

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579**

In the Matter of the Claim of	}	
	}	
	}	
	}	
ESTATE OF HOWARD STANTON THOMAS, DECEASED	}	Claim No. LIB-III-083
	}	
	}	Decision No. LIB-III-052
	}	
	}	
Against the Great Socialist People’s Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joanne W. Young, Esq. Kirstein & Young, PLLC
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FINAL DECISION

Claimant Estate objects to the Commission’s Proposed Decision denying its claim against the Great Socialist People’s Libyan Arab Jamahiriya (“Libya”). In the Proposed Decision, the Commission denied the claim because Claimant Estate had failed to establish that it was the legally authorized representative of the estate of Mr. Thomas, its decedent. The Commission further noted that even if Claimant Estate had had standing, it would deny Claimant Estate’s claim for the same reasons set forth in two other decisions that involved essentially identical facts and the same evidentiary record, *i.e.*, Claim No. LIB-III-044, Decision No. LIB-III-044 (2016) (“Initial Proposed Decision”), and Claim Nos. LIB-III-036 et al., Decision No. LIB-III-045 (2016) (“Consolidated Proposed Decision”). Because Claimant Estate has not provided evidence or argument sufficient to undermine the Proposed Decision, we affirm the denial of this claim.

BACKGROUND

Together with a group of other claimants known collectively as the Abbott Group, Claimant Estate brought this claim against Libya under Category F of the November 27, 2013 letter from the State Department’s Legal Adviser referring several categories of claims against Libya to this Commission (“2013 Referral”). Category F of the 2013 Referral consists of “commercial claims of U.S. nationals provided that (1) the claim was set forth by a claimant named in *Abbott et al. v. Socialist People’s Libyan Arab Jamahiriya* (D.D.C.) 1:94-cv-02444-SS; and (2) the Commission determines that the claim would be compensable under the applicable legal principles.”¹

Like the other Abbott Group claimants, Claimant Estate alleges that the 1988 Lockerbie bombing ultimately forced Pan Am to cease operations and liquidate in December 1991, resulting in Mr. Thomas losing his job as a pilot for the airline, which in turn caused him to lose several years’ worth of income and benefits that he otherwise would have earned. Claimant Estate asserts that, but for the terrorist bombing, Pan Am would have continued operations, and Mr. Thomas would have continued to work for Pan Am.

The Commission denied the claim in a Proposed Decision dated August 16, 2016, concluding that Claimant Estate had failed to establish that it had standing to bring the claim (“Proposed Decision”). The Commission further concluded that even if Claimant Estate had standing, it would deny the claim for the same reasons set forth in the Initial Proposed Decision and the Consolidated Proposed Decision: (1) Claimant Estate had failed to demonstrate that its claim was not extinguished by a 2005 Settlement Agreement

¹ 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 ¶ 8.

between Pan Am and Libya; and (2) it had failed to demonstrate that the Lockerbie bombing caused Mr. Thomas's job loss.

On September 14, 2016, Claimant Estate filed a notice of objection and requested an oral hearing. The notice of objection stated that Claimant Estate had established that it had standing to bring the claim. The notice of objection also incorporated by reference the notices of objection filed by the claimants whose claims were addressed on the merits in the Initial and Consolidated Proposed Decisions. On November 23, 2016, Claimant Estate's counsel submitted a memorandum asserting that Mr. Thomas's surviving spouse, Miora Leser, has the legal authority to represent his estate before the Commission. However, counsel did not submit any new evidence or argument to support Claimant Estate's standing.

On November 23, 2016, the Abbott Group claimants, including Claimant Estate, filed a Hearing Brief on behalf of all claimants who had filed objections to their respective Proposed Decisions. The brief included numerous exhibits. The Commission then held an eight-hour consolidated hearing on the objections of all Abbott Group claimants on December 14, 2016 at the E. Barrett Prettyman Federal Courthouse in Washington, D.C. Several witnesses testified at the hearing.²

DISCUSSION

First, Claimant Estate has failed to establish that it has standing to bring this claim. As the Commission made clear in the Proposed Decision, in the case of claims brought on behalf of deceased individuals, a claimant must provide the Commission with evidence that he or she is legally entitled to bring the claim. *See Proposed Decision (citing Claim of*

² The evidence and argument presented in the Hearing Brief and Objection Hearing, as well as two additional exhibits submitted after the hearing, are more fully detailed in our Final Decision affirming the Consolidated Proposed Decision in Claim Nos. LIB-III-036 *et al.*, Decision No. LIB-III-045 (2018).

