

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

In the Matter of the Claim of	}	
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	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-III-027
	}	
	}	Decision No. LIB-III-017
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joshua M. Ambush, Esq. Joshua M. Ambush, LLC
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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 in the terrorist attack at Lod Airport in Israel on May 30, 1972. 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 his half-brother was killed in the terrorist attack at Lod Airport in Israel on May 30, 1972, and that Claimant had a close relationship with him and was deeply affected by his death. He says he is thus entitled to compensation from Libya.

In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya. Included among those settled claims were all claims for mental pain and anguish based on wrongful death arising out of various terrorist attacks, including the one at Lod Airport. *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). Thus, although Claimant had not brought a lawsuit against Libya, the U.S. and Libya settled any claim he might have had arising out of that terrorist attack. 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.

The third of these referral letters is at issue here. *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, known as Category E, states as follows:

This category 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 under the Claims Settlement Agreement, provided that (1) the claimant was not a plaintiff 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 claim meets the standard adopted by the Commission for mental pain and anguish; 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. We believe and recommend that a fixed amount of \$200,000 would be an appropriate level of compensation for a claim that meets the applicable standards under this Category.

*Id.* at ¶ 7. 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 third Libya claims program pursuant to Title I of ICSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On June 2, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category E of the 2013 Referral, and on December 18, 2014, and April 16, 2015, Claimant submitted additional evidence supporting his claim.

## 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) were not a named party in any of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral; (3) have a close relative whose death formed the basis of a death claim compensated under the Claims Settlement

Agreement; (4) are not eligible for compensation from the associated wrongful-death claim, and did not receive any compensation from the wrongful-death claim; and (5) have not received any compensation under any other distribution under the Claims Settlement Agreement, and do not qualify for any other category of compensation under the 2013 Referral. 2013 Referral, *supra*, ¶ 7.

*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-028, Decision No. LIB-III-014, at 4 (2015).

Claimant satisfies this requirement. He has provided, among other documents, copies of his Puerto Rico birth certificate and his current Puerto Rico voter ID card. This evidence establishes that this claim was held by a U.S. national at the time the decedent was killed on May 30, 1972, and was so held continuously until the effective date of the Claims Settlement Agreement.

*Pending Litigation*

To be eligible for compensation under Category E of the 2013 Referral, the claimant must not have been a named party in any of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral. 2013 Referral, *supra*, ¶ 7. Claimant and his counsel have represented to the Commission under penalty of 18 U.S.C. § 1001, a statute akin to a perjury statute, and the Commission has verified, that Claimant was not a named party in any of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral. Claimant’s claim thus satisfies this requirement.

*Death Claim Compensated Under the Claims Settlement Agreement*

Category E of the 2013 Referral also requires that the death for which Claimant seeks mental-pain-and-anguish compensation have been the basis of a death claim compensated under the Claims Settlement Agreement. Here, this element of jurisdiction has been satisfied: the Commission awarded compensation for the wrongful-death claim of Claimant's half-brother under Category E of the 2009 Referral.<sup>1</sup> See Claim No. LIB-II-080, Decision No. LIB-II-150 (2012).

*Other Compensation*

Category E of the 2013 Referral is limited to claims where the claimant is not eligible for compensation from the associated wrongful-death claim; the claimant did not receive any compensation from the wrongful-death claim; the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement; and the claimant does not qualify for any other category of compensation under the 2013 Referral. 2013 Referral, *supra*, ¶ 7. Claimant here was not a beneficiary of the award made by the Commission in the wrongful-death claim arising out of his half-brother's death. See Claim No. LIB-II-080, Decision No. LIB-II-150, *supra*, at 6. Claimant and his counsel have further represented under penalty of 18 U.S.C. § 1001, a statute akin to a perjury statute, that Claimant is not eligible for compensation from the associated wrongful-death claim; that he did not receive any compensation from the wrongful-death claim; that he has not received any compensation under any other distribution under the Claims Settlement Agreement; and that he does not qualify for any other category of compensation under the 2013 Referral. The Commission has no reason to doubt these representations. Claimant thus satisfies these final jurisdictional requirements.

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<sup>1</sup> 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 ("2009 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 E, the 2013 Referral states that a claimant must be a "living" close relative of a decedent. The Commission has previously held that 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 case and caused the mental pain and anguish. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *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 E Claimant to be a "close relative" of a decedent. The Commission has previously held that, in this category of claims, the term "close relatives" comprises those relatives who are immediate family to the decedent: spouses, children, parents, and siblings. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 6-7. When interpreting the term "close relatives" in the context of mental-pain-and-anguish claims in Category B of this claims program, and in the Category B of an earlier Libya claims program, the Commission also held that the term "siblings" 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* Claim No. LIB-III-010, Decision No. LIB-III-012 at 6-7 (2015); and *see, e.g.*, Claim No. LIB-II-059, Decision No. LIB-II-075 at 5 (2011). Because

Category E of the 2013 Referral, this category of claims, is substantively identical, we apply that same standard to Category E claims such as this one.

Claimant has established that he was the decedent's half-brother, as evidenced by the Claimant's and the decedent's birth certificates, which list the same father. As described in more detail in the next section, in addition to the documentary evidence submitted showing his relationship to the decedent, Claimant has also provided evidence that he had a close, brotherly relationship with the decedent. We thus find that he has met the requirement that he be a "close relative" of the 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 ¶ 7. In adjudicating claims under this category of the 2013 Referral, the Commission has presumed that all spouses, children, parents, and full siblings of a decedent suffered mental pain and anguish. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 7. While Claimant does not enjoy this presumption because he was the decedent's *half*-brother, he has provided compelling evidence, including affidavits from decedent's sister and family friends of the decedent, that Claimant had a close, brotherly relationship with the decedent. He has also provided his own affidavit describing his close relationship with the decedent, who he states grew up nearby, acted as his protector, visited him, and worked on cars with him. Claimant states that he was the one tasked with the devastating job of identifying the decedent's body after the decedent was murdered. 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. *See* Claim No. LIB-III-010, Decision No. LIB-III-012, *supra*, at 7.

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 E. 2013 Referral, *supra* ¶ 7. This is the same fixed amount that was recommended for compensable claims in the similar Category B of the 2013 Referral and the similar 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, including in other Category E claims, *see* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 7-8. 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.* Accordingly, Claimant is entitled to an award of \$200,000.00, and this amount constitutes the entirety of the compensation to which the Claimant is entitled in the present claim. We make this award with full knowledge that no amount of money can truly compensate for the death of a loved one in such horrific circumstances.

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).

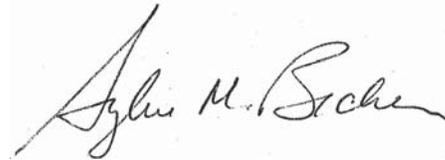
Dated at Washington, DC, May 12, 2015  
and entered as the Proposed Decision  
of the Commission.

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

**July 1, 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).