

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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	}	
ESTATE OF PABLO TIRADO-AYALA	}	Claim No. LIB-II-104
	}	
	}	Decision No. LIB-II-102
	}	
Against the Great Socialist People's	}	
Libyan Arab Jamahiriya	}	
Counsel for Claimant:	}	Naomi Weinberg, Esq. Osen LLC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the ESTATE OF PABLO TIRADO-AYALA, based upon injuries said to have been sustained by Mr. Tirado-Ayala as a result of the terrorist attack at Lod Airport in Israel on May 30, 1972.

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 U.S. nationals against Libya. *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*  
(“January Referral Letter”).

The present claim is made under Category E. According to the January Referral Letter, Category E consists of

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

*Id.* at ¶ 7. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December Referral Letter”) from the State Department, 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 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and 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 President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008), which, *inter alia*, 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 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 ICOSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

#### BASIS OF THE PRESENT CLAIM

On June 21, 2010, the Commission received a Statement of Claim asserting a claim under Category E of the January Referral Letter, along with exhibits in support of the claim. The Statement of Claim and an accompanying cover letter from the claimant's counsel state that Mr. Tirado-Ayala was present at the May 30, 1972 Lod Airport terrorist attack at which he witnessed the murder of his friends and, as a result, he suffered shock, depression and post-traumatic stress disorder that adversely affected him throughout his life. The submission includes documents described by the claimant as the birth certificate and death certificate for Mr. Tirado-Ayala, and the birth certificates of Antonia Ramirez-Fiero, Mr. Tirado-Ayala's wife, and of Angel Ramirez, whom the claimant states Mr. Tirado-Ayala raised as his son since Mr. Ramirez was six years old. The claimant also submitted with its Statement of Claim documents described as Mr. Tirado-Ayala's last will and testament and a Certification from the "Office of the Director of Notarial Inspection."

#### DISCUSSION

##### *Standing*

As a threshold matter, the claimant must establish that it is the proper claimant in this claim. In the case of claims brought on behalf of deceased victims, a claimant must provide the Commission with evidence that he or she is legally entitled to bring the claim. *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). To this end, the Commission staff requested, by letters dated June 29, 2010, May 9, 2011, and September 12, 2011, that the claimant provide the Commission with evidence establishing the identity of the proper representative of the Estate of Mr. Tirado-Ayala, and whether that said representative has legal authority to act on the Estate's behalf before the Commission. Claimant has failed to respond to these requests.<sup>1</sup> On this basis alone, the claim must fail.

*Claim for Death or Injury Resulting From a Covered Incident*

The Commission held in *Claim of* <sup>5 U.S.C. §552(b)(6)</sup>, Claim No. LIB-II-039, Dec. No. LIB-II-015 (2010), that in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant: (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; and (2) must have received medical treatment for the physical injury within a reasonable time; and (3) must verify the injury by medical records. *Claim of* <sup>5 U.S.C. §552(b)(6)</sup> <sup>5 U.S.C. §552(b)(6)</sup> *supra*, at 6-7. The claimant asserts that Mr. Tirado-Ayala suffered shock, depression and post-traumatic stress disorder as a result of the May 30, 1972 Lod Airport terrorist attack. However, despite requests dated June 29, 2010, May 9, 2011, and September 12, 2011 from the Commission staff, the claimant has failed to provide the Commission with evidence substantiating that Mr. Tirado-Ayala was present at Lod Airport during the terrorist attack, and that he suffered a physical injury as a result of the terrorist attack.

Furthermore, as noted above, under subsection 4(a) of the ICSA, the Commission's jurisdiction is limited to the categories of claims defined in the January Referral Letter.

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<sup>1</sup> 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).

Under Category E of the January Referral Letter, the Commission may only provide compensation for claims for physical injury and wrongful death. This specific reference to compensation for “physical injury” claims, and not “personal injury” claims more broadly, makes clear that the Secretary of State drew a distinction between physical and mental injuries, and opted to provide compensation only for the former under this referral. Thus, the January Referral Letter contemplates a distinction between the two types of injuries and precludes the Commission from awarding compensation for anything other than physical injuries. For the Commission to do otherwise would render the term “physical injury” (as opposed to “personal injury”) effectively meaningless.<sup>2</sup> Moreover, insofar as the Commission is directed to apply “applicable principles of international law” in deciding the claims before it, *see* 22 U.S.C. § 1623(a)(2) (2006), the Commission notes that the distinction between physical and mental injuries is well-established in both international conventions<sup>3</sup> and decisions of international tribunals.<sup>4</sup> Accordingly, the Commission further finds that this claim also fails to satisfy its physical injury standard.

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<sup>2</sup> That the term “physical injury” was intended to have a specific meaning is clear from the fact that the Referral Letter suggests that passage of the LCRA was predicated on assurances made to Congress that *physical injury* claimants would receive compensation comparable to the amount provided for *physical injuries* in the private settlement made by the Libyan government with victims of the 1986 Labelle Discotheque terrorist attack in Berlin, Germany. See December Referral Letter at pp. 1-2.

<sup>3</sup> See, e.g., Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, *opened for signature* Dec. 10, 1984, S. TREATY DOC. NO. 100-20, at 3-5, 19, 1465 U.N.T.S. 85; Rome Statute of the International Criminal Court, arts. 6, 7, *opened for signature* July 17, 1998, 2187 U.N.T.S. 3; Geneva Convention Relative to the Treatment of Prisoners of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention on the Prevention and Punishment of the Crime of Genocide, art. 2, *entry into force* Jan. 12, 1951, Sen. Exec. Doc. 81-O, 78 U.N.T.S. 277.

<sup>4</sup> See, e.g., Prosecutor v. Muhimana, Case No. ICTR-95-1B-T, Judgment and Sentence, ¶¶ 492-494 & n.454, ¶¶ 501-501 (citing, *inter alia*, Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Judgment, ¶ 291); Prosecutor v. Krajišnik, Case No. IT-00-39-T, Judgment, ¶ 746 (citing Prosecutor v. Delalic (“The Čelebići case”), Case No. IT-96-21-A, Judgment, ¶¶ 424, 426); Prosecutor v. Bagosora, ICTR-98-41-T, Decision on Motions for Judgment of Acquittal, ¶ 34 & n.77; South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), 1966 I.C.J. 6, 253 (July 18).

In summary, the Commission finds that the claimant has failed to meet its burden to establish that it is the proper claimant in this claim, or that the injury sustained by Mr. Tirado-Ayala satisfies the Commission's standard for physical injury.

In light of the foregoing, the Commission concludes that this claim does not qualify for compensation under Category E of the January Referral Letter. Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, October 28, 2011  
and entered as the Proposed Decision  
of the Commission.

  
Timothy J. Feighery, Chairman

  
Rafael E. Martinez, Commissioner

**This decision was entered as the  
Commission's Final Decision on**  
NOV 30 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).