ESTATE OF ELIZABETH L. ROOT, Claim No. LIB-II-040, Decision No. LIB-II-026 (2011)). In the present claim, Claimant Estate has sought to establish its standing as representative of the decedent's estate by asserting that the decedent's last will and testament nominated his surviving spouse, Miora Leser, as personal representative of his estate, and that she had legal authority to pursue the claim on his behalf. However, Claimant Estate has not submitted the decedent's will, and even if it had, that document alone would not have been sufficient to establish that Ms. Leser was the legally authorized representative of the decedent's estate. As the Commission observed in the Proposed Decision, in a claim brought by an estate, a claimant must submit legal proof of the identity of the personal representative (e.g. letters testamentary or letters of administration issued by the appropriate court or judge). Claimant Estate has provided no such evidence. Because this claim is not being brought by a legally authorized estate representative, the Commission must deny the claim.

Moreover, even if a legally authorized estate representative had brought this claim, it would have also failed to have met its burden of proving that the alleged harm is compensable under the applicable legal principles, as required under Category F of the 2013 Referral. We considered this exact question in our Final Decision in Claim Nos. LIB-III-036, *et al.*, Decision No. LIB-III-045 (2018) (Final Decision). That decision involved most of the other Abbott Group claimants and was based on allegations, evidence, and legal arguments identical to those relied on by Claimant Estate here. In that decision, we denied the claims of those other Abbott Group claimants. If a legally authorized estate

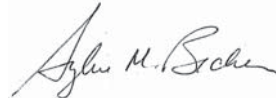
representative had brought this Claim, we would thus have denied it for the same reasons stated in that decision, which we incorporate by reference.

In sum, this claim must be, and hereby is, denied. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, January 16, 2018
and entered as the Final Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

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PROPOSED DECISION

Claimant Estate brings this claim against the Great Socialist People’s Libyan Arab Jamahiriya (“Libya”) based on economic losses that the original Claimant in this claim, Howard Stanton Thomas, allegedly sustained as a result of the bombing of Pan Am Flight 103 over Lockerbie, Scotland, on December 21, 1988. Claimant Estate alleges that the bombing ultimately forced Pan American World Airways, Inc. (“Pan Am”) to cease operations nearly three years later, resulting in Mr. Thomas losing his job as a pilot for the airline, which in turn caused him to lose several years’ worth of income and benefits that he otherwise would have earned. Claimant Estate asserts that, but for the terrorist bombing, Pan Am would have continued operations, and Mr. Thomas would not have lost his employment and suffered the losses which the Estate now claims. On May 1, 2015, the Commission received a letter from Claimant’s counsel indicating, *inter alia*,

that Mr. Thomas had died; however, the Estate has not provided evidence of a legal representative to represent it before the Commission. Therefore, this claim is denied.¹

BACKGROUND AND BASIS OF CLAIM

On December 21, 1988, Pan Am Flight 103, en route from London to New York, exploded in the skies over Lockerbie, Scotland. A Scottish court later found a Libyan intelligence agent guilty of murder for the bombing. Claimant Estate states that, at the time of the bombing, Mr. Thomas was a pilot for Pan American World Airways, Inc. (“Pan Am”). It alleges that “[t]his act of Libyan terrorism ultimately closed [Pan Am] on December 4, 1991[]”—nearly three years after the bombing. As a result, it claims, “the bombing ended [Mr. Thomas’s] professional career[] . . . result[ing] in the immediate loss of income” as well as “substantially all [of his] pension and medical benefits.”

Mr. Thomas and a number of other former Pan Am flight crew members sued Libya and others in United States federal court in 1994 for, *inter alia*, tortious interference with contractual relations and tortious interference with advantageous business relations.² Libya was dismissed from the case on jurisdictional grounds in 1995.

In 1993, Pan Am too had sued Libya, though in Scotland, for both the destruction of its aircraft as well as a variety of other direct and consequential damages allegedly suffered because of the Lockerbie bombing. Among the claims Pan Am made was one based on a theory of causation similar to that advanced by the Claimant Estate here—that the Lockerbie bombing caused Pan Am to go out of business. In 2005, Pan Am and Libya settled that case.

¹ Under Commission regulations, where, as here, an estate representative fails to qualify for substitution following the death of an individual claimant, the Commission may issue its decision in the name of the estate of the deceased. *See* 45 C.F.R. § 509.5(j)(1) (2015). Accordingly, this Proposed Decision is issued in the name of ESTATE OF HOWARD STANTON THOMAS, DECEASED.

² *See Abbott v. Socialist People’s Libyan Arab Jamahiriya*, No. 1:94cv2444 (D.D.C.).

A few years later, in August 2008, the United States and Libya concluded an agreement (the “Claims Settlement Agreement”) that settled numerous claims of U.S. nationals against Libya, including claims “aris[ing] from . . . property loss caused by . . . aircraft sabotage . . . or the provision of material support or resources for such an act”³ Two months later, 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.⁴

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission.⁵ The Secretary 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.

