

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)

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-046

Decision No. LIB-II-017

Counsel for Claimant:

Richard Heideman, Esq.
Heideman Nudelman & Kalik, P.C.

Oral Hearing held on July 28, 2011

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought under Category B of the Department of State's January Referral Letter¹ by 5 U.S.C. §552(b)(6) for intentional infliction of emotional distress suffered by him as a result of the death of his sister, 5 U.S.C. §552(b)(6) who was killed at Fiumicino Airport in Rome, Italy on December 27, 1985.

By its Proposed Decision entered January 12, 2010, the Commission denied this claim (hereinafter, the "mental pain and anguish" claim) for lack of jurisdiction. In reaching this conclusion, the Commission considered the language of Category B of the January Referral Letter, and specifically the language that limits eligibility under that category to "claims of U.S. nationals for mental pain and anguish who are living close

¹ January 15, 2009, letter from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission ("January Referral Letter").

relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State provided that . . . the claimant has not received any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral. . . .” *Id.* at ¶ 4 (emphasis added). The Commission noted that ⁵ U.S.C. §552(b)₍₆₎ was qualified for, and had in fact been awarded, three million dollars for his claim (made pursuant to the Department of State’s December Referral Letter²) for his own physical injuries, suffered during the same incident at Fiumicino Airport.³ Given this award, and considering the explicit language of Category B of the January Referral Letter, the Commission concluded that ⁵ U.S.C. §552(b)(6) was not an eligible Category B claimant and denied the mental pain and anguish claim.

On January 28, 2010, the claimant objected to the Commission’s Proposed Decision, and on March 19, 2010, the claimant filed a brief in support of his objection. Essentially, claimant’s position is that his mental pain and anguish claim under Category B of the January Referral Letter is a distinct and separate claim that should be recognized by the Commission as the subject of a separate award of compensation under Category B, regardless of whether claimant received compensation under a different claim category for a different claim.

Claimant contends that the founding agreement and acts underpinning the Libya Claims Program require recognition of, and compensation for, each of his claims that falls within a category of the Referrals. Specifically, the claimant points to the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008), which

² December 11, 2008, *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”) (and, together with the January Referral Letter, the “Referrals”).

³ On August 20, 2009, the Commission issued a Proposed Decision, which became a Final Decision on September 30, 2009, awarding the claimant three million dollars for his claim based upon physical injuries he sustained at Fiumicino Airport in Rome, Italy on December 27, 1985. *Claim of* ⁵ U.S.C. §552(b)(6) Claim No. LIB-I-021, Decision No. LIB-I-007 (2009).

was enacted to settle “all” valid claims held by U.S. nationals; 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, which covers “all claims of U.S. nationals pending against Libya at the time of the enactment of the LCRA”; and Executive Order 13477, 73 Fed. Reg. 65,965 (Oct. 31, 2008), in which “the President espoused ‘all’ claims within . . . Article 1 of the Claims Settlement Agreement.”⁴ Claimant argues that the Commission committed “errors of law” in failing to interpret these documents so as to permit him to recover for his mental pain and anguish claim.

Claimant also argues that the January Referral Letter itself is improper and contrary to the LCRA, the Claims Settlement Agreement and Executive Order 13477, because the Secretary of State exceeded her authority by limiting the category of compensable claims created under the Claims Settlement Agreement.

On May 24, 2011, the Commission received claimant’s request for an oral hearing, which was held on July 28, 2011. Claimant’s counsel further argued at the oral hearing that the Commission was the only remaining forum for claimant to bring this mental pain and anguish claim, and, as such, the language of the January Referral Letter should be interpreted liberally in order to include as many espoused claims as possible. Counsel also emphasized the dangers of a “constitutional infirmity” as well as takings concerns in failing to recognize and compensate claimant’s mental pain and anguish claims, which was also a distinctly cognizable count in claimant’s underlying federal court litigation against Libya.

⁴ In addition to these documents, claimant also argues that there is no evidence in the legislative history that Congress, in enacting the LCRA, intended that compensation be withheld from those “who held two *distinct* claims compensable either at U.S. municipal or international law” (emphasis in original).

DISCUSSION

Claimant's contention that the agreement and acts that underpin this program should be interpreted to permit an award of compensation to claimant for both his physical injury claim and his mental pain and anguish claim is unavailing. As stated in the Proposed Decision in this claim, the Commission's jurisdiction in the Libya Claims Program is limited to the claims referred to it by the Secretary of State. Specifically, subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, provides that:

The Commission shall have jurisdiction to receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or 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).

