

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 LORENZO ALEXANDER HARRIS
DECEASED; PRISCILLA HARRIS, ADMINISTRATOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-I-040

Decision No. LIB-I-049

Counsel for Claimant:

Elizabeth Smith, Esq.
Motley Rice LLC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") brought by the ESTATE OF LORENZO ALEXANDER HARRIS, DECEASED; PRISCILLA HARRIS, ADMINISTRATOR ("claimant"), is based on physical injuries said to have been suffered by the late Lorenzo Alexander Harris as a result of the bombing of the LaBelle Discotheque in Berlin, Germany, on April 5, 1986.

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, under a delegation of authority from the Secretary of State, the State Department 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 the Honorable 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), which, among other things, 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 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 July 22, 2009, the Commission received from counsel for the claimant a completed Statement of Claim and accompanying exhibits supporting its claim, including evidence of: the United States nationality of the claimant's decedent, Lorenzo Alexander Harris, as well as that of his daughter, Priscilla Harris; inclusion of the claimant as a named party in the complaint filed in *Harris v. Socialist People's Libyan Arab Jamahiriya*, 06-cv-732 (D.D.C.), part of the Pending Litigation referred to in Attachment 1 of the December Referral Letter; dismissal of the *Harris* case; and documentation relating to the physical injuries alleged to have been sustained and the medical care received by the claimant's decedent following the LaBelle Discotheque bombing incident.

According to the claimant Mr. Harris was present at the LaBelle Discotheque in Berlin Germany on April 5, 1986 when a bomb was detonated, causing him to be thrown backwards and lose consciousness and that he sustained two separate injuries as a result of this incident, hearing loss and lung disease. In support of the claim for hearing loss, the claimant has provided documentation relating to a hearing test conducted on the day of the bombing incident, along with the results of several previous hearing tests dating back to nearly 10 years before the incident¹, together with statements by his widow, Karin Gertrude Harris. With regard to the claim of lung disease, claimant alleges that as a result of breathing dust containing aspergillus spores Mr. Harris contracted legionella pneumonia, which is alleged to have ultimately led to his death. In support of this portion of the claim, the claimant has provided medical records that discuss the treatment of Mr. Harris' lung disease, his autopsy report (conducted on his exhumed body 6 months after his death), two medical opinions, and statements made by Mr. Harris' widow.

DISCUSSION

As an initial matter, the Commission has reviewed the court documents submitted by the claimant, which were issued following the death of Lorenzo Alexander Harris, who died intestate in 1990. In particular, the Commission takes note that an Order of the Georgia Probate Court of Fulton County dated August 31, 2009 appointed Mr. Harris' daughter, Priscilla Alexandra Harris, to be the administrator of her father's estate. Based on this document, the Commission determines that the ESTATE OF LORENZO ALEXANDER HARRIS, DECEASED; PRISCILLA HARRIS, ADMINISTRATOR, is the proper claimant in this claim.

¹ These tests were conducted during regular physicals when the late Mr. Harris was in the military.

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined in the December Referral Letter; namely the claims of individuals who: (1) are U.S. nationals, (2) have been named as parties in a Pending Litigation which has been dismissed, and (3) set forth a claim in the Pending Litigation for injury other than emotional distress alone. December Referral Letter, *supra*, ¶¶ 2-3.

Nationality

The Claims Settlement Agreement (CSA) states that it settles the claims of "United States nationals." However, the CSA is silent as to *when* a claimant must be a U.S. national in order to be eligible for compensation under the CSA. This question is more complicated in cases where, as here, the victim is deceased and the claim is now one brought by the estate of the decedent on behalf of his or her beneficiaries. In such cases, it is a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors, the War Claims Commission and the International Claims Commission, that for purposes of determining the nationality of a claim, the nationality of the injured party as well as the beneficiaries of his or her estate must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.²

To establish the U.S. nationality of its decedent, Mr. Harris, the claimant has provided copies of the birth certificate and "Report of the Death of an American Citizen

² See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

Abroad. Based on this evidence, the Commission determines that the claim was held by a U.S. national at the time of the injury on which this claim is based and continuously thereafter until Mr. Harris' death in 1990.

The documents submitted by the claimant from the Georgia Probate Court, indicate that Mr. Harris' estate devolved upon his death to his wife, Karin Gertrud Harris, and to his daughter, Priscilla Harris, in equal shares. The claimant has provided copies of the birth certificate and current U.S. passport of Priscilla Alexandra Harris, which the Commission determines establish that Priscilla Harris is a U.S. national by birth, and has held her U.S. nationality continuously to the present. The record affirmatively indicates that Karin Gertrud Harris is and has always been a national of Germany.

The claimant has sought to argue that Priscilla Harris should be deemed the sole heir of her father's estate based on the execution of a "Disclaimer" dated June 9, 2009 by her mother, Karin Gertrud Harris, "renounc[ing] any interest [she] might have as a [sic] heir-at-law of LORENZO ALEXANDER HARRIS or interest [she] might otherwise have in the proceeds arising from any claim against the State of Libya...as a result of [her] husband's death." In its previous programs, however, the Commission has held that the renunciation of an inherited interest constitutes an assignment of that interest to the remaining heirs effective as of the date of renunciation and not as of the date of death of the deceased owner.³

³ See, e.g., *Claim of BELLA GABAY against Yugoslavia*, Claim No. Y-1065, Decision No. Y-1491 (1954); *Claim of ARTHUR DOBOZY and VICTOR AND PAUL DOBOZY against Hungary*, Claim No. HUNG-21,300, Decision No. HUNG-1,257 (1958); *Claim of ENID CLARICE GUTTMAN against Yugoslavia*, Claim No. Y2-0839, Decision No. Y2-1720 (1969).

