

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

In the Matter of the Claim of	}	
	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-III-010
	}	
	}	Decision No. LIB-III-012
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant: David J. Strachman, Esq.
McIntyre Tate LLP

PROPOSED DECISION

Claimant brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") for mental pain and anguish suffered as a result of the death of his half-brother, ^{5 U.S.C. §552(b)(6)} ("decedent"), who was killed on board Pan Am Flight 103 on December 21, 1988. Because he has established that he is a living close relative of the decedent and satisfies all other legal requirements entitling him to an award of compensation from this Commission, he is entitled to an award of \$200,000.00.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that Libyan agents killed his half-brother on December 21, 1988, while he was on board Pan Am Flight 103, and that Claimant had a close relationship with him and was deeply affected by his death. Along with four other family members, Claimant sued Libya in federal court in 2002 for intentional infliction of emotional distress, loss of consortium and solatium. *See* Complaint, ^{5 U.S.C. §552(b)(6)}

2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya, including claims for mental pain and anguish based on wrongful death. *See 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; *see also* Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). In October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission. *See* International Claims Settlement Act of 1949 (“ICSA”), 22 U.S.C. § 1623(a)(1)(C)(2012). The Secretary has delegated that authority to the State Department’s Legal Adviser, who, by letters dated December 11, 2008, January 15, 2009, and November 27, 2013, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

In 2010, the Claimant filed a claim under Category B of the January 2009 Referral, alleging that his half-brother’s death caused him mental pain and anguish. However, one of the jurisdictional requirements for claims in that category was that the claim be based on a decedent “whose death formed the basis of a death claim compensated by the Department of State.” *See* Claim No. LIB-II-139, Decision No. LIB-II-098 (2011) (emphasis added). Because Claimant’s half-brother’s death claim was not compensated by the State Department—the evidence indicated that his half-brother’s

wife settled the claim for wrongful death in a separate, private agreement with the Libyan government, *id.* at 4—the Commission denied his claim.

The Legal Adviser referred an additional set of claims to the Commission on November 27, 2013. *Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* (“2013 Referral” or “November 2013 Referral”). One category of claims from the 2013 Referral is applicable here. That category, known as Category B, consists of

claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent provided that (1) the claim was set forth as a claim for emotional distress, solatium, or similar emotional injury by the claimant in the Pending Litigation; (2) the claim meets the standard adopted by the Commission for mental pain and anguish; (3) the claimant is not eligible for compensation as part of the associated wrongful death claim; and (4) the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral.

Id. at ¶ 4. Attachment 1 to the 2013 Referral lists the suits comprising the Pending Litigation.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to Title I of ICOSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On April 25, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category B of the 2013 Referral, together with exhibits supporting the elements of his claim, including the evidence he had previously submitted in connection with the claim he made under the January 2009 Referral. These submissions included evidence of Claimant’s U.S. nationality; his close relationship with the decedent,⁵ U.S.C. §552(b)(6) his inclusion as a named party in

one of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral, in which he set forth a claim for intentional infliction of emotional distress and solatium, and the dismissal of the Pending Litigation case against Libya. The Claimant subsequently submitted additional evidence of his U.S. nationality and relationship to the decedent. Claimant has also submitted a memorandum arguing for an upward departure in award.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined in the 2013 Referral; namely, the claims of individuals who (1) are U.S. nationals; (2) made claims for emotional distress, solatium, or similar emotional injury, in one of the designated Pending Litigation cases; and (3) have not received any compensation under any other distribution under the Claims Settlement Agreement, and do not qualify for any other category of compensation pursuant to the 2013 Referral. 2013 Referral, *supra*, ¶ 4.

Nationality

This claims program is limited to "claims of U.S. nationals." Here, this means that a claimant must have been a national of the United States continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-007, Decision No. LIB-III-008, at 4 (2014).

Claimant satisfies this requirement. He has provided, among other documents, copies of his California birth certificate and his current U.S. passport. This evidence establishes that this claim was held by a U.S. national at the time the decedent was killed on December 21, 1988, and was so held continuously until the effective date of the Claims Settlement Agreement.

Pending Litigation and its Dismissal

To be eligible for compensation under Category B of the 2013 Referral, Claimant's claim must have been "set forth as a claim for emotional distress, solatium, or similar emotional injury" in one of the Pending Litigation cases listed in Attachment 1 to the 2013 Referral. 2013 Referral, *supra*, ¶ 4. ^{5 U.S.C. §552(b)(6)}

^{5 U.S.C. §552(b)(6)}

filed in the U.S. District Court for the District of Columbia, is one of those cases, and the Complaint in that case names Claimant as one of the plaintiffs and states a claim for both solatium and intentional infliction of emotional distress. Claimant's claim thus satisfies this requirement.

Other Compensation

To fall within Category B of the 2013 Referral, Claimant must also be ineligible for compensation from the associated wrongful-death claim, must not have received any compensation under any other distribution under the Claims Settlement Agreement, and must not qualify for any other category of compensation pursuant to the 2013 Referral. 2013 Referral, *supra*, ¶ 4. Claimant has represented to the Commission under penalty of perjury, and has provided additional substantiating evidence, that he "ha[s] not received any money from the settlement between . . . ^{5 U.S.C. §552(b)(6)} estate and Libya [or] any money from any other source as a result of his death." He has also represented to the Commission under penalty of perjury that he has not received compensation under any other part of the Claims Settlement Agreement, and that he does not qualify for any other category of claims under the 2013 Referral. On this basis, the Commission finds that Claimant is not eligible for compensation from the associated wrongful-death claim, did not receive any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation under the 2013 Referral.

