

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

In the Matter of the Claim of

MICHELE VAN BENEDEN, AS THE
ADMINISTRATOR OF THE ESTATE OF
PETER L. KNOWLAND

Against the Great Socialist People's
Libya Arab Jamahiriya

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} Claim No. LIB-II-166
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} Decision No. LIB-II-172
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Counsel for Claimant:

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

Oral hearing held on January 25, 2013.

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by MICHELE VAN BENEDEN, AS THE ADMINISTRATOR OF THE ESTATE OF PETER L. KNOWLAND ("claimant"), under Category D of the January Referral Letter.¹ The claim is based on the alleged severity of the physical injuries said to have been sustained by Peter Lesley Knowland as a result of the terrorist attack at Schwechat Airport in Vienna, Austria on December 27, 1985.

The Commission previously issued an award in Mr. Knowland's favor for the injuries he suffered in this attack. On September 23, 2009, the Commission issued a Proposed Decision awarding Mr. Knowland \$3 million in compensation pursuant to the

¹ 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").

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”). On October 23, 2009, the Commission entered the Proposed Decision as a Final Decision.² Mr. Knowland died on January 20, 2010, of causes unrelated to the 1985 attack.

The present claim, for additional compensation based on the same injuries, was denied for lack of standing by a Proposed Decision (“PD”) dated September 13, 2012. In reaching this conclusion, the Commission cited, among other things, unanswered questions about the Belgian court order that purported to authorize Ms. Van Beneden to act on behalf of the estate and fundamental inconsistencies in the evidence. As discussed in detail below, little has changed since the Proposed Decision: many of the unanswered questions remain unanswered, and the fundamental inconsistencies have only increased.

DISCUSSION

The Category D Claim

Mr. Knowland received a final award under the December Referral Letter dated October 23, 2009 and was thus eligible as of that date to make a claim for additional compensation under the January Referral Letter: he had received an award under the December Referral Letter, and he had dismissed his Pending Litigation.³ About three

² The Commission did not receive an objection to the Proposed Decision from Mr. Knowland and therefore the Commission entered the Proposed Decision as a Final Decision. *See* 45 C.F.R. § 509.5(g) (2012) (The Commission is authorized to enter a Proposed Decision as a Final Decision if it does not receive an objection to the Proposed Decision within 30 days of submitting it to the claimant).

³ Category D of the January Referral Letter consists of “claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by [the Department of State’s] December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to [the Department of State’s] December 11, 2008 referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim’s death; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.”

months later, however, on January 20, 2010, Mr. Knowland died without having filed a claim for additional compensation under Category D.

The deadline for submitting a claim under Category D was July 7, 2010. On July 6, 2010, counsel (identified in the above caption) submitted a "Claim on behalf of Mr. Knowland unsigned by Mr. Knowland as we just learned of Mr. Knowland's passing." The claim form was signed only by counsel. Counsel further stated to the Commission that it was then "in the process of trying to identify next of kin and determine whether an estate has been opened." Commission staff permitted the filing and by letter dated July 21, 2010, "tentatively assigned" a claim number to the claim and advised counsel that "[i]n order to proceed with the adjudication of the claim, we request that you advise the Commission as soon as possible when the estate's legal representative has been identified and provide a duly signed signature page of the claim form by that individual to the Commission. Please also provide evidence that the identified individual has the appropriate legal authority to act on behalf of the estate."

About a year later, on July 15, 2011, counsel submitted a new signature page of the claim form, signed by Ms. Michele Van Beneden, along with a letter advising the Commission "that Ms. Michele Van Beneden has been appointed by the Tribunal de Premiere Instance as the Administrator of Mr. Knowland's estate. Mr. Knowland died in Brussels Belgium and his estate is being handled in Belgium." The evidence of that alleged authority was a Belgian court order appointing Ms. Van Beneden as "an administrator ad hoc" of Mr. Knowland's estate.⁴ The record contains no evidence about what the phrase "administrator ad hoc" means and certainly none indicating that the phrase means she is in fact "the Administrator of Mr. Knowland's estate," as counsel's

⁴ Or, in the original French language of the court order, "*un administrateur ad hoc.*"

letter puts it. At the oral hearing, counsel was unable to explain what the phrase “administrator ad hoc” means.

On September 13, 2012, the Commission entered a Proposed Decision denying this claim on the grounds that claimant failed to establish that she was the proper claimant and that she thus did not have standing to present the claim of Mr. Knowland’s estate to the Commission. Specifically, the Commission concluded that “(1) the Belgian court's order does not show that Ms. Van Beneden represents the Estate of Mr. Knowland; (2) the application for the order makes representations that raise unanswered questions about the case; and (3) it is unclear from the evidence in the record whether the Belgian court has jurisdiction to appoint an administrator for Mr. Knowland's estate.” PD at 16.

