

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

In the Matter of the Claim of	}	
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	}	
	}	
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	}	
ESTATE OF EDGAR LEE MOBLEY, JR.,	}	Claim No. LIB-III-055
DECEASED; JENNIFER I. HULTGREN,	}	
ADMINISTRATOR	}	Decision No. LIB-III-046
	}	
	}	
Against the Great Socialist People's	}	
Libyan Arab Jamahiriya	}	

Counsel for Claimant:

Joanne W. Young, Esq.  
Kirstein & Young, PLLC

**FINAL DECISION**

Claimant Estate objects to the Commission's Proposed Decision denying its claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya"). In the Proposed Decision, the Commission denied the claim because Claimant Estate had failed to establish that it was the legally authorized representative of the estate of Mr. Mobley, its decedent. The Commission further noted that even if Claimant Estate had had standing, it would deny Claimant Estate's claim for the same reasons set forth in two other decisions on claims brought by other Pan Am employees (collectively the "Abbott Group") that involved essentially identical facts and the same evidentiary record, *i.e.*, Claim No. LIB-III-044, Decision No. LIB-III-044 (2016) ("Initial Proposed Decision"), and Claim Nos. LIB-III-036 et al., Decision No. LIB-III-045 (2016) ("Consolidated Proposed Decision").

After carefully considering all of Claimant Estate's arguments and evidence on objection, we conclude that it has standing to bring this claim and that the claim satisfies the requirements for jurisdiction under the 2013 Referral from the Department of State. We further conclude, however, that Claimant Estate has failed to demonstrate that the Lockerbie bombing caused Mr. Mobley to lose his job, for the reasons detailed in the Commission's final decision on other Abbott Group claims (Final Decision affirming the Consolidated Proposed Decision in Claim Nos. LIB-III-036 *et al.*, Decision No. LIB-III-045 (2018)). We therefore affirm the denial of this claim.

#### BACKGROUND

Together with a group of other claimants known collectively as the Abbott Group, Claimant Estate brought this claim against Libya under Category F of the November 27, 2013 letter from the State Department's Legal Adviser referring several categories of claims against Libya to this Commission ("2013 Referral"). Category F of the 2013 Referral consists of "commercial claims of U.S. nationals provided that (1) the claim was set forth by a claimant named in *Abbott et al. v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 1:94-cv-02444-SS; and (2) the Commission determines that the claim would be compensable under the applicable legal principles."<sup>1</sup>

Like the other Abbott Group claimants, Claimant Estate alleges that the 1988 Lockerbie bombing ultimately forced Pan Am to cease operations and liquidate in December 1991, resulting in Mr. Mobley losing his job as a pilot for the airline, which in turn caused him to lose several years' worth of income and benefits that he otherwise would

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<sup>1</sup> Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission ¶ 8.

have earned. Claimant Estate asserts that, but for the terrorist bombing, Pan Am would have continued operations, and Mr. Mobley would have continued to work for Pan Am.

The Commission denied the claim in a Proposed Decision dated August 16, 2016, concluding that Claimant Estate had failed to establish that it had standing to bring the claim (“Proposed Decision”). The Commission further concluded that even if Claimant Estate had standing, it would deny the claim for the same reasons set forth in the Initial Proposed Decision and the Consolidated Proposed Decision: (1) Claimant had failed to demonstrate that its claim was not extinguished by a 2005 Settlement Agreement between Pan Am and Libya; and (2) it had failed to demonstrate that the Lockerbie bombing caused Mr. Mobley’s job loss.

On September 13, 2016, Claimant Estate filed a notice of objection and requested an oral hearing. The notice of objection stated that Claimant Estate had established that it had standing to bring the claim. The notice of objection also incorporated by reference the notices of objection filed by the Abbott Group claimants whose claims were addressed on the merits in the Initial and Consolidated Proposed Decisions. On November 23, 2016, Claimant Estate submitted two documents issued by the Circuit Court for Brevard County, Florida on November 15, 2016: an Order Admitting Will to Probate and Appointing Personal Representative that appoints Jennifer I. Hultgren as the personal representative of the decedent’s estate and Letters of Administration that recognize Ms. Hultgren’s “full power to administer the estate according to law . . . .”