In summary, therefore, the Commission concludes that this claim is within the Commission's jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

Merits

Claimant Must Have Been Living at the Time of the 2013 Referral

To be eligible for compensation under Category B, the 2013 Referral states that a claimant must be a "living" close relative of a decedent. The Commission has previously held that in order to qualify for compensation under Category B of the 2013 Referral, a claimant must have been living as of the date of the relevant referral from the State Department 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 No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 6. Claimant has satisfied this requirement, as evidenced by his birth certificate, and his signed and dated claim form.

Claimant Must Be a Close Relative of the Decedent

The 2013 Referral Letter also requires a Category B Claimant to be a "close relative" of a decedent. The Commission has previously held that for the limited purpose of Category B of the 2013 Referral, the term "close relatives" comprises those relatives who are immediate family to the decedent: spouses, children, parents, and siblings. *See* Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 6-7. Claimant has established that he was ^{5 U.S.C. §552(b)(6)} half-brother, as evidenced by the Claimant's birth certificate and the decedent's death certificate, which list the same mother. The Commission has previously held that for the limited purpose of the similar Category B of the 2009 Referral, the term "close relatives" includes half-siblings who demonstrate they had the same familial relationship to the decedent as that generally associated with the relationship between full biological siblings. *See, e.g.*, Claim No.

LIB-II-059, Decision No. LIB-II-075 at 5 (2011). As will be discussed in the next section, Claimant has provided evidence that he had a close, brotherly relationship with the decedent. He therefore has met this standard and has satisfied the Commission that he was a “close relative” of decedent.

Mental Pain and Anguish Standard

The 2013 Referral Letter requires that a claim meet “the standard adopted by the Commission for mental pain and anguish.” 2013 Referral ¶ 4. In adjudicating claims under Category B of the 2013 Referral, the Commission has presumed that all “close relatives” of a decedent (i.e., spouse, children, parents, and siblings) suffered mental pain and anguish. *See* Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 7. While Claimant does not enjoy this presumption, he has provided substantive and compelling evidence that he had a close, brotherly relationship with the decedent. Claimant has submitted pictures of himself and the decedent celebrating special family occasions together. He has also provided a heart-wrenching affidavit describing his close relationship with his brother, who he states called him on a weekly basis, flew cross-country to visit him and to help him and his mother move from California to Utah, served as a mentor, and provided financial and emotional support. Claimant has thereby provided evidence of his close, brotherly relationship with the decedent, and has thus satisfied the standard adopted by the Commission for mental pain and anguish.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation. The 2013 Referral recommends a fixed amount of \$200,000 for claims that meet the applicable standard under Category B. 2013 Referral, *supra* ¶ 4. This is the same fixed amount that was recommended for compensable claims in Category B of the 2009 Referral. In its first

decision addressing compensation for mental pain and anguish under the 2009 Referral, the Commission carefully reviewed its prior claims programs, as well as those of other tribunals and commissions that had adjudicated wrongful-death claims, including the September 11th Compensation Fund of 2001. The Commission noted the nature and tragedy of the events associated with the Pending Litigation cases, and determined that \$200,000 was an appropriate amount of compensation for mental pain and anguish claims. *See* Claim No. LIB-II-044, Decision No. LIB-II-001, at 9-10 (2010). This fixed sum was therefore awarded to all claimants under the 2009 Referral with compensable mental pain and anguish claims. The same \$200,000 fixed amount has been awarded to mental pain and anguish claims in the 2013 Referral. *See* Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 7-9. The Commission has also previously determined, based on consideration of the applicable principles of international law and its own precedent, that it will not award interest in this category of claims. *Id.* The Commission sees no reason to depart from the \$200,000 figure for mental pain and anguish in this claim.

Finally, the Commission has reviewed the Claimant's memorandum in support of an upward departure which requests that the Commission award sums "similar to those in civil terrorism cases" in U.S. courts. The Commission previously addressed and rejected this same argument, as well as similar arguments made in regard to Category B of the 2009 Referral. *See, e.g.*, Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 9; and Claim No. LIB-II-125, Decision No. LIB-II-022 at 4-5 (2012); and *Cf.*, Claim No. LIB-II-042, Decision No. LIB-II-018, Order dated April 15, 2013. In rejecting this argument again, we do so with full knowledge that no amount of money can truly compensate for the death of a loved one in such horrific circumstances. Accordingly,

Claimant is entitled to an award of \$200,000.00, and this amount constitutes the entirety of the compensation that the Claimant is entitled to in the present claim.

The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27 (2012).

AWARD

Claimant is entitled to an award in the amount of Two Hundred Thousand Dollars (\$200,000.00).

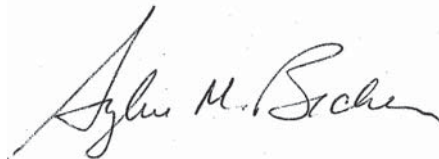
Dated at Washington, DC, January 13, 2015
and entered as the Proposed Decision
of the Commission.

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

February 18, 2015



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery 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 delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2014).