As detailed more fully below, the Commission has learned in the course of the objection proceedings not only that Ms. Van Beneden is not in fact the “Administrator of the Estate of Peter Knowland,” but also that the estate, if it ever existed, is, according to counsel, “in disarray.” The very questions and inconsistencies identified in the Commission’s Proposed Decision appear clearly to have been well-placed, with the result that, as discussed below, there are, essentially, only attorneys before the Commission, and no client, claim or claimant in relation to which an award may be made.

The Proceedings on Objection to the Proposed Decision

On November 27, 2012, counsel submitted “on behalf of our client, the Estate of Peter Lesley Knowland (‘Claimant’)” a Notice of Intent to Object to the Proposed Decision. Counsel thus described the claimant as “the Estate of Peter Lesley Knowland (‘Claimant’),” not, as it had earlier, as “Michele Van Beneden, as the Administrator of

the Estate of Peter Lesley Knowland.” Yet, during the hearing on objection, the Commission asked counsel whether it had any evidence of having been retained by the Estate of Mr. Knowland, and counsel replied that it had no such evidence. Counsel, moreover, was unable to provide any evidence of there even being an estate. It is thus clear that (1) there is no claimant before this Commission, and (2) counsel objected to the Proposed Decision without a client. On this basis alone, the claim must be dismissed for lack of standing. However, for the sake of completeness, the Commission will proceed to address the issues raised by counsel on objection.⁵

The Commission’s Discretion to Make an Award to an Estate

On January 4, 2013, counsel filed its objection brief and additional evidence. Again, counsel purported to make this submission “[o]n behalf of our client, the Estate of Peter Lesley Knowland (‘Claimant’).” Counsel’s primary argument on appeal was that the “resolution of who are the heirs of Mr. Knowland’s estate and who has standing to assert a claim on the estate’s behalf might take years to finalize sufficiently such that the Commission will feel comfortable certifying an award in the name of an heir. It would be strikingly unjust to use this issue to deny what-is-otherwise a meritorious claim.” To avoid this outcome, counsel urged the Commission to exercise its discretion under its regulations to make an award in the name of the estate of the deceased.

⁵ In light of this conclusion, however, the Commission need not, and does not, address certain discrepancies noted in the Proposed Decision, including the discrepancies in social security numbers provided by the claimant to the Commission, the issue of claimant’s Belgian nationality and whether that has any bearing on his U.S. nationality, and the issues concerning the address claimant provided to the Commission in Florida. Aside from the fact that these issues are unnecessary for the Commission’s Final Decision in this claim, counsel’s efforts to clarify these issues in its post-Proposed Decision filings and during the oral hearing consisted mainly of conjecture.

The regulation counsel relies on is 45 C.F.R. § 509.5(j)(1) (2012), and it reads as follows:

In case an individual claimant dies prior to the issuance of the Final Decision, that person's legal representative will be substituted as party claimant. However, upon failure of a representative to qualify for substitution, the Commission may issue its decision in the name of the estate of the deceased and, in the case of an award, certify that award in the same manner to the Secretary of the Treasury for payment, if the payment of the award is provided for by statute.⁶

There are a number of problems with counsel's invocation of this particular regulation. First, it provides for *substitution* of one party for another and thus cannot confer standing where none exists prior to substitution. The question of substitution is distinct from that of standing.⁷

Second, both the text of paragraph (j)(1) of section 509.5 and the broader context of all of section 509.5 make clear that the provision applies only when a claimant had properly filed a claim, but died before the Final Decision.⁸ By its plain terms, the provision applies in the event of the death of an individual "claimant." As noted above, Mr. Knowland died prior to filing a Category D claim and thus never became a "claimant" with respect to Category D, even though he could have filed a Category D claim before his death.

This last fact is relevant to more than just the proper interpretation of the regulation; it goes to the very heart of the Commission's decision to exercise its

⁶ 45 C.F.R. § 509.5(j)(1) (2012).

⁷ See, e.g., *Richard v. West*, 161 F.3d 719, 722 (Fed.Cir. 1998) (citing *Robertson v. Wegmann*, 436 U.S. 584, 587 n. 3 (1978) (procedural substitution rules "simply describe [] the *manner* in which parties are to be substituted . . . once it is determined that the applicable substantive law allows the action to survive a party's death.") (emphasis in original)).

