

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 MACK EDWARD GOINS,
DECEASED;
TESSIE GOINS BROWN, EXECUTRIX

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-173

Decision No. LIB-II-052

Counsel for Claimant:

Caragh Fay, Esq.
Fay Kaplan Law, P.A.

Oral Hearing held on September 8, 2011

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the Estate of Mack Edward Goins (the "claimant") based on mental pain and anguish suffered by the late Mack Edward Goins as the result of the death of his son, James Emmanuel Goins, who died on June 7, 1986 as the result of injuries suffered on April 5, 1986 in the terrorist bombing of the La Belle discotheque in Berlin, Germany. By its Proposed Decision entered June 3, 2011, the Commission denied claimant's claim under Category B of the January Referral Letter,¹ on the grounds that Category B states it

¹ January 15, 2009, letter 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").

covers claims of U.S. nationals “who are living” and Mack Edward Goins died on February 13, 1993, nearly 16 years prior to the January Referral Letter.

On June 22, 2011, the claimant submitted a Notice of Objection to the Proposed Decision and requested an oral hearing. On August 18, 2011, the Commission received from the claimant without explanation what appears to be a copy of a letter the claimant sent to the State Department’s Legal Adviser requesting that the State Department clarify for the Commission by the Commission’s hearing date on September 8, 2011, that “living” means “all persons having a claim who were alive on the date of the incident or occurrence in question.” The requested oral hearing was held before the Commission on September 8, 2011. The claimant was allowed additional time and submitted a supplemental brief on October 18, 2011. For the reasons discussed below, the Commission finds the claimant’s arguments unavailing and affirms its denial as set forth in the Proposed Decision.

DISCUSSION

The claimant, in its written submissions and in its oral presentation, argued that it is entitled to compensation from the Commission based on the following: (1) the Libyan Claims Resolution Act (“LCRA”)² “guarantees payment to victims of terrorist attacks sponsored by Libya” and “Congress promised that these victims and their families would receive full and fair compensation;” (2) Mack Edward Goins had a valid claim under federal law because he was alive at the time James Emmanuel Goins died; (3) the Commission’s Proposed Decision denies the “plain intent” of Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008), wherein, the claimant asserts, “the President

² Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008).

ordered that all claims against Libya be settled;” (4) the “reasonable interpretation” of the word “living” in Category B of the January Referral Letter is that the claimant was living at the time of the injury; and (5) because Executive Order No. 13,477 defines “person” to mean “any individual or entity, including both natural and juridical persons” and because the January Referral Letter is “ambiguous as to how and when the claimant must be ‘alive’, the simple interpretation is that an estate is a person and therefore the claim is eligible for an award under the referral letter.”

The claimant’s arguments notwithstanding, as the Commission noted in the Proposed Decision, the January Referral Letter specifically states that Category B shall consist of claims of U.S. nationals for mental pain and anguish “who are living” close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State. In light of this fact, the Commission has consistently held that in order to qualify for compensation under Category B, a claimant must have been living as of the date of the January Referral Letter as well as at the time of the incident which served as the basis of the Pending Litigation and caused the mental pain and anguish. *See Claim of ESTATE OF JANICE HUFF, DECEASED*, Claim No. LIB-II-024, Decision No. LIB-II-010 (2010); *Claim of ESTATE OF JAMES HUFF, DECEASED*, Claim No. LIB-II-025, Decision No. LIB-II-011 (2010); *Claim of ESTATE OF MALCOLM PUGH, DECEASED*, Claim No. LIB-II-026, Decision No. LIB-II-012 (2010); *Claim of ESTATE OF GEORGIA MAE CHISHOLM, DECEASED*, Claim No. LIB-II-029, Decision No. LIB-II-013 (2010); and *Claim of ESTATE OF EDWARD CORDER, DECEASED*, Claim No. LIB-II-035, Decision No. LIB-II-014 (2010). In those decisions, the Commission rejected the primary argument that the claimant here also makes – namely, the argument

that the January Referral Letter's statement that Category B shall consist of claims of U.S. nationals for mental pain and anguish "who are living" should be understood to mean close relatives who were living at the time of the decedent's death. The Commission noted in those decisions that the January Referral Letter plainly refers to claimants "who are living" and not "who are, or were, living." Accordingly, the Commission held in those decisions that Category B only included individuals who were living at the time of the January Referral Letter.

