

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-172

Decision No. LIB-II-103

Counsel for Claimant:

Caragh Fay, Esq.
Fay Kaplan Law, P.A.

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 5 U.S.C. §552(b)(6), who died on June 7, 1986 as the result of injuries suffered on April 5, 1986 in the terrorist bombing of the La Belle discotheque in Berlin, Germany.

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 State Department's Deputy Legal Adviser, by letter dated March 26, 2010 ("March 26, 2010 Letter"), advised the Commission that Attachment 1 to the January Referral Letter should have included amongst the Pending Litigation the case of *Beecham, et al. v. Great Socialist People's Libyan Arab Jamahiriya, et al.* (D.D.C.) 01-02243 ("*Beecham*").

The March 26, 2010 Letter and 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 July 7, 2010, the Commission received from the claimant a completed Statement of Claim in which the claimant asserts a claim under Category B of the January Referral Letter, along with exhibits in support of the claim. The claimant provided supplemental information in a submission dated October 12, 2010. These submissions include evidence: of claimant’s U.S. nationality; that the claimant was included as a named party in the complaint filed in *Beecham*, and set forth a claim for emotional distress, loss of solatium, or similar injury; and that *Beecham* was dismissed on

November 6, 2008. The claimant states that she was the “Aunt/Care-taker/Mother” of the decedent, 5 U.S.C. §552(b)(6), whom she raised after 5 U.S.C. §552(b)(6) mother died when 5 U.S.C. §552(b)(6) was a child, and that she had a very close relationship with 5 U.S.C. §552(b)(6) and was deeply hurt by his death.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICOSA, 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 North Carolina birth certificate, her social security card, tax receipts, and her current North Carolina driver's license. Based on this evidence, the Commission finds that this claim was held by a U.S. national from the time James Emmanuel Goins died, 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 birth certificate and her signed Statement of Claim dated July 1, 2010.

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

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.

relatives of a decedent who are within one step of immediacy to the decedent, namely spouses, children, parents and siblings.

In this claim, claimant, who was the decedent's paternal aunt, seeks compensation under Category B on the basis of her relationship to the decedent, asserting that she acted as the decedent's caregiver and mother from the age of six until he left to join the U.S. Army at the age of 18. In support of this assertion, claimant produced to the Commission the following evidence: (1) the birth certificates of claimant, claimant's brother, and the decedent, which demonstrate that the claimant was the paternal aunt of the decedent; (2) claimant's sworn videotaped testimony that: (a) she served in the capacity of the decedent's mother beginning when the decedent was a child, and the decedent and his father lived with the claimant from when the decedent was a child until the decedent was an adult; (b) claimant quit her job to care for the decedent, while the decedent's father went to work, and claimant was responsible for decedent's upbringing including sending him to school and taking him to the doctor when he was sick; (c) claimant considered decedent her child, cared for him as if he were her child, and the news of the decedent's death severely impacted her; and that (d) she received a call from the President of the United States offering his condolences to her after the death of decedent; (3) the death certificate of decedent's biological mother; (4) the decedent's school report records, which were sent to the claimant's address; (5) two affidavits submitted by cousins of the decedent stating that: (a) the claimant treated the decedent as a son and raised the decedent until he turned eighteen; (b) that the decedent felt and acted as though the claimant was his mother; and (c) the decedent's death severely impacted the claimant.

In deciding this claim, the Commission is thus required to determine whether a relative who is not biologically within one step of immediacy to the decedent can nonetheless be considered a “close relative” for purposes of this program by virtue of her *de facto* relationship to the decedent, and if so, whether the claimant here so qualifies.

As to the first question, the Commission determines that the term “close relatives” in the January Referral Letter allows for claims by Pending Litigants who are relatives of the decedent and who can prove that they acted in the place of a parent. This determination is consistent with the Commission’s prior jurisprudence. *See, e.g., War Claims Commission Regulation*, 14 Fed. Reg. 7843 (1949) (“W.C.C. Regulation”), Section 506.3(d) (defining the term “dependent parent” for purposes of certain War Claims program award eligibility to include, in addition to dependent natural parents and dependent adopted parents, those dependents who served *in loco parentis*); and *Claim of MILDRED ELLA GLAZIER*, W.C.C. Precedent Opinion No. 5, Claim No. 4964 (1950) (a stepfather could recover for a decedent step-son, if the step-father could demonstrate that he served *in loco parentis*).

The Commission further finds, based on the evidence proffered by the claimant (summarized above), that she is a “close relative” of 5 U.S.C. §552(b)(6) for purposes of her claim in this program. The evidence establishes to the Commission’s satisfaction that the claimant provided maternal care and comfort to the decedent not only during his childhood but also during his furloughs as a young adult in the Army.

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 March 26, 2010 Letter advised the Commission that Attachment 1 to the January Referral Letter should include the *Beecham* case amongst the Pending Litigation. The claimant has provided a copy of the complaint in *Beecham* filed in the U.S. District Court for the District of Columbia, which names her as a party and states a claim for emotional and psychological pain and suffering. Additionally, the claimant has provided the District Court's November 6, 2008 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, Claimant has represented to the Commission, under penalty of perjury, that she has no agreement, verbal or written, to receive, or that she will receive, any portion of, or secondary distribution payments from, the Department of State payment for wrongful death claims. 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

The Commission notes that the claimant has requested an award of one million dollars plus costs. However, 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 total compensation for eligible claims under Category B of the January Referral Letter, and that interest is not to be applied. Accordingly, the Commission determines that the claimant, 5 U.S.C. §552(b)(6), is entitled herein to an award of \$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 ICSA. 22 U.S.C. §§ 1626-27 (2006).

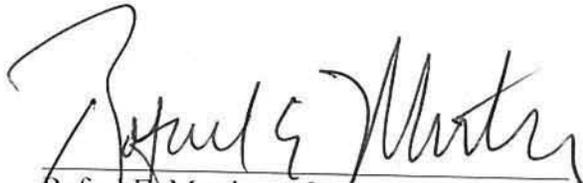
AWARD

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, October 28, 2011
and entered as the Proposed Decision
of the Commission.

**This decision was entered as the
Commission's Final Decision on
NOV 30 2011**


Timothy J. Feighery, Chairman


Rafael E. Martinez, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2010).