of the January Referral Letter.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation.

As stated in the December Referral Letter, on October 31, 2008, the Secretary of State certified, pursuant to the LCRA, that she “ha[d] received funds pursuant to the claims agreement that are sufficient to ensure[,]” *inter alia*, “fair compensation of claims of nationals of the United States for wrongful death . . . in cases pending on the date of enactment of [the LCRA]” December Referral Letter, *supra*, ¶ 1.⁹ Although the exact amount constituting “fair compensation” was not specified, the Department of State distributed \$10 million for the wrongful death claims that it processed, before referring other claims to the Commission. See January Referral Letter, *supra*, ¶ 6

In the *Claim of* ^{5 U.S.C. §552(b)(6)} *supra*, the Commission noted that the “magnitude of the awards that has been recommended by the Legal Adviser for physical injury claims is a matter of first impression for this Commission.” *Id.* at 10. Such is also the case with wrongful death claims. Having surveyed the amounts of compensation awarded for wrongful death by international commissions and tribunals, and indeed by this Commission in prior programs, the Commission is unaware of any previous award of compensation for wrongful death in the amount of \$10 million in international law, without any showing of individual economic damages.¹⁰

⁹ The LCRA required the Secretary of State to certify that proceeds from the settlement would be sufficient to provide “fair compensation of claims of nationals of the United States for wrongful death or physical injury cases pending on the date of enactment of this Act” LCRA § 3, 122 Stat. at 2999.

¹⁰ See, e.g., *Claim of EDWARD T. WILKES and DANIEL WILKES*, Claim Nos. W-10922, W-10923, W-10924, Decision No. W-3576 (1965); *ALESSANDRA BORRIONE LEONI ET AL.*, Claim No. IT-10,833, Decision No. IT-879 (1959); *DOROTHY S. MCCARTHY ET AL.*, Claim No. CU-0697, Decision No. CU-6244; 1 Marjorie M. Whiteman, *Damages in International Law* 682, 826 (1937); *Report of Robert W. Bonyngue, Agent of the United States, Before the Mixed Claims Commission, United States and Germany* 17 (1934)

The Commission is not, however, confined by past international practice, or indeed, its own practice in prior programs. The Commission is required by its enabling statute to apply to the claims before it, in the following order: the provisions of the applicable claims agreement – in this case, the Claims Settlement Agreement – and the applicable principles of international law, justice and equity.¹¹

In terms of the Claims Settlement Agreement, as the Commission in ^{5 U.S.C.} §552(b)(6) noted, “each claims settlement is based on a unique set of circumstances, which may in turn lead to breaks with past practices—though without setting a precedent for the future.” ^{5 U.S.C.} §552(b)(6) *supra*, p. 10.¹² As was the case with claims for physical injury, the unique circumstances of this claims program warrant a unique approach. Those circumstances include the fact that this claims program is only a part of the United States’ overall settlement of claims of U.S. nationals against Libya – that is, the Department of State has distributed payments directly to certain claimants, while the claims of other claimants, for the same kinds of loss arising out of the same events, have been referred to the Commission for adjudication. Aside from this fact, the only apparent difference between this wrongful death claimant, and those wrongful death claimants to whom \$10 million was distributed by the State Department, is that this claimant was not one of the Pending Litigants, while the claims processed by the State Department were Pending Litigants.

In the Commission’s view, this is not a difference that holds any legal significance for the purpose of determining the amount of compensation to be awarded.

¹¹ 22 U.S.C. § 1623(a)(2).

¹² *See also* Bin Cheng, Justice and Equity in International Law, 8 Current Legal Probs. 185, 206 (1955) (“[one of the] most important aspect[s] of equity is the taking into account of the personal circumstances of the parties in order to bring about the true and desired result of the law.”)

The claim here, like the claims that were processed by the State Department, is one for a wrongful death resulting from a Covered Incident. Two of the express objectives of the Claims Settlement Agreement are relevant here: first, to “terminate permanently all pending suits” – an objective that affects the claims in Pending Litigation – and second, to “preclude any future suits that may be taken to the courts” – an objective that affects claims, like the present claim, that were not part of the Pending Litigation. There is no indication that any one of the objectives of this agreement was more or less valuable to the parties to that agreement. For purposes of this program, therefore, there is no material difference between these two groups of wrongful death claims that would warrant a greater or lesser amount of compensation.

Fundamental principles of equity require that in any claims program similar damages be available to similarly-situated claimants.¹³ Here, where the State Department has distributed a fixed amount to certain claimants, the Commission concludes that equity requires an award of the same amount to similarly-situated claimants.

As noted above, the Commission understands that in making a distribution of \$10 million to the Pending Litigants, the State Department did not require that claimants prove individual economic damages. *See Letter from John D. Negroponte, Deputy Secretary of State, to the Honorable Mitch McConnell, United States Senate* (July 28, 2008). Equity likewise requires that similarly-situated claimants be treated in a similar manner before this Commission. Consequently, the Commission determines that it will not require claimants before it to prove individual economic damages in eligible wrongful death cases.

¹³ *See, e.g., United Nations Comp. Comm'n Governing Council, Priority of Payment and Payment Mechanism (Guiding Principles)*, S/AC.26/Dec. 17 (1994), at 1 (March 23, 1994).

In conclusion, the Commission holds that for all wrongful death claimants under Category E, the appropriate amount of compensation is \$10,000,000.00. Accordingly, the Commission determines that the claimant, ESTATE OF VIRGEN MILAGROS FLORES, DECEASED; CRUCITA FLORES SUÁREZ, PERSONAL REPRESENTATIVE, is entitled herein to an award of \$10,000,000.00.


As regards interest, in the *Claim of* ^{5 U.S.C. §552(b)(6)} *supra*, after consideration of principles of international law and precedent decisions, the Commission held that compensable tort claims in this claims program are not entitled to interest as part of the awards made therein. *Id.* Therefore, the award of \$10,000,000.00 made herein 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 ICSEA. 22 U.S.C. §§ 1626-1627 (2006).

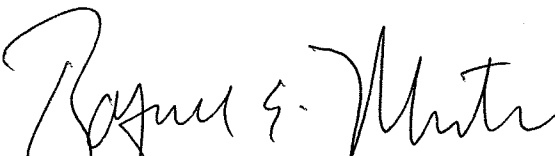
AWARD

Claimant ESTATE OF VIRGEN MILAGROS FLORES, DECEASED;
CRUCITA FLORES SUÁREZ, PERSONAL REPRESENTATIVE, is entitled to an
award in the amount of Ten Million Dollars (\$10,000,000.00).

Dated at Washington, DC, May 10, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

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

JUN 20 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).