On November 23, 2016, the Abbott Group claimants, including Claimant Estate, filed a Hearing Brief on behalf of all claimants who had filed objections to their respective Proposed Decisions. The brief included numerous exhibits. The Commission then held an eight-hour consolidated hearing on the objections of all Abbott Group claimants on

December 14, 2016 at the E. Barrett Prettyman Federal Courthouse in Washington, D.C. Several witnesses testified at the hearing.<sup>2</sup>

## DISCUSSION

### Standing

Claimant Estate has submitted Letters of Administration, issued by the Circuit Court for Brevard County, Florida, recognizing Jennifer I. Hultgren as personal representative of the estate. Accordingly, the Commission concludes that ESTATE OF EDGAR LEE MOBLEY, JR., DECEASED; JENNIFER I. HULTGREN, ADMINISTRATOR is the proper claimant in this claim.

### Jurisdiction

Under subsection 4(a) of the ICSA,<sup>3</sup> the Commission's jurisdiction here is limited to the category of claims defined by the November 2013 Referral. Therefore, in order to come within the Commission's jurisdiction, claimants filing under Category F of the 2013 Referral must establish that their claim (1) is a commercial claim, (2) is held by a U.S. national, and (3) was set forth by a claimant named in the *Abbott* case.<sup>4</sup>

### *Commercial Claim*

Category F is limited to commercial claims. We have previously held that the claims of other Abbott Group claimants, claims based on allegations virtually identical to those Claimant Estate makes here, were commercial claims within the meaning of Category F of the 2013 Referral.<sup>5</sup> Accordingly, this claim is a "commercial claim[]" within the meaning of the 2013 Referral.

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<sup>2</sup> The evidence and argument presented in the Hearing Brief and Objection Hearing, as well as two additional exhibits submitted after the hearing, are more fully detailed in our Final Decision affirming the Consolidated Proposed Decision in Claim Nos. LIB-III-036 *et al.*, Decision No. LIB-III-045 (2018).

<sup>3</sup> 22 U.S.C. § 1623(a).

<sup>4</sup> 2013 Referral, *supra* note 1, ¶ 8.

<sup>5</sup> See Initial Proposed Decision, *supra*, at 4-5; Consolidated Proposed Decision, *supra*, at 6.

*Nationality*

This claims program is limited to “claims of U.S. nationals.” Here, that means that a claimant must have been a national of the United States continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-001, Decision No. LIB-III-001, at 5-6 (2014). Claimant Estate has provided a copy of the Mr. Mobley’s most recent U.S. passport, which evidences his birth in the United States and his U.S. nationality at the time of the Claims Settlement Agreement. It therefore satisfies the nationality requirement.

*Claimant Named in Abbott*

To fall within Category F of the 2013 Referral, the claim must have been set forth by a claimant named in the *Abbott* case. Claimant Estate has provided a certified copy of the complaint in that litigation, filed in the United States District Court for the District of Columbia, which names Mr. Mobley as a plaintiff and sets forth his commercial claims against Libya. Based on this evidence, Claimant Estate has satisfied this requirement as well.

In summary, this claim is within the Commission’s jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

Merits

To prevail in this claim, Claimant Estate has the burden to prove that its claim is “compensable under the applicable legal principles.”<sup>6</sup> Thus, to decide this claim, the Commission must determine whether the evidence that Claimant Estate has submitted, which now includes the live testimony of several witnesses and additional written

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<sup>6</sup> 2013 Referral, *supra* note 1, ¶ 8.

statements, suffices to meet that burden. The Commission considered this exact question in its Final Decision in Claim Nos. LIB-III-036, *et al.*, Decision No. LIB-III-045 (2018) (Final Decision). That decision involved most of the other Abbott Group claimants and was based on allegations, evidence, and legal arguments identical to those relied on by Claimant Estate here. In that decision, we denied the claims of those other Abbott Group claimants. We thus deny this claim for the same reasons stated in that decision, which we incorporate by reference: although the 2005 Pan Am-Libya settlement did not extinguish Claimant Estate's claim, it has failed to establish that the Lockerbie bombing caused Mr. Mobley's job loss, as required under the applicable legal principles the Commission must apply pursuant to the 2013 Referral.

#### CONCLUSION

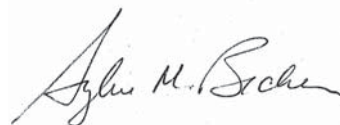
Having considered all of Claimant Estate's evidence and arguments, the Commission concludes that Claimant Estate's claim is not compensable under the applicable legal principles. Accordingly, the denial of this claim set forth in the Proposed Decision is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, January 16, 2018  
and entered as the Final Decision  
of the Commission.