Furthermore, as the Commission stated in *Claim of* ^{5 U.S.C. §552(b)(6)}, Claim No. LIB-II-046, Decision No. LIB-II-017 (2011) the Commission's jurisdiction is limited by ICSA³ to claims referred to it by the Department of State. The Commission therefore concluded in ^{5 U.S.C. §552(b)(6)} that where the referral language is unambiguous there is "no need for the Commission to revert to the applicable claims agreement (in this case the Claims Settlement Agreement) or the other documents underpinning the January Referral Letter that have been cited by claimant, in order to inform the ordinary meaning of Category B of that Referral." In ^{5 U.S.C. §552(b)(6)} the Commission also noted that the Claims Settlement Agreement⁴ was a settlement of claims "and never purported to be a payment in full." The Commission further noted in ^{5 U.S.C. §552(b)(6)} that the Libya Claims Program authorized by the Claims Settlement Agreement is a "humanitarian settlement fund" and that in that regard the State Department's delineation of the Commission's Category B jurisdiction, by its wording, appears intended to denote Category B as a last recourse to

³ The International Claims Settlement Act of 1949 ("ICSA").

⁴ *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.

compensate certain living close relatives of decedents who did not, and will not otherwise, receive compensation under the Libya Claims Program.

The Commission's reasoning and conclusions in the claims described above apply equally here, and on this basis the Commission rejects claimant's arguments that the words "are living" in Category B of the January Referral Letter should be interpreted to mean "are or were living," and that either the LCRA or Executive Order 13,477 should be interpreted so as to entitle the claimant to an award of compensation under this category.

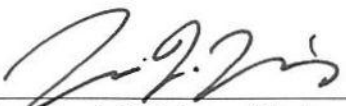
Equally unavailing is claimant's argument that because Executive Order 13,477 defines "person" to mean "any individual or entity, including both natural and juridical persons" and because the January Referral Letter is "ambiguous as to how and when the claimant must be 'alive', the simple interpretation is that an estate is a person and therefore the claim is eligible for an award under the referral letter." The word "living" would be unnecessary if, as claimant urges, every individual's claim could be succeeded by the claim of their estate. More to the point, an estate cannot be the "close relative" of a decedent. Therefore, since there is no ambiguity as to this language, just as in 5 U.S.C. §552(b)(6), there is no need for the Commission to revert to the documents underpinning the January Referral Letter that have been cited by claimant.

Finally, the denial of this claim, filed by the estate of an individual who died 16 years prior to the Claims Settlement Agreement, is consistent with the Commission's statement in 5 U.S.C. §552(b)(6) that the Claims Settlement Agreement is a "humanitarian settlement fund" and that in that regard the State Department's delineation of the Commission's Category B jurisdiction, by its wording, appears intended to denote

Category B as a last recourse to provide humanitarian compensation to only certain *living* close relatives of decedents.

In conclusion, based on the reasoning articulated above and in the Proposed Decision, because Mack Edward Goins was not living on the date of the January Referral Letter, the claimant does not meet the jurisdictional requirements of Category B of the January Referral Letter. Accordingly, the denial set forth in the Proposed Decision in this claim is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, October 28, 2011
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

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 MACK EDWARD GOINS,
DECEASED;
TESSIE GOINS BROWN, EXECUTRIX

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-173

Decision No. LIB-II-052

Counsel for Claimant:

Caragh Fay, Esq.
Fay Kaplan Law, P.A.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the Estate of Mack Edward Goins (the "claimant") based on mental pain and anguish suffered by the late Mack Edward Goins as the result of the death of his son, James Emmanuel Goins, who is said to have died on June 7, 1986 as the result of injuries suffered on April 5, 1986 in the terrorist bombing of the La Belle discotheque in Berlin, Germany.

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 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 B. According to the January Referral Letter, Category B consists of:

claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State provided that (1) the claim was set forth as a claim for emotional distress, solatium, or similar emotional injury by the claimant named in the Pending Litigation; (2) the claimant is not eligible for compensation from the associated wrongful death claim, and the claimant did not receive any compensation from the wrongful death claim; (3) the claimant has not received any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral; and (4) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 4. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation. On March 26, 2010, the State Department's Deputy Legal Adviser, by letter dated March 26, 2010 ("March 26, 2010 Letter"), advised the Commission that Attachment 1 to the January Referral Letter should have included amongst the Pending Litigation the case of *Beecham, et al. v. Great Socialist People's Libyan Arab Jamahiriya, et al.* (D.D.C.) 01-02243.