⁸ The subsections (a) through (l) of 45 C.F.R. § 509.5 describe the "Procedure for determination of claims." The various subsections describe the procedure in chronological order, starting at the Proposed Decision phase through the Final Decision stage, and then finally, in the case of newly discovered evidence, to the post-Final Decision stage. Earlier phases of the claims adjudication process, from time deadlines to the form, content and filing of claims and exhibits are addressed in earlier sections, §§ 509.1 through 509.4.

discretion under that regulation. Counsel was unable to identify any evidence indicating an intention on the part of Mr. Knowland to file a Category D claim. Counsel argued on objection that the Category D claim is a “meritorious claim,” and that for this reason, the Commission should not concern itself with “collateral issues” such as who, if anyone, the proper claimant is. But this is not a collateral issue. Although a Category D claim filed by Mr. Knowland may well have been meritorious, there are a number of occasions in this program when claimants with potentially meritorious Category D claims decided not to pursue such a claim after having received \$3 million under the December Referral Letter. Counsel’s desire to pursue a claim cannot substitute for a claimant’s intentions. Thus, even though 45 C.F.R. § 509.5(j)(1) (2012) might be read to permit the Commission to issue a decision “in the name of the estate of the deceased” in this circumstance, the Commission sees no reason to do so here.

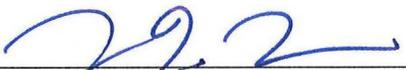
Finally, during the hearing, counsel was unable to identify a legal estate of the deceased victim recognized in any legal jurisdiction. As noted in the Proposed Decision, the evidence submitted (chiefly, the purported appointment of Ms. Van Beneden as an “ad hoc Administrator” by a Belgian court) raised significant questions as to why the estate was established in Belgium under Belgian law, and indeed whether it could be so established. Counsel’s own Belgian-law expert opined that Monegasque law would apply. The Commission also questioned why Florida law would not apply, since the payment of the award under the December Referral Letter was made to Mr. Knowland at a Florida address. At the hearing, counsel was unable to shed any light on these questions and in fact acknowledged that “the estate was in disarray” and “in shambles.” In light of these circumstances, and without the assurances that would be provided by a

valid estate properly under a court's jurisdiction, the Commission will not exercise its discretion under § 509.5(j)(1) to "issue a decision in the name of the estate of the deceased."

CONCLUSION

Accordingly, for the reasons discussed above, and based on the evidence and information submitted in this claim, the claim fails for lack of standing. Accordingly, the denial set forth in the Proposed Decision in this claim must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, February 15, 2013
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, Commissioner

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In the Matter of the Claim of	}	
ESTATE OF PETER LESLEY KNOWLAND,	}	
DECEASED	}	Claim No. LIB-II-166
	}	
	}	Decision No. LIB-II-172
	}	
Against the Great Socialist People's	}	
Libya Arab Jamahiriya	}	

Counsel for Claimant: Richard D. Heideman, Esq.
Heideman Nudelman & Kalik, P.C.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by Ms. Michele Van Beneden purportedly as *ad hoc* administrator and sole heir of the estate of Peter Lesley Knowland and is based on the alleged severity of the physical injuries said to have been sustained by Mr. Knowland as a result of the terrorist attack at Schwechat Airport in Vienna, Austria on December 27, 1985. Mr. Knowland died on January 20, 2010 of causes unrelated to the attack.

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").

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

claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by [the Department of State's] December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to [the Department of State's] December 11, 2008 referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim's death; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

January Referral, ¶6. Attachment 1 to the January Referral lists the suits comprising the Pending Litigation.

The January Referral, as well as a December 11, 2008 Referral Letter ("December Referral") 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 ICSA and the January Referral. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

On September 23, 2009, the Commission adjudicated Mr. Knowland's physical injury claim under the December Referral. In its decision, the Commission found that Mr. Knowland suffered injuries "as a result of being hit by multiple bullets and shrapnel from several hand grenades [and] that his right leg and right arm were permanently damaged by bullets and the grenade shrapnel." The Commission concluded that these injuries met the Commission's standard for physical injury and, consequently, that Mr. Knowland was entitled to compensation in the amount of \$3 million. *Claim of PETER LESLEY KNOWLAND*, Claim No. LIB-I-048, Decision No. LIB-I-018 (2009).

BASIS OF THE PRESENT CLAIM

On July 6, 2010, the Commission received from Mr. Knowland's counsel a Statement of Claim seeking additional compensation under Category D of the January Referral, along with exhibits supporting the elements of the claim. The Statement of

Claim was signed only by counsel; counsel informed the Commission that he had only recently discovered that Mr. Knowland was deceased. Counsel stated that he was in the process of determining the identity of Mr. Knowland's heirs. The Commission's Chief Counsel notified counsel that the Commission required, as soon as possible, a claim form signed by an individual with appropriate legal authority as the claimant estate's legal representative. On July 15, 2011, one year after the filing of the Statement of Claim, the Commission received a substituted signature page of the Statement of Claim bearing the signature of a Ms. Michèle Van Beneden.