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Anuj C. Desai, Commissioner



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Sylvia M. Becker, Commissioner

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Counsel for Claimant:

Joanne W. Young, Esq.  
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**PROPOSED DECISION**

Claimant Estate brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based on economic losses that the original Claimant in this claim, Edgar Lee Mobley, Jr., allegedly sustained as a result of the bombing of Pan Am Flight 103 over Lockerbie, Scotland, on December 21, 1988. Claimant Estate alleges that the bombing ultimately forced Pan American World Airways, Inc. ("Pan Am") to cease operations nearly three years later, resulting in Mr. Mobley losing his job as a pilot for the airline, which in turn caused him to lose several years' worth of income and benefits that he otherwise would have earned. Claimant Estate asserts that, but for the terrorist bombing, Pan Am would have continued operations, and Mr. Mobley would not have lost his employment and suffered the losses which the Estate now claims. On May 23, 2016, the Commission received information indicating that Mr. Mobley died after the filing of his claim. Commission staff subsequently confirmed from public records that Mr.

Mobley died on May 24, 2015; however, the Estate has not provided evidence of a legal representative to represent it before the Commission. Therefore, this claim is denied.<sup>1</sup>

#### BACKGROUND AND BASIS OF CLAIM

On December 21, 1988, Pan Am Flight 103, en route from London to New York, exploded in the skies over Lockerbie, Scotland. A Scottish court later found a Libyan intelligence agent guilty of murder for the bombing. Claimant Estate states that, at the time of the bombing, Mr. Mobley was a pilot for Pan American World Airways, Inc. (“Pan Am”). It alleges that “[t]his act of Libyan terrorism ultimately closed [Pan Am] on December 4, 1991[]”—nearly three years after the bombing. As a result, it claims, “the bombing ended [Mr. Mobley’s] professional career[] . . . result[ing] in the immediate loss of income” as well as “substantially all [of his] pension and medical benefits.”

Mr. Mobley and a number of other former Pan Am flight crew members sued Libya and others in United States federal court in 1994 for, *inter alia*, tortious interference with contractual relations and tortious interference with advantageous business relations.<sup>2</sup> Libya was dismissed from the case on jurisdictional grounds in 1995.

In 1993, Pan Am too had sued Libya, though in Scotland, for both the destruction of its aircraft as well as a variety of other direct and consequential damages allegedly suffered because of the Lockerbie bombing. Among the claims Pan Am made was one based on a theory of causation similar to that advanced by the Claimant Estate here—that the Lockerbie bombing caused Pan Am to go out of business. In 2005, Pan Am and Libya settled that case.

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<sup>1</sup> Under Commission regulations, where, as here, an estate representative fails to qualify for substitution following the death of an individual claimant, the Commission may issue its decision in the name of the estate of the deceased. See 45 C.F.R. § 509.5(j)(1) (2015). Accordingly, this Proposed Decision is issued in the name of ESTATE OF EDGAR LEE MOBLEY, JR., DECEASED.

<sup>2</sup> See *Abbott v. Socialist People’s Libyan Arab Jamahiriya*, No. 1:94cv2444 (D.D.C.).



A few years later, in August 2008, the United States and Libya concluded an agreement (the “Claims Settlement Agreement”) that settled numerous claims of U.S. nationals against Libya, including claims “aris[ing] from . . . property loss caused by . . . aircraft sabotage . . . or the provision of material support or resources for such an act . . . .”<sup>3</sup> Two months later, in October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.<sup>4</sup>

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission.<sup>5</sup> The Secretary delegated that authority to the State Department’s Legal Adviser, who, by letters dated December 11, 2008, January 15, 2009, and November 27, 2013, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

It is the third of those referral letters, the 2013 Referral, that is relevant here.<sup>6</sup> In particular, one of the 2013 Referral’s categories of claims, Category F, is at issue in this case. That category consists of “commercial claims of U.S. nationals provided that (1) the claim was set forth by a claimant named in *Abbott et al. v. Socialist People’s Libyan Arab Jamahiriya* (D.D.C.) 1:94-cv-02444-SS; and (2) the Commission determines that the claim would be compensable under the applicable legal principles.”<sup>7</sup>

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<sup>3</sup> *Claims Settlement Agreement Between the United States of America and the Great Socialist People’s Libyan Arab Jamahiriya* Art. I (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008; *see also* Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008).