Accordingly, the Commission determines that, consistent with the ICSA and the December Referral Letter, its jurisdiction with respect to this claim extends only to the one-half portion thereof continuously held by the sole U.S. national, Priscilla Alexandra Harris.

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 and must provide evidence that the Pending Litigation against Libya has been dismissed. December Referral Letter, *supra*, ¶ 3. The claimant has provided a copy of the complaint in Case No. 06-cv-732, filed in the United States District Court for the District of Columbia, which names it as a party. Additionally, the claimant has provided a Stipulation of Dismissal as evidence of the dismissal of this Pending Litigation dated May 5, 2009. Based on this evidence, the Commission finds that the claimant was a named party in the Pending Litigation, and that the Pending Litigation has been properly dismissed.

Claim for Injury Other than Emotional Distress

As noted above, the claimant has provided a copy of the Complaint in the Pending Litigation. In the Complaint under Count I the claimant estate states a cause of action for, *inter alia*, physical injury. Based on this evidence, the Commission finds that the claimant set forth a claim for injury other than emotional distress alone in the Pending Litigation.

In summary, the Commission concludes that this 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 the standard for physical injury adopted by the Commission for purposes of this Referral. In order to develop the appropriate standard for compensability, the Commission considered both its own jurisprudence and pertinent sources in international and domestic law. The Commission concluded in the *Claim of* ^{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 referred to in 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.

Id. at 8-9.

Physical Injury

Based on its review of the evidence submitted in support of this claim, including medical reports, the Commission finds that claimant's decedent, Mr. Harris, was present at the LaBelle Discotheque on April 5, 1986 when terrorists detonated a bomb. The

Commission further finds that Mr. Harris suffered a significant shift in his ability to hear as a result of the terrorist incident for which he sought medical care.

The Commission notes that the medical report from the University Clinic Steglitz of the FU Berlin dated April 5, 1986, the day of the bombing incident, makes no mention of any lung or respiratory issues. In addition, Drs. Riecken, DiBman and Ziegler, the German physicians who treated Mr. Harris when he was hospitalized for his lung problems in 1988, noted in their medical report dated August 10, 1988, addressed to Dr. Margrit Adelkofer, that Mr. Harris had stated that “he has always been healthy up to ... May 1988, [but since then] he has had trouble breathing and severe headaches.” In contrast, Mrs. Harris notes in her statement dated June 29, 2010 that “[s]oon after the bombing, Lorenzo became sick,” and that “[h]e could not breathe right and had shortness of breath...” She has, however, provided no evidence in support of her assertion. Further, Dr. Karl Zeigler, in his undated medical report, notes that he recalls discussions with Dr. Adelkofer wherein she indicated that she “repeatedly examined Mr. Harris, due to...dust/bacterial exposure of his lungs.” In the absence of contemporaneous medical evidence in support of the statements of Mrs. Harris and Dr. Zeigler, the Commission is not persuaded that a causal link between the LaBelle incident and Mr. Harris’ lung disease/damage has been established.

Section 509.5(b) of the Commission's regulations provides:

The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

45 C.F.R. 509.5(b) (2010).

Based on the evidence and information submitted in support of claimant's asserted lung disease or damage, the Commission finds, based on the entirety of the evidence presented, that the claimant estate has not met its burden of proof in establishing that the lung disease or damage alleged to have been suffered by the claimant's decedent was caused by the LaBelle incident. In light of the foregoing, the Commission concludes that this portion of the claim does not qualify for compensation under the December Referral Letter.

Accordingly, the Commission concludes that the claimant, ESTATE OF LORENZO ALEXANDER HARRIS, DECEASED; PRISCILLA HARRIS, ADMINISTRATOR, is entitled to compensation in this claim for the damage to the late Mr. Harris' hearing only.

COMPENSATION

In the *Claim of* ^{5 U.S.C. §552(b)(6)}, *supra*, the Commission held that \$3 million 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 physical injury claims in this claims program were not entitled to interest as part of the award. *Id.* However, the Commission has determined in the present claim that its jurisdiction extends only to the one-half portion of the claim continuously held by U.S. nationals. Accordingly, the Commission determines that the claimant, ESTATE OF LORENZO ALEXANDER HARRIS, DECEASED; PRISCILLA HARRIS, ADMINISTRATOR, is entitled herein to an award of \$1,500,000.00 and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

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

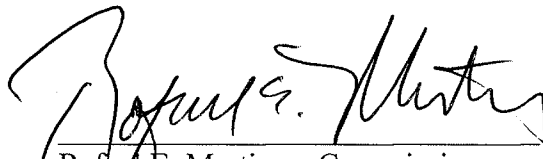
AWARD

Claimant, ESTATE OF LORENZO ALEXANDER HARRIS, DECEASED; PRISCILLA HARRIS, ADMINISTRATOR, is entitled to an award in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00).

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

APR 07 2011


Timothy J. Feighery, Chairman


Rafael E. Martinez, Commissioner

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

MAY 13 2011

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).