It is the third of those referral letters, the 2013 Referral, that is relevant here.⁶ In particular, one of the 2013 Referral’s categories of claims, Category F, is at issue in this case. That category consists of “commercial claims of U.S. nationals provided that (1) the claim was set forth by a claimant named in *Abbott et al. v. Socialist People’s Libyan Arab Jamahiriya* (D.D.C.) 1:94-cv-02444-SS; and (2) the Commission determines that the claim would be compensable under the applicable legal principles.”⁷

³ *Claims Settlement Agreement Between the United States of America and the Great Socialist People’s Libyan Arab Jamahiriya* Art. I (“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).

⁴ *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

⁵ *See* International Claims Settlement Act of 1949 (“ICSA”), 22 U.S.C. § 1623(a)(1)(C) (2012).

⁶ *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”).

⁷ *Id.* at ¶ 8.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of the third Libya Claims Program pursuant to the ICSCA and the 2013 Referral.⁸

On June 11, 2014, the Commission received from Mr. Thomas a completed Statement of Claim seeking compensation under Category F of the 2013 Referral, together with exhibits supporting the elements of his claim.

DISCUSSION

Claimants before the Commission must establish their standing as the proper claimants in their claims. *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 (2011). In the case of claims brought on behalf of deceased individuals, a claimant must provide the Commission with evidence that he or she is legally entitled to bring the claim. Claim Nos. LIB-II-113 & LIB-II-117, Decision No. LIB-II-177 (2012) (Proposed Decision).

Claimant has failed to establish it has standing. Mr. Thomas died on September 29, 2014. As evidence of this, Claimant Estate has provided a certified copy of Mr. Thomas's death certificate. The Commission staff mailed two letters to counsel of record, on February 6, 2015, and November 9, 2015, requesting that she provide for estate claims, such as the present claim, legal proof of the identity of the personal representative (e.g. letters testamentary or letters of administration issued by the appropriate court or judge as proof of the representative's authority to act on behalf of the estate). Thus far, no such evidence has been provided. Because this claim is not being brought by a legally

⁸ *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

authorized estate representative, the Commission is unable to determine jurisdiction or adjudicate this claim on the merits.

Finally, in the interests of adjudicative efficiency and economy, the Commission also notes that, even if it had jurisdiction and were to assess the claim, Claimant Estate would have failed in its burden of proving that the alleged harm is compensable under the applicable legal principles, as required under Category F of the 2013 Referral.⁹ The Commission has previously decided the claims of other members of the *Abbott* litigation group in Claim No. LIB-III-044, Decision No. LIB-III-044 (2016) (Proposed Decision), and Claim Nos. LIB-III-036, *et al.*, Decision No. LIB-III-045 (2016) (Proposed Decision). The relevant facts, evidence, and legal arguments submitted in those claims are identical to the record relied on by Claimant Estate here. Accordingly, even assuming Claimant Estate were to have established the other jurisdictional elements of its claim under the 2013 Referral,¹⁰ we would deny Claimant Estate's claim for the reasons explained more fully in the above-referenced claims, which we incorporate by reference: First, Claimant Estate has failed to establish that its claim was not extinguished by the 2005 settlement of the lawsuit Pan Am brought against Libya in Scotland, and, second, it has failed to prove that the bombing of Pan Am Flight 103 was the proximate cause of Mr. Thomas's economic harm. Therefore, this claim must be, and hereby is, denied.

⁹ The Commission has previously addressed the merits of a claim, notwithstanding the claimant's failure to establish the jurisdictional bases for its claim, in the interests of adjudicative efficiency and economy. *See, e.g., Claim of SUBROGATED INTERESTS TO PAN AMERICAN WORLD AIRWAYS, INC.*, Claim No. LIB-II-171, Decision No. LIB-II-161 (2012), 20 note 17 (Proposed Decision); *Claim of JERKO BOGOVICH*, Claim No. Y-1757, Decision No. Y-857 (1954).

¹⁰ The 2013 Referral requires Claimant Estate to show, in addition to the standing requirement discussed above, that this claim is a "commercial claim[]" of a "U.S. national" within the meaning of the 2013 Referral, and that the claim was set forth by a claimant named in the *Abbott* case.

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

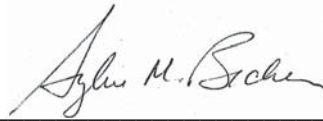
Dated at Washington, DC, August 16, 2016
and entered as the Proposed Decision
of the Commission.

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

October 3, 2016



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) (2015).