<sup>4</sup> *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

<sup>5</sup> *See* International Claims Settlement Act of 1949 (“ICSA”), 22 U.S.C. § 1623(a)(1)(C) (2012).

<sup>6</sup> *Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* (“2013 Referral” or “November 2013 Referral”).

<sup>7</sup> 2013 Referral, *supra* note 6, at ¶ 8.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of the third Libya Claims Program pursuant to the ICSCA and the 2013 Referral.<sup>8</sup>

On June 11, 2014, the Commission received from Mr. Mobley a completed Statement of Claim seeking compensation under Category F of the 2013 Referral, together with exhibits supporting the elements of his claim.

#### DISCUSSION

Claimants before the Commission must establish their standing as the proper claimants in their claims. *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 individuals, a claimant must provide the Commission with evidence that he or she is legally entitled to bring the claim. Claim Nos. LIB-II-113 & LIB-II-117, Decision No. LIB-II-177 (2012) (Proposed Decision).

Claimant Estate has failed to establish that it has standing. Mr. Mobley died on May 24, 2015. After learning of his death, the Commission staff mailed a letter to counsel of record on May 24, 2016, requesting that she provide legal proof of the identity of the personal representative (e.g. letters testamentary or letters of administration issued by the appropriate court or judge as proof of the representative's authority to act on behalf of the estate), as well as a signed authorization from the personal representative authorizing counsel to represent the Estate before the Commission. No such evidence has been provided. Because this claim is not being brought by a legally authorized estate

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<sup>8</sup> *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

representative, the Commission is unable to determine jurisdiction or adjudicate this claim on the merits.

Finally, in the interests of adjudicative efficiency and economy, the Commission also notes that, even if it had jurisdiction and were to assess the claim, Claimant Estate would have failed in its burden of proving that the alleged harm is compensable under the applicable legal principles, as required under Category F of the 2013 Referral.<sup>9</sup> The Commission has previously decided the claims of other members of the *Abbott* litigation group in Claim No. LIB-III-044, Decision No. LIB-III-044 (2016) (Proposed Decision), and Claim Nos. LIB-III-036, *et al.*, Decision No. LIB-III-045 (2016) (Proposed Decision). The relevant facts, evidence, and legal arguments submitted in those claims are identical to the record relied on by Claimant Estate here. Accordingly, even assuming Claimant Estate were to have established the other jurisdictional elements of its claim under the 2013 Referral,<sup>10</sup> we would deny Claimant Estate's claim for the reasons explained more fully in the above-referenced claims, which we incorporate by reference: First, Claimant Estate has failed to establish that its claim was not extinguished by the 2005 settlement of the lawsuit Pan Am brought against Libya in Scotland, and, second, it has failed to prove that the bombing of Pan Am Flight 103 was the proximate cause of Mr. Mobley's economic harm. Therefore, this claim must be, and hereby is, denied.

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<sup>9</sup> The Commission has previously addressed the merits of a claim, notwithstanding the claimant's failure to establish the jurisdictional bases for its claim, in the interests of adjudicative efficiency and economy. *See, e.g., Claim of SUBROGATED INTERESTS TO PAN AMERICAN WORLD AIRWAYS, INC.*, Claim No. LIB-II-171, Decision No. LIB-II-161 (2012), 20 note 17 (Proposed Decision); *Claim of JERKO BOGOVICH*, Claim No. Y-1757, Decision No. Y-857 (1954).

<sup>10</sup> The 2013 Referral requires Claimant Estate to show, in addition to the standing requirement discussed above, that this claim is a "commercial claim[]" of a "U.S. national" within the meaning of the 2013 Referral, and that the claim was set forth by a claimant named in the *Abbott* case.

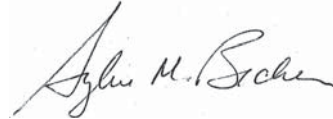
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, DC, August 16, 2016  
and entered as the Proposed Decision  
of the Commission.

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Anuj C. Desai, Commissioner

A handwritten signature in black ink, appearing to read "Sylvia M. Becker". The signature is more formal and structured than the one above, with clear lettering.

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Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery 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 delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2015).