

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 JEANNE D. SHINN, DECEASED;
BEVERLY H. MIGNEREY,
PERSONAL REPRESENTATIVE

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-I-020

Decision No. LIB-I-028

Counsel for Claimant:

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Heideman Nudelman & Kalik, P.C.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon physical injuries said to have been sustained by the claimant's decedent, who died in 2001, at Fiumicino Airport in Rome, Italy on December 27, 1985.

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 December 11, 2008, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication a category of claims of United States nationals against Libya. *Letter from*

the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission (“December Referral Letter”). The category of claims referred consists of

claims of U.S. nationals for physical injury, provided that (1) the claim meets the standard for physical injury adopted by the Commission; (2) the claim is set forth as a claim for injury other than emotional distress alone by a named party in the Pending Litigation; and (3) the Pending Litigation against Libya and its agencies or instrumentalities; officials, employees, and agents of Libya or Libya’s agencies or instrumentalities; and any Libyan national (including natural and juridical persons) has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 3. Attachment 1 to the December Referral Letter lists the suits comprising the Pending Litigation.

Related to the December Referral Letter, a number of official actions were taken with respect to the settlement of claims between the United States and Libya. Specifically, 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 Secretary of State certified, pursuant to the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008), that the United States Government had received funds sufficient to ensure “fair compensation of claims of nationals of the United States for . . . physical injury in cases pending on the date of enactment of this Act against Libya” December Referral Letter, *supra*, ¶ 1. On the same day, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Oct. 31, 2008), espousing the claims of United States nationals coming within the terms of the Claims Settlement Agreement, barring United States nationals from asserting or maintaining such claims, terminating any

pending suit within the terms of the Claims Settlement Agreement, and directing the Secretary of State to establish procedures governing claims by United States nationals falling within the terms of the Claims Settlement Agreement.

On March 23, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this Libya Claims Program pursuant to the ICSA and the December Referral Letter. *Notice of Commencement of Claims Adjudication Program, and of Program Completion Date*, 74 Fed. Reg. 12,148 (2009).

BASIS OF THE PRESENT CLAIM

On June 18, 2009, the Commission received from claimant's counsel a completed Statement of Claim and accompanying exhibits supporting the claimant's claim, including evidence of: the United States nationality of the claimant's decedent and the sole beneficiary of the claimant estate; a copy of a Death Certificate reflecting the date and place of the decedent's death; a copy of the decedent's will; the claimant estate's inclusion as a named party in the Pending Litigation referred to in Attachment 1 of the December Referral Letter, setting forth a claim for injury other than emotional distress alone; the dismissal of the Pending Litigation against Libya; and a description of the claimant's decedent's physical injuries.

According to the Statement of Claim, the late Jeanne D. Shinn, who died in Colorado in 2001, was present at the Fiumicino Airport in Rome, Italy with her husband at the time of the terrorist attack, and suffered numerous bullet and shrapnel wounds to several parts of her body. She is also said to have suffered a punctured ear drum, a severed nerve in her mouth, and a deep gash in her throat. These physical injuries required two days of hospitalization in two different hospitals in Rome, and further

hospitalization after she was medically evacuated from Rome to Colorado. According to the statement of claim, despite surgery, the injuries left Mrs. Shinn with permanent speech impairment and a 75 percent reduction in the use of her dominant hand and arm. The claimant estate has provided evidence of its decedent's United States nationality as of the date of the incident and the U.S. nationality of the sole beneficiary, Beverly Mignerey, as of the decedent's date of death and thereafter up to the time of the Settlement Agreement. Additionally, the claimant estate has provided medical records, newspaper clippings, records from a criminal trial in Rome against one of the terrorists in the attack, and other documents in support of its claim.

DISCUSSION

As an initial matter, the Commission has reviewed the claimant's decedent's will and codicil thereto, which designates Ms. Beverly H. Mignerey as the sole residuary beneficiary of the decedent's estate. Documentation in the file reflects that Ms. Mignerey is a United States national by birth. Based on this review, the Commission finds that the ESTATE OF JEANNE D. SHINN, DECEASED; BEVERLY H. MIGNEREY, PERSONAL REPRESENTATIVE, is the proper claimant in this claim.