It is asserted in the Statement of Claim that in addition to the pain suffered by Mr. Knowland and the many surgeries he endured to ameliorate his injuries, his "pronounced walking disability, significant reduction in the usability of the right arm, numerous disfiguring scars, neurological deficits and liver damage" are sufficiently severe to constitute a special circumstance warranting additional compensation under Category D. The evidence submitted includes: a description of Mr. Knowland's physical injuries and their alleged permanent effects; extensive contemporaneous medical records; numerous photos depicting Mr. Knowland's injuries; and an affidavit from Ms. Van Beneden, who describes herself as Mr. Knowland's companion and states that they met in 2002 and had been living together since 2004. In her affidavit, Ms. Van Beneden attests to the permanent impairments that resulted from the physical injuries Mr. Knowland sustained in the terrorist incident.

The evidence submitted also includes a copy of Mr. Knowland's Last Will, signed and notarized on September 7, 2009; evidence of Mr. Knowland's U.S. nationality; evidence of his receipt of an award under the December Referral; and an Order of the

President of the Belgian Court of First Instance, dated July 4, 2011, appointing Ms. Van Beneden to be, in the words of the Order, “an ad hoc administrator ... only to represent the interests of the late Mr. Knowland and the sole legatee [i.e., Ms. Van Beneden herself] in the proceedings in the United States against the states of Libya and of Syria in the framework of compensation following the terrorist attack of December 27, 1985.”

The Commission initially considered this claim during its open meeting of June 5, 2012. At the meeting, the Commission determined that it would require further proceedings because there was insufficient evidence to adjudicate the claim. Pursuant to this determination, the Commission staff requested, by letter dated June 8, 2012, that the claimant estate provide further information concerning (a) the timeliness of the Category D filing; (b) Ms. Van Beneden’s standing to bring the present claim in light of both the July 4, 2011 Belgian court order appointing her *ad hoc* administrator and the proceedings in that court; (c) discrepancies between two separate translations of that order submitted by Ms. Van Beneden; (d) Mr. Knowland’s Will, in which Mr. Knowland purported to disinherit his wife, Mrs. Décia Knowland, in favor of Ms. Van Beneden, and which identifies Mr. Knowland as a Belgian national; (e) whether Mrs. Décia Knowland had been notified about the Belgian court proceedings; (f) discrepancies between the Social Security number listed on Mr. Knowland’s Report of Death and the Social Security number listed on both his Certificate of Naturalization and the Voucher for Payment of Award from the Department of Treasury for the \$3 million award he received under the December referral; (g) Mr. Knowland’s relationship with the State of Florida in light of the fact that counsel for Mr. Knowland had provided a Florida address for Mr. Knowland

in late 2009, just before Mr. Knowland died,¹ and whether Florida law has any impact on the estate proceedings; and (h) Mr. Knowland's profession and evidence of his earnings in the five years prior to his death. The issues identified by the Commission raise, among other things, fundamental questions about who has the proper authority to bring the present Category D claim.

On September 4, 2012, the Commission received additional evidence in response to the above request. The additional evidence includes: letters from attorneys in Florida, Belgium, and Monaco discussing the application of the laws of their respective jurisdictions to Mr. Knowland's estate; a copy of the application submitted to the Belgian Court of First Instance requesting appointment of Ms. Van Beneden as *ad hoc* administrator; a Belgian death certificate titled "Copy of Certificate," dated November 17, 2010, for Mr. Knowland;² and a letter dated July 4, 2012, from a Dr. Van de Kerckhove.

DISCUSSION

As the Commission's jurisprudence makes clear, claimants before the Commission must establish their standing as the proper claimant in a 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). 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.

¹ The Commission independently researched the Florida address identified as Mr. Knowland's address, and has ascertained that it is an address for a commercial business in a shopping center in Hallandale, Florida.

² The Copy of Certificate describes another certificate dated February 2, 2010. Counsel has not provided the Commission with a copy of that February 2, 2010 certificate.

Claim of SYLMA E. RIVERA/JUAN FRANCISCO FIGUEROA-RODRIGUEZ, Claim Nos. LIB-II-113/LIB-II-117, Decision No. LIB-II-177 (2012) (Proposed Decision).