The Commission's delineated jurisdiction under 22 U.S.C. § 1623(a)(1)(C), as expressed in Category B of the January Referral Letter, is unambiguous in excluding claims where the claimant has received "*any*" compensation under "*any*" other part of the Claims Settlement Agreement. There is, consequently, no need for the Commission to revert to the applicable claims agreement (in this case the Claims Settlement Agreement) or the other documents underpinning the January Referral Letter that have been cited by claimant, in order to inform the ordinary meaning of Category B of that Referral.

In concluding that the State Department meant what it plainly stated in Category B, it is useful to consider that, at the time of the negotiations of the Claims Settlement Agreement with Libya, the State Department undoubtedly was aware that the majority of plaintiffs in the underlying federal court litigations – plaintiffs who would become eligible claimants under the program referred to the Commission – had asserted multiple distinct counts against Libya. With this awareness, it simply beggars belief that the State

Department would have included language of such breadth in Category B (“ . . . any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral”) had the Department not meant to exclude claimants from further compensation if they already received compensation, or were eligible to receive compensation, under the Referrals. In short, the language of Category B means what it says, with the result that the claimant here, having already received an award of compensation of \$3 million for his physical injury claim, is ineligible for an award under Category B of the January Referral Letter.

This conclusion is also consistent with the fact that the agreement with Libya was a settlement of claims for just compensation — albeit a settlement at unprecedented levels of compensation — and never purported to be a payment in full. Claimant’s demand that he be compensated for each count in his underlying federal court litigation against Libya is inconsistent with the very nature of a settlement as a just compromise. Moreover, this conclusion is consistent with the nature and purpose of the settlement fund itself. The Commission notes that the Libya Claims Program authorized by the Claims Settlement Agreement is a “humanitarian settlement fund.” In that regard, the State Department’s delineation of the Commission’s Category B jurisdiction, by its wording, appears intended to articulate Category B as a last recourse to compensate certain living close relatives of decedents who did not, and will not otherwise, receive compensation under the Libya Claims Program.⁵

⁵ See, e.g., Letter dated July 28, 2008 from John D. Negroponte to Senator Mitch McConnell at page 2 (“We intend to use this money for three purposes . . . (2) to provide payments for emotional distress to close relatives who are not legally entitled to share in wrongful death payments, such as non-dependant parents. . .”). It is important to note that while sub-part (2) of Category B of the January Referral Letter refers to eligibility for an associated wrongful death claim as a grounds for exclusion from a mental pain and anguish claim, sub-part (3), which is at issue here, goes even further to state that any receipt of compensation, or any qualification for compensation under any other category, requires exclusion from a mental pain and anguish claim.

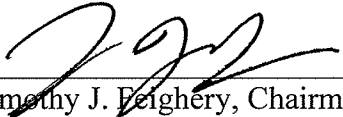
Indeed, with his advancement of the argument that the Secretary of State exceeded her authority by limiting the category of compensable claims purportedly created by the LCRA, in alleged violation of both the LCRA and Executive Order 13477, claimant implicitly acknowledges that the State Department's January Referral Letter does not endow the Commission with jurisdiction over Category B claims where a claimant has already received compensation under any other part of the Claims Settlement Agreement. Despite this acknowledgment, the claimant, nonetheless, advocates that the Commission should interpret the language of the January Referral Letter so that a claimant who has already been compensated for physical injuries can also be compensated for a separate claim involving mental pain and anguish. Although invited to by the Commission during the hearing, however, the claimant failed to proffer any reading of the language of Category B that would permit such a result.⁶

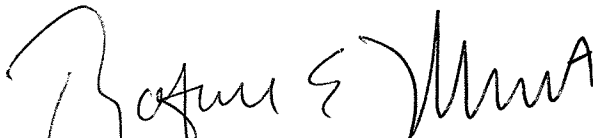
⁶ As regards the claimant's constitutional arguments, the Commission has previously noted: "consideration of constitutional issues is outside the scope of the Department of State's referral to the Commission." *Claim of* ⁵ U.S.C. §552(b) Claim No. LIB-I-008, Decision No. LIB-I-011 at 7 (2010) (Final Decision).
(6)

CONCLUSION

In conclusion, while the Commission sympathizes with the claimant, for the reasons expressed above, the claim must fail for lack of jurisdiction. The denial set forth in the Proposed Decision in this claim is therefore hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, August 31, 2011
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman

Rafael E. Martinez, Commissioner

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

In the Matter of the Claim of

Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6)

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-046

Decision No. LIB-II-017

Counsel for Claimant:

Richard Heideman, Esq.
Heideman Nudelman & Kalik, P.C.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) for intentional infliction of emotional distress suffered by the claimant as the result of the death of his sister, Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) who was killed 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 January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication six categories of claims of United States nationals against Libya. *Letter from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to Mauricio J.*

LIB-II-046

Tamargo, Chairman, Foreign Claims Settlement Commission (“January Referral Letter”).