Jurisdiction

The Commission must consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the December Referral Letter is limited to claims of individuals who are: (1) United States nationals and (2) named parties in a Pending Litigation which has been dismissed. December Referral Letter, *supra*, ¶¶ 2-3.

Nationality

In the *Claim of* Personally Identifiable Information
Redacted under 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 a claim to be compensable, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, from the date the claim arose until the date of the Claims Settlement Agreement. Based on the evidence submitted with this claim, the Commission determines that this claim was held by a United States national at the time of the injury on which the claim is based, that it was continuously held thereafter by the decedent until her death in 2001, and that it has been continuously held from that point until the effective date of the Claims Settlement Agreement by a U.S. national.

Pending Litigation and its Dismissal

To fall within the category of claims referred to the Commission, the claimant must be a named party in the Pending Litigation listed in Attachment 1 to the December Referral Letter, must have set forth a claim for injury other than emotional distress alone, and must provide evidence that the Pending Litigation against Libya has been dismissed. December Referral Letter, *supra*, ¶ 3. The claimant estate has provided a copy of the Order of Dismissal in Cases No. 06-cv-727 and 08-cv-529, filed in the United States District Court for the District of Columbia, which shows that these cases were ordered dismissed on December 24, 2008. Based on this evidence, the Commission finds that the claimant was a named party in the Pending Litigation, that she set forth a claim for injury other than emotional distress alone, and that the Pending Litigation has been properly dismissed.

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

Merits

Standard for Physical Injury

As stated in the December Referral Letter, to qualify for compensation, a claimant asserting a claim for physical injury must meet a threshold standard for physical injury adopted by the Commission. In order to develop such a threshold standard for compensability, the Commission considered both its own jurisprudence and pertinent sources in international and domestic law. After careful and thorough consideration, the Commission held in the *Claim of* Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6), *supra*, that in order for a claim for physical injury to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of an incident related to the Pending Litigation; and
- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

Physical Injury

According to its Statement of Claim, the claimant's decedent suffered physical injuries on December 27, 1985, while in the terminal at the Fiumicino Airport in Rome, Italy. The Statement of Claim indicates that the late Mrs. Shinn suffered numerous bullet and shrapnel wounds to several parts of her body, as well as a punctured ear drum, a severed nerve in her mouth, and a deep gash in her throat. In support of its claim, the

claimant estate has provided documentation including medical records, newspaper clippings, and other materials to corroborate the statements regarding its decedent's injuries and treatment. In addition, it has provided a copy of the decedent's will and Certificate of Death.

Based on the evidence submitted, the Commission finds that the claimant's decedent's injury meets the standard for physical injury set forth above. Accordingly, claimant ESTATE OF JEANNE D. SHINN, DECEASED; BEVERLY H. MIGNEREY, PERSONAL REPRESENTATIVE is entitled to compensation as set forth below.

COMPENSATION

In the *Claim of* Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) , *supra*, the Commission held that \$3,000,000.00 is an appropriate amount of compensation for physical injuries that meet the Commission's standard in this claims program. The Commission also held that compensable claims in this claims program were not entitled to interest as part of the award. *Id.* Accordingly, the Commission determines that the claimant, ESTATE OF JEANNE D. SHINN, DECEASED; BEVERLY H. MIGNEREY, PERSONAL REPRESENTATIVE, is entitled herein to an award of \$3,000,000.00 and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

Accordingly, the Commission 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. §§ 1626-27 (2006).

AWARD

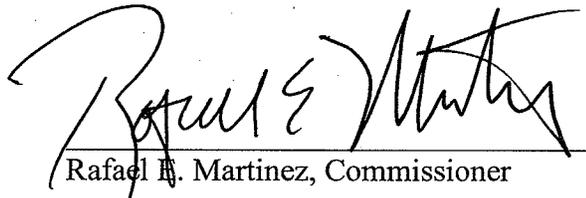
Claimant ESTATE OF JEANNE D. SHINN, DECEASED; BEVERLY H. MIGNEREY, PERSONAL REPRESENTATIVE, is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

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

NOV 18 2009



Mauricio J. Tamargo, Chairman



Rafael B. Martinez, Commissioner

**This decision was entered as the
Commission's Final Decision on
DEC 24 2009**

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) (2008).