Ms. Van Beneden asserts that she is the proper claimant in this claim. She relies on Mr. Knowland's Will naming her as sole legatee and the July 4, 2011 Belgian court order. This evidence fails, however, to show that Ms. Van Beneden is the proper claimant before the Commission. In particular, there remain unanswered questions about the Belgian court order and fundamental inconsistencies in the evidence in this case, questions and inconsistencies that undermine Ms. Van Beneden's claim to have standing to represent Mr. Knowland's estate.

INCONSISTENCIES WITHIN THE CLAIM

At the outset, the Commission notes numerous, unanswered questions and potential inconsistencies in the evidence for this claim. First, there is inconsistent information as to Mr. Knowland's place of residence, with the evidence suggesting three different places: Hallandale, Florida; Monaco; and Brussels, Belgium. In his Will dated September 9, 2009, Mr. Knowland identified himself as a "current resident of the Principality of Monaco." About two months later, on November 10, 2009, Mr. Knowland stated on his certification to the Department of Treasury, under penalty of "18 U.S.C. § 1001 and other federal criminal statutes," that his "current address" was in Hallandale, Florida. Yet, the address provided by Mr. Knowland is a commercial address (a shopping center) in Hallandale, Florida. About two months after that, on January 20, 2010, Mr. Knowland died, and the official documentation of his death also lists inconsistent places of residence for him. The "Report of Death of an American Citizen Abroad" from the State Department lists Mr. Knowland's "permanent or temporary

address abroad” as an address in Monaco, and the Belgian death certificate for Mr. Knowland states that he resided in Brussels, Belgium.

Second, the Commission notes the inconsistent Social Security numbers provided for Mr. Knowland. The “Report of Death of an American Citizen Abroad” from the State Department lists a Social Security number different from the Social Security number listed on Mr. Knowland’s Voucher for Payment to the Treasury Department and on his Certificate of Naturalization. Counsel has stated that he cannot explain the discrepancies in the Social Security numbers.³

Third, the record reveals ambiguities about Mr. Knowland’s nationality. Counsel for Mr. Knowland asserted to the Commission that Mr. Knowland is a U.S. national. Yet, Mr. Knowland’s Will, his Belgian death certificate, and the application that counsel submitted to the Belgian court requesting the appointment of Ms. Van Beneden as an *ad hoc* administrator, all identify Mr. Knowland as a Belgian national.⁴

Finally, there are unanswered questions about the relationship between Mr. and Mrs. Knowland at the time of Mr. Knowland’s death. The legal opinions submitted by counsel to support the alleged disinheritance of his wife rely on the assertion that Mr. Knowland and his wife had been living apart since their separation, including for at least

³ Counsel informed the Commission that he sent inquires regarding the Social Security numbers to: (1) the Social Security Administration; (2) the State Department Passport Office; and (3) Office of Congresswoman Wasserman Schultz. At the time of the issuance of this Proposed Decision, counsel has not provided any updates regarding responses to these inquiries.

⁴ None of this evidence - Mr. Knowland’s Will, the Belgian death certificate, or the application to the Belgian court - was before the Commission when it adjudicated Mr. Knowland’s December Referral claim. Thus, the fact that the Commission determined that Mr. Knowland was a United States national for purposes of its December Referral decision does not diminish the Commission’s concerns.

six months prior to his death. Yet, there is no independent evidence to support these assertions.⁵

MR. KNOWLAND'S WILL

Ms. Van Beneden points to Mr. Knowland's Will to support her contention that she is the proper claimant before the Commission. Mr. Knowland's Will was prepared and notarized at the Monaco Thoracic Center in Monaco on September 7, 2009, prior to, as the Will puts it, "undergoing a surgical procedure." In his Will, Mr. Knowland states that he "married Mrs. Decia Knowland without contract in Vienna, Austria on 03/04/1986." He further states that they established their "first matrimonial residence in the Domaine de Louvranges, Wavre in Belgium" and that they were, therefore, considered "married under the rules governing community property as provided by Belgian Law."⁶ Under the terms of the Will, Mr. Knowland appears to disinherit Mrs. Decia Knowland ("I deprive my wife of all rights to my inheritance") and to establish Ms. Van Beneden as his "sole legatee." The Will goes on to state that, before "liquidating" his estate, "it will be necessary to first liquidate" the community property

⁵ The Commission is also troubled by the piecemeal evidence throughout this and related proceedings and in particular regarding counsel's awareness of Mr. Knowland's death. In a July 6, 2010, letter to the Commission, counsel stated, "we are filing this Claim on behalf of Mr. Knowland unsigned by Mr. Knowland as we just learned of Mr. Knowland's passing. We are in the process of trying to identify next of kin and determine whether an estate has been opened." Yet, counsel made what appears to be a different representation to a federal district court in Mr. Knowland's related litigation against Syrian defendants. In a Motion to Reconsider, filed on November 4, 2010, counsel for Mr. Knowland stated to the District Court that it was "[o]n October 22, 2010" that "counsel for Plaintiff obtained information from the United States Department of State that Plaintiff, Peter Knowland, had died on January 20, 2010 and was buried in Brussels, Belgium. Upon obtaining this confirmation counsel for the Plaintiff had been attempting to locate information which would identify the representative of Mr. Knowland's estate." *Peter Knowland v. Great Socialist People's Libyan Arab Jamahiriya, et al.*, Case No. 1:08-cv-01309-RMC (D.D.C.) (filed November 4, 2010).