Category B of the claims referred consists 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 by the Department of State provided that (1) the claim was set forth as a claim for emotional distress, solatium, or similar emotional injury by the claimant named 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 claimant has not received any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral; and (4) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

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

The January Referral Letter, as well as a December 11, 2008 referral letter from the State Department’s Legal Adviser to the Commission (“December Referral Letter”), followed a number of official actions that 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. 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 “has received funds pursuant to the claims agreement that are sufficient to ensure . . . payment of the settlements referred to in section 654(b) of division J of the Consolidated Appropriations Act, 2008 (Public Law 110-161; 121 Stat. 2342); and . . . fair compensation of claims of nationals of the United States for wrongful death or physical injury in cases pending on the date of enactment of this Act against Libya” January Referral Letter, *supra*, ¶ 1. On the same day, the President issued Executive Order No. 13477, 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 July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

I. BASIS OF THE PRESENT CLAIM

On November 16, 2009, the Commission received a completed Statement of Claim and accompanying exhibits filed by counsel for Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) including: evidence of claimant's United States nationality; evidence of the dismissal of certain claims in *Estate of John Buonocore III, et al. and Victor Simpson, et al v. Socialist People's Libyan Arab Jamahiriya*, 06-cv-727 and 08-cv-529 (D.D.C.); and evidence of claimant's relationship to Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6)

II. DISCUSSION

The Commission must consider whether this claim falls within the category of claims referred to it by the Department of State. As discussed above, the Commission's jurisdiction under Category B of the January Referral Letter is limited to claims of individuals: (1) who are United States nationals; (2) who are living; (3) who are close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State; (4) who, as named parties, made claims for emotional distress, solatium, or similar emotional injury in a Pending Litigation case which has been

dismissed; and (5) who are not eligible for compensation from the wrongful death claim, have not received any compensation from the wrongful death claim, have not received any compensation under any other part of the Claims Settlement Agreement, and do not qualify for any other category of compensation pursuant to the January referral. January Referral Letter, *supra*, ¶ 4.

The Commission notes that the January Referral Letter specifically states that Category B shall consist of claims of U.S. nationals who are living close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State "provided that . . . the claimant has not received any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral." The Commission notes that the Statement of Claim form asks:

Has the claimant received or is the claimant, aside from this category, eligible for any compensation directly from the department of State or from the FCSC pursuant to the Department of State's referrals dated December 11, 2008 and January 15, 2009?

Statement of Claim question 8.7. The Claimant responded "Yes" to this question. Indeed, on August 20, 2009, the Commission issued a Proposed Decision which became a Final Decision on September 30, 2009, which awarded the claimant three million dollars (\$3,000,000.00) for his claim based upon physical injuries he sustained at Fiumicino Airport in Rome, Italy on December 27, 1985. *Claim of* Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6)

Claim No. LIB-I-021, Decision No. LIB-I-007 (2009). Having given careful consideration to this claim as well as the language of the January Referral Letter, the Commission determines that the category of claims being referred, namely Category B, was not meant to include individuals who have received any compensation under any other part of the Claims Settlement Agreement. The Commission, as a consequence,

finds that because claimant did receive three million dollars under the Claims Settlement Agreement, he does not meet the jurisdictional requirements of Category B of the January Referral Letter.

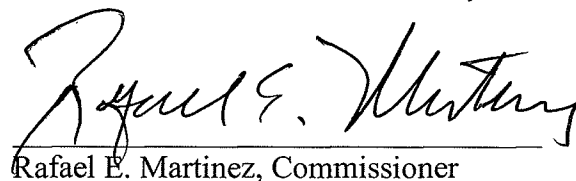
Accordingly, while the Commission recognizes the loss described by the claimant, the Commission is constrained to conclude that his claim under Category B of the January Referral Letter is not compensable. Therefore, this claim must be, and hereby is, denied. The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

JAN 12 2010



Mauricio J. Tamargo, Chairman



Rafael E. Martinez, Commissioner

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).