

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-036

Decision No. LIB-II-117

Counsel for Claimant:

Stuart H. Newberger, Esq.
Crowell & Moring LLP

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on mental pain and anguish suffered by 5 U.S.C. §552(b)(6) as a result of the death of her brother, 5 U.S.C. §552(b)(6) who was killed on board UTA Flight 772 on September 19, 1989.

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 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 B. According to the January Referral Letter, Category B 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 (“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, 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 Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On September 23, 2009, the Commission received from claimant a Statement of Claim in which the claimant asserts a claim under Category B of the January Referral Letter. The submission also included exhibits supporting the elements of the claim, including a copy of claimant's birth certificate and documents relating to the distribution of the estate of 5 U.S.C. §552(b)(6). Claimant also provided evidence of her inclusion as a named party in the Pending Litigation referred to in Attachment I of the January Referral Letter, in which she set forth a claim for emotional distress, solatium, or similar injury; and the dismissal of the Pending Litigation against Libya. On December 11, 2009, the Commission received from claimant a copy of her U.S. passport and the birth certificate of 5 U.S.C. §552(b)(6).

DISCUSSION Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined in the January Referral Letter; namely the claims of

individuals who: (1) are U.S. nationals; (2) are living; (3) are close relatives of a decedent whose death formed the basis of a death claim compensated by the Department of State; (4) as named parties, made claims for emotional distress, loss of solatium, or similar emotional injury in a Pending Litigation case which has been dismissed; and (5) are not eligible for compensation from the associated 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.

Nationality

In *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that to meet the nationality requirement, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. To meet this requirement, the claimant has provided copies of her birth certificate issued by the state of Indiana, and of her U.S. passport. Based on this evidence, the Commission finds that this claim was held by a U.S. national at the time 5 U.S.C. §552(b)(6) was killed on September 19, 1989, and continuously thereafter, including on the effective date of the Claims Settlement Agreement.

Claimant Must Have Been Living at the Time of the January Referral Letter

The January Referral Letter states that Category B shall consist 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. In this program, the Commission has held in *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-II-044, Decision No. LIB-II-001 (2010), that in order to qualify for compensation under Category B, a claimant must have been living as of the date of the January Referral Letter as well as at the time of the incident which served as the basis of the Pending Litigation and caused the mental pain and anguish. The Commission finds that claimant has satisfied this requirement, as evidenced by her U.S. passport and her declaration in support of her Statement of Claim dated September 5, 2009.

Claimant Must Be a Close Relative of the Decedent

The January Referral Letter also states that Category B shall consist 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.¹ The Commission held in *Claim of* 5 U.S.C. §552(b)(6) *supra*, that for the limited purpose of Category B of this claims program, the term “close relatives” comprises the relatives of a decedent who are within one step of immediacy to the decedent, namely spouses, children, parents and siblings. The Commission finds that the claimant has established that she is a close relative of 5 U.S.C. §552(b)(6) as evidenced by the claimant’s birth certificate and the birth certificate of 5 U.S.C. §552(b)(6) which list the same mother and father.

¹ The Commission takes notice that the death of 5 U.S.C. §552(b)(6) formed the basis of a death claim compensated by the Department of State.

Pending Litigation and its Dismissal

To be eligible for compensation under Category B of the claims referred to the Commission, the claimant must also be a named party who made a claim for emotional distress, loss of solatium, or similar emotional injury in a Pending Litigation case listed in Attachment 1 to the January Referral Letter, and must provide evidence that the Pending Litigation against Libya has been dismissed. January Referral Letter, *supra*, ¶ 4. The claimant has provided a copy of the Amended Complaint in *Pugh v. Socialist People's Libyan Arab Jamahiriya*, 02-cv-2026, filed in the U.S. District Court for the District of Columbia, which names the claimant as a party and states a claim for intentional infliction of emotional distress. Additionally, the claimant has provided the District Court's March 6, 2009 Order dismissing with prejudice the litigation, which included claimant's claim, as evidence of the dismissal of this Pending Litigation. Based on this evidence, the Commission finds that the claimant was a named party who made a claim for emotional distress, loss of solatium, or similar emotional injury in the Pending Litigation and that the Pending Litigation has been properly dismissed.

*Claimant Must Not be Eligible For, and Must Not Have Received,
Any Compensation from the Associated Wrongful Death Claim*

To fall within Category B of the claims referred to the Commission, the claimant must also be ineligible for compensation from the wrongful death claim, must not have received any compensation from the wrongful death claim, must not have received any compensation under any other part of the Claims Settlement Agreement, and must not qualify for any other category of compensation pursuant to the January Referral Letter. January Referral Letter, *supra*, ¶ 4. Claimant has represented to the Commission, under penalty of perjury, that she has not received, and that she is not eligible to receive, aside

from under Category B, compensation from the Department of State or from the Commission, pursuant to either the December Referral Letter or the January Referral Letter. In addition, the claimant has provided evidence that she was not a beneficiary of the estate of 5 U.S.C. §552(b)(6) which was compensated by the Department of State for the wrongful death of 5 U.S.C. §552(b)(6).² On this basis, the Commission finds that the claimant was not eligible for compensation from the associated wrongful death claim, did not receive any compensation from the associated wrongful death claim, did not receive any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation under the January Referral Letter.

Accordingly, the Commission finds that this claim is within the Commission's jurisdiction and that the claimant has satisfied the elements required for compensation pursuant to Category B of the January Referral Letter.

COMPENSATION

In *Claim of*, 5 U.S.C. §552(b)(6) *supra*, the Commission held that, in this program, the recommended fixed award of \$200,000 is the appropriate amount of compensation for eligible claims under Category B of the January Referral Letter, and that such awards are not entitled to interest. Accordingly, the Commission determines that the claimant, 5 U.S.C. §552(b)(6) is entitled herein to an award of

² The claimant has informed the Commission that she is party to a joint prosecution agreement which was entered into by all plaintiffs participating in the *Pugh* litigation, and pursuant to which the plaintiffs agreed to pool all recoveries arising from the litigation and divide the total proceeds according to a formula. The Commission has previously found that distributions under such secondary agreements do not constitute "compensation from the wrongful death claim" for purposes of assessing eligibility under Category B. *See, Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-II-016, Decision No. LIB-II-062 (2011).

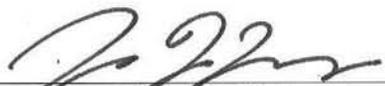
\$200,000, and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

The Commission, therefore, enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICOSA. 22 U.S.C. §§ 1626-27 (2006).

AWARD

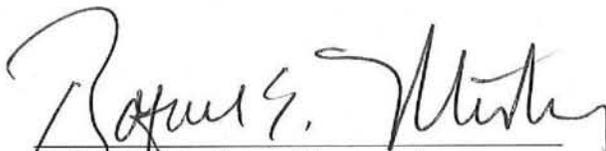
Claimant 5 U.S.C. §552(b)(6) is entitled to an award in the amount of Two Hundred Thousand Dollars (\$200,000.00).

Dated at Washington, DC, December 15, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman

**This decision was entered as the
Commission's Final Decision on**
JAN 18 2012



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) (2010).