⁶ Further confirming Mrs. Decia Knowland's status as Mr. Knowland's wife at the time of his death is Mr. Knowland's Belgian death certificate, dated November 17, 2010 (almost ten months after his death), that identifies Mr. Knowland as the "husband of Décia Suzanna Knowland."

jointly held by Mr. and Mrs. Knowland. Ms. Van Beneden was then to receive the “net proceeds that I will receive from the [property] liquidation,” as well as “all assets that I own on the date of my death.”

This Will thus purports to disinherit Mr. Knowland’s legal spouse in favor of an unrelated companion. To understand the legal validity and enforceability of such a provision, the Commission requested that counsel provide further information concerning the Will, including information on the applicable law. In response, counsel submitted letters from legal professionals in Belgium, Monaco, and the State of Florida on the application of their respective laws to Mr. Knowland’s Will.

With respect to Belgian law, counsel submitted a July 25, 2012 letter from a Ms. Ilse Verhelst, a Belgian attorney, addressing whether Mr. Knowland could disinherit his wife under Belgian law. Ms. Verhelst notes, at the outset of her analysis, that the *lex successionis* of Mr. Knowland’s Will is Monegasque law and therefore the laws of Monaco, not Belgium, are applicable to determine whether Mr. Knowland can disinherit his wife through his Will. Belgian counsel states in her opinion:

First, I want to insist on the fact that the *lex successionis* (in the case the law of Monaco) determines the estate devolution: that law decides to what extent the intestate devolution can be set aside by the personal wishes of the deceased as made up in a will. The nature of a legacy, universal or at specific title, is determined according to the *lex successionis*. The same goes for delivery of a legacy and its eventual caducity.

It is also the *lex successionis* that will tell where the margins or limits of free disposition are to be put: who can claim a forced heirship, to what extent and of what is the nature of such a protected right?

Therefore, it is my opinion that the law of Monaco is applicable and not the Belgian law.

If this is correct, however, it leaves unexplained how or why a Belgian court had the legal authority to issue an order appointing Ms. Van Beneden the *ad hoc* administrator. Indeed, Ms. Van Beneden is asking the Commission to recognize a Belgian court order - one that makes no reference to Monegasque law - as proof that she properly represents the estate of Mr. Knowland, while simultaneously claiming that Monegasque law - and not Belgian law - applies to Mr. Knowland's circumstances.⁷

After determining that Belgian law is inapplicable to Mr. Knowland's Will, Ms. Verhelst nonetheless analyzes that law and concludes that Mr. Knowland could disinherit his wife under Belgian law. However, she bases her conclusion on a factual premise that has no evidentiary support in the record before the Commission: that Mr. and Mrs. Knowland lived apart for the entire time after their separation. After noting that Mr. Knowland made a Will disinheriting his spouse, Ms. Verhelst asserts that Mr. and Mrs. Knowland had lived separately for at least six months. For this she relies on a March 10, 1989 judgment that apparently "authorized Ms. Decia Knowland to live separately at 1300 Wavre (Belgium) . . .," but counsel has not submitted this 1989 judgment to the Commission. Moreover, Ms. Verhelst also simply asserts that "Ms. Knowland lives at Crans Montana in Switzerland at least since 2007" and thus that Mr. and Mrs. Knowland had not lived together since their separation. While there is evidence stating that Mrs. Knowland lives in Switzerland (Mr. Knowland's Will and the Belgian Death Certificate),

⁷ Moreover, in the related District Court proceedings, counsel asserted in a Consent Motion to substitute Ms. Van Beneden for Mr. Knowland, "the law governing the plaintiff's (Mr. Knowland) estate must be determined by the state in which he was domiciled at the time of his death, which was Monaco." *Peter Knowland v. Great Socialist People's Libyan Arab Jamahiriya, et al.*, Case No. 1:08-cv-01309-RMC (D.D.C.) (filed May 20, 2011).

there is none that she has lived there since 2007 or, more importantly, that Mr. and Mrs. Knowland had been living separately the entire time after their legal separation.⁸

With respect to the applicability of Monegasque law, counsel submitted a letter dated August 24, 2012 from a Mr. Thomas Brezzo, a lawyer practicing in Monaco. Mr. Brezzo states that under Monegasque law, a surviving spouse is not a “forced heir,” and “‘forced heirs’ are those who cannot be excluded from a succession and to [whom] a minimum proportion of the succession is reserved by the Law.” Mr. Brezzo concludes that “if the deceased use [sic] of the faculty offered to him/her by Articles 761 and following of the Civil Code, to dispose freely of his/her possessions ‘available’ - by *inter vivos* or testamentary gifts – the surviving spouse will then be deprived of any right in the said possessions.”