The March 26, 2010 Letter and the January Referral Letter, as well as a December 11, 2008 referral letter from the State Department's Legal Adviser to the Commission ("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 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 July 7, 2010, the Commission received from the claimant a completed Statement of Claim, in which the claimant asserts a claim under Category B of the January Referral Letter, along with exhibits supporting elements of its claim, including evidence that: the late Mack Edward Goins was born in the United States and died on February 13, 1993; the claimant was included as a named party in the complaint filed in *Beecham, et al. v. Great Socialist People's Libyan Arab Jamahiriya, et al.* (D.D.C.) 01-02243, and set forth a claim for emotional distress, solatium, or similar injury; and that *Beecham* was dismissed on November 6, 2008. A memorandum submitted by claimant's

counsel avers that the late Mack Edward Goins endured pain and suffering as the result of the death of his son.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICOSA the Commission's jurisdiction here is limited to the category of claims defined in the January Referral Letter; namely the claims of individuals who: (1) are U.S. nationals; (2) are living; (3) are close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State; (4) as named parties, made claims for emotional distress, solatium, or similar emotional injury in a Pending Litigation case which has been dismissed; and (5) are not eligible for compensation from the wrongful death claim, have not received any compensation from the wrongful death claim, have not received any compensation under any other part of the Claims Settlement Agreement, and do not qualify for any other category of compensation pursuant to the January referral. January Referral Letter, *supra*, ¶ 4.

The Commission notes that the January Referral Letter specifically states that Category B shall consist of claims of U.S. nationals for mental pain and anguish "who are living" close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State. In light of this fact, the Commission has previously held that in order to qualify for compensation under Category B, a claimant must have been living as of the date of the January Referral Letter as well as at the time of the incident which served as the basis of the Pending Litigation and caused the mental pain and anguish. *See Claim of ESTATE OF JANICE HUFF, DECEASED*, Claim No. LIB-II-024, Decision No. LIB-II-010 (2010); *Claim of ESTATE OF JAMES HUFF, DECEASED*, Claim No. LIB-II-025, Decision No. LIB-II-011 (2010); *Claim of ESTATE OF MALCOLM PUGH, DECEASED*, Claim No. LIB-II-026, Decision No. LIB-II-012

(2010); *Claim of ESTATE OF GEORGIA MAE CHISHOLM, DECEASED*, Claim No. LIB-II-029, Decision No. LIB-II-013 (2010); and *Claim of ESTATE OF EDWARD CORDER, DECEASED*, Claim No. LIB-II-035, Decision No. LIB-II-014 (2010). In those decisions, the Commission rejected the claimants' argument that the January Referral Letter's statement that Category B shall consist of claims of U.S. nationals for mental pain and anguish "who are living" should be understood to mean close relatives who were living at the time of the decedent's death. *Id.* The Commission noted in those decisions that the January Referral Letter plainly refers to claimants "who are living" and not "who are, or were, living." *Id.* Accordingly, the Commission held in those decisions that Category B only included individuals who were living at the time of the January Referral Letter. *Id.*

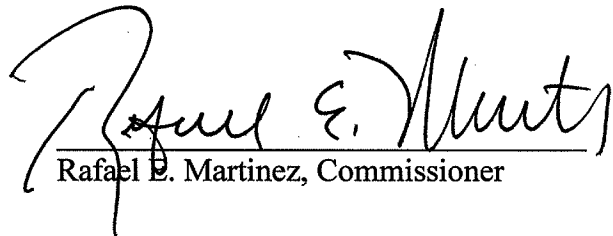
The Commission therefore finds, based on the reasoning it enunciated in the above identified decisions, that because Mack Edward Goins was not living on the date of the January Referral Letter, the claimant does not meet the jurisdictional requirements of Category B of the January Referral Letter. Accordingly, while the Commission recognizes the tremendous loss suffered by the estate's decedent, it is constrained to conclude that this claim is not compensable under Category B of the January Referral Letter. Therefore, this claim must be, and hereby is, denied.

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, DC, June 3, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



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) (2010).