It is important to note, however, that although Mr. Brezzo recites applicable Monegasque law in his letter, he does not provide an analysis of the application of that law to Mr. Knowland’s Will. In fact, Mr. Brezzo specifically acknowledges at the beginning of his letter that “[t]he following is a short theoretical study of Monegasque law, which must, in order to be fully applicable, be confirmed and complemented in the light of documents and information *which I was not provided.*” (emphasis added.) Given its limitations, Mr. Brezzo’s opinion is of little value to the Commission.

With regard to the possible applicability of Florida law, both the record and reliable evidence of which the Commission takes notice indicate that Mr. Knowland was a legal resident of Florida – or at least had some kind of relationship with Florida that

⁸ There is also evidence that Ms. Van Beneden and Mr. Knowland have lived together since 2004 (Van Beneden Affidavit ¶ 6). However, even accepting Ms. Van Beneden’s claim and assuming the validity of the unsubmitted 1989 judgment, there is no evidence in the record about the period between 1989 and 2004.

might contradict the claim that only Monaco law applies to Mr. Knowland's estate. On July 30, 2008, counsel for Mr. Knowland filed a complaint in the United States District Court for the District of Columbia alleging that "Peter Knowland is a permanent resident of the State of Florida."⁹ On October 7, 2009, counsel provided the Commission, by email, with an updated address for Mr. Knowland, informing the Commission that Mr. Knowland "recently moved down the street" in Hallandale, Florida. Counsel submitted, with the Statement of Claim for this January Referral claim, a copy of Mr. Knowland's signed and notarized¹⁰ Department of Treasury Certification and Voucher of Payment forms, dated November 10, 2009, confirming his ownership of the Commission's \$3 million award for his December Referral claim, and certifying, under penalty of "18 U.S.C. § 1001 and other federal criminal statutes," that his "current address" was in Hallandale, Florida. As noted above, Mr. Knowland died about two months later, on January 20, 2010, in Belgium. In October of that year, in Mr. Knowland's related litigation against Syria, Judge Collyer of the U.S. District Court for the District of Columbia issued a Memorandum Opinion and made a finding of fact in reliance upon Mr. Knowland's complaint that Mr. Knowland "is a resident of Florida."¹¹ Judge Collyer's use of the present tense clearly indicates that she believed that Mr. Knowland was still alive and lived in Florida. As noted in footnote 5, *supra*, counsel had every opportunity to inform the District Court of the factual changes regarding the circumstances of Mr. Knowland's death but failed to do so before November 4, 2010.

⁹ *Peter Knowland v. Great Socialist People's Libyan Arab Jamahiriya, et al.*, Case No. 1:08-cv-01309-RMC (D.D.C.) (filed July 30, 2008).

¹⁰ The document was notarized in Germany by a German notary.

¹¹ *Peter Knowland v. Great Socialist People's Libyan Arab Jamahiriya, et al.*, Case No. 1:08-cv-01309-RMC (D.D.C.) (issued Oct. 8, 2010).

To support Ms. Van Beneden's claim that Florida law was inapplicable to Mr. Knowland's estate, counsel submitted a letter from Daniel Probst, Esq., a Florida attorney who is "board certified" in Wills, Trusts & Estates. Mr. Probst concluded that Florida law did not apply to Mr. Knowland's estate because Mr. Knowland was not "a resident of the state of Florida" and did not have "either real property or a debtor with situs in the state of Florida." He based his opinion on: (1) a search of real property records in one Florida county; (2) the first page of Mr. Knowland's passport; (3) a copy of the "Report of Death of an American Citizen Abroad"; and (4) the certificate of Mr. Knowland's death issued by the Belgian authorities. He made no reference to the representations about Florida residency made by, and on behalf of, Mr. Knowland in his federal court litigation, or to Mr. Knowland's "recent[] move[] down the street" in October 2009. He also failed to address the possibility that Mr. Knowland might have owned real property in some other county in Florida. Moreover, his conclusion that Mr. Knowland was not a resident of Florida did not address the possibility that Mr. Knowland might have rented property in the state. Finally, although his opinion appears to state that personal property is irrelevant for non-residents, Mr. Probst also ignores the possibility that Mr. Knowland might have had personal property and/or financial assets in Florida (including the \$3 million Mr. Knowland received after certifying to the United States Government that his "current address" was in Florida).

In light of the inconsistent information and representations outlined above, the Commission is not persuaded that sufficient evidence has been provided to establish the law applicable to Mr. Knowland's estate, and consequently whether his Will is valid

under that law. As such, the terms of the Will by themselves are insufficient to establish that Ms. Van Beneden is the proper claimant before the Commission.

BELGIAN COURT ORDER

In addition to the Will, Ms. Van Beneden relies on the July 4, 2011 Belgian Court order naming her an *ad hoc* administrator. However, in light of the specific language of the court's order and the unanswered questions in the application for the order, the Commission likewise is not persuaded that the Belgian court order provides enough evidence to demonstrate that Ms. Van Beneden is the proper claimant in this claim.

First, the text of the court's order does not give Ms. Van Beneden the proper legal authority to represent Mr. Knowland's estate, but instead grants her authority "only to represent the interests of the late Mr. Knowland and the sole legatee [i.e., Ms. Van Beneden herself] in the proceedings in the United States" Since the order only speaks to the interests of Mr. Knowland and of the sole legatee, the order does not state that there is any obligation on Ms. Van Beneden's part to the actual estate. The order also fails to address whether notice was given to all interested parties regarding the application or the order. Moreover, the only reference in the order to Mr. Knowland's estate is the following: "[w]e acknowledge the explicit declaration of the claimant [here, clearly meaning Ms. Van Beneden] that these proceedings are initiated only for conservatory purposes without prejudice and keeping all *her* rights intact, and being so, is *not* a pure and simple acceptance of the estate of the late Mr. Peter Knowland." (emphasis added).¹² It is unclear exactly what this means, but the language does not

¹² It is worth noting that the text of the court's order quoted in this paragraph comes almost verbatim from Ms. Van Beneden's application for that order.

unequivocally purport to grant Ms. Van Beneden the authority to represent Mr. Knowland's estate.

In addition to the order itself, the application for the order also raises additional questions about Ms. Van Beneden's claim to be the proper claimant before the Commission. In particular, the application contains various representations. First, the application represents that Mr. Knowland is a Belgian national. The Commission notes that counsel has always represented to the Commission that Mr. Knowland is a U.S. national. If this is true, it might have been important for the Belgian court to know.¹³ Second, the application represents that, "[i]n Anglo-Saxon law, under Common Law influence, in the 'probate' proceedings, the process is necessarily entrusted to an ad hoc representative." Since probate matters in the United States are handled in state court proceedings, it is unclear what state or jurisdiction the representation is referring to. Indeed, this representation is particularly puzzling given the legal opinions counsel submitted to the Commission, opinions that conclude that Monegasque law applies to Mr. Knowland's estate. Finally, in light of the unanswered questions about the law applicable to the proffered Will, it is entirely unclear how or why a Belgian court would have had jurisdiction to appoint an administrator of Mr. Knowland's estate in the first place.

To summarize, therefore: (1) the Belgian court's order does not show that Ms. Van Beneden represents the Estate of Mr. Knowland; (2) the application for the order makes representations that raise unanswered questions about the case; and (3) it is unclear from the evidence in the record whether the Belgian court has jurisdiction to appoint an administrator for Mr. Knowland's estate. For these reasons, the Commission

¹³ Because the Commission rejects this claim on grounds of lack of standing, it need not reach the issue of nationality here.

declines to accept the Belgian court order “on its face,” as claimant urges, or to treat it as sufficient evidence to establish that Ms. Van Beneden is the proper claimant before the Commission.

CONCLUSION

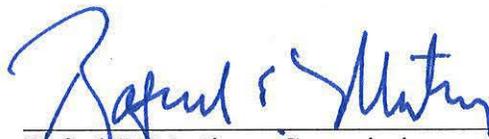
Based on the foregoing discussion, and having carefully reviewed the entire record before it, the Commission concludes that Ms. Van Beneden has failed to establish that she is the proper claimant in this claim, and therefore does not have standing to present the claim of Mr. Knowland’s estate to the Commission.¹⁴ Accordingly, this claim must be and it is hereby denied.

The Commission considers it unnecessary to make determinations with respect to other aspects of this claim.

Dated at Washington, DC, September 13, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, 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) (2011).

¹⁴ It is the claimant’s burden to provide evidence to establish the validity of its claim. *See* 45 C.F.R. § 509.5(b) (2011) (“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.”).