

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of

ESTATE OF RAMON FIGUEROA-VIERA,
DECEASED; JOSE RAMON FIGUEROA MORALES,
ADMINISTRATOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

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} Claim No. LIB-II-062

} Decision No. LIB-II-138
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Counsel for Claimant:

Neal M. Sher, Esq.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the Estate of Ramon Figueroa-Viera (the "claimant"), based upon physical injuries said to have been sustained by Ramon Figueroa-Viera as a result of the terrorist attack at Lod Airport in Israel on May 30, 1972. Claimant further contends that these physical injuries led to Mr. Figueroa-Viera's death on January 14, 1976.

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 United States nationals against Libya. *January 15, 2009, Letter*

from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission (“January Referral”).

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

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

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

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).

BASIS OF THE PRESENT CLAIM

On February 17, 2010, the Commission received from the claimant a Statement of Claim in which the claimant asserts a claim under Category E of the January Referral. The submission also included exhibits supporting the elements of its claim, including evidence of the U.S nationality of the late Ramon Figueroa-Viera and that of the beneficiaries of the estate, a copy of a Death Certificate reflecting the date and place of Mr. Figueroa-Viera's death, his presence at the terrorist incident at Lod Airport in Israel on May 30, 1972, and his medical treatment following the attack. The claimant asserts that Ramon Figueroa-Viera was injured as a result of the Lod Airport incident and that he eventually died as a result of his injuries some years later.

DISCUSSION

As an initial matter, the Commission notes that the Resolution issued by the Commonwealth of Puerto Rico, Court of First Instance, Humacao Part, dated February 28, 2011, appointed Jose Ramon Figueroa Morales as the Judicial Administrator of Mr. Figueroa-Viera's estate. Accordingly, the Commission finds that the ESTATE OF RAMON FIGUEROA-VIERA, DECEASED; JOSE RAMON FUGUEROA MORALES, ADMINISTRATOR, is the proper claimant in this claim.

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined under the January Referral; namely, claims of individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral, *supra*, ¶ 7.

Nationality

In the *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. In the case of claims brought by estates on behalf of beneficiaries, it is a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors (the War Claims Commission and the International Claims Commission) that, for purposes of determining the nationality of a claim, the nationality of the injured party as well as the beneficiaries of his or her estate must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.¹ To determine the beneficiaries of the decedent's estate, the Commission has reviewed the Declaration of Heirs issued by the Commonwealth of Puerto Rico, District Tribunal,

¹ See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

Fajardo Part dated February 25, 1994, and determines that during the pertinent time period an interest in this claim has been held by the following: the late Ramon Figueroa-Viera; his widow, the late Flor Collazo Melendez; and his children, Jose Ramon Figueroa Morales and Miriam Figueroa Collazo.

To meet the nationality requirement, the claimant has provided the following with respect to these individuals: the birth certificates and current passports of Jose Ramon Figueroa Morales and Miriam Figueroa Collazo, and the birth and death certificates of the late Flor Collazo Melendez and Ramon Figueroa-Viera. Based on this evidence and other evidence in the record, the Commission determines that the claim was owned by a U.S. national at the time of the incident, and was so held continuously through the effective date of the Claims Settlement Agreement.

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must also assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral. January Referral, *supra*, ¶ 7. This list includes the “May 30, 1972 attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734.” *Id.*, Attachment 2, ¶ 1. In its Statement of Claim, the claimant sets forth claims for physical injury and wrongful death based on injuries suffered by Mr. Figueroa-Viera during the Lod Airport terrorist attack. Accordingly, the Commission finds that the claimant has satisfied this element of its claim.

Pending Litigation

Finally, the January Referral states that the claimant may not have been a plaintiff in a Pending Litigation. January Referral, *supra*, ¶ 7. Attachment 2 to the January Referral identifies the Pending Litigation cases associated with each Covered Incident,

which in this claim, as noted above, is the *Franqui* case. Claimant's representative has averred under oath in the Statement of Claim, and the pleadings in the *Franqui* case confirm, that neither the Estate nor any of its beneficiaries were plaintiffs in the Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has also satisfied this element of its claim.

In summary, the Commission concludes, on the basis of the foregoing, that this claim is within the Commission's jurisdiction pursuant to the January Referral and is entitled to adjudication on the merits.

Merits

As noted above, the claimant alleges that the decedent suffered physical injuries during the terrorist attack at Lod Airport, and that these injuries were the cause of his death some four years later. These assertions are examined in the sections that follow, beginning with the claim for physical injury.

Standard for Physical Injury

As stated in the January Referral, to be eligible for compensation, a claimant asserting a claim under Category E must meet the standard for physical injury adopted by the Commission. January Referral Letter, *supra*, ¶ 7. The Commission held in *Claim of* 5 U.S.C. §552(b)(6) , Claim No. LIB-II-039, Dec. No. LIB-II-015 that in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; and
- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

Id. at 6-7. Likewise this claim for physical injury must meet this standard in order to be compensable.

Physical Injury

According to the Statement of Claim, the claimant's decedent, Ramon Figueroa-Viera, was injured during the Lod Airport attack and immediately taken to Tel Hashomer Hospital in Israel. Mr. Figueroa-Viera was admitted to the hospital and required "emergency surgery due to the nature of the wounds," including the removal of "a ten (10) inch piece of [his] intestine." Claimant asserts that during the surgery, Mr. Figueroa-Viera "became systematically unstable and suffered cardiac arrest, whereupon the procedure was finished, leaving a bullet near the intestinal area."

The contemporaneous medical record submitted in support of this claim from the Sheba Medical Center, Tel Hashomer, summarizes the treatment received by Mr. Figueroa-Viera. The record indicates that Mr. Figueroa-Viera sustained a gunshot wound in his abdomen which perforated his small intestine and that he underwent surgery, including the "resection" of a 17cm section of his small intestine, after which "his condition improved rapidly with no post operation complications." Mr. Figueroa-Viera was scheduled to be released on June 12, 1972, but, due to a fever and the appearance of a tumor in his right hypochondrium—the upper right portion of the abdominal cavity where the liver is located—he was not released at that time. According to his medical record, he was subsequently released on June 29, 2012 "in good health, laboratory tests – normal, and the tumor nearly vanished." The record does not indicate that a bullet or fragment thereof was left behind in Mr. Figueroa-Viera's abdomen nor does it indicate that he suffered cardiac arrest during surgery. Based on its consideration of the factual record before it, the

Commission finds that the claimant's injuries meet the standard for physical injury set forth above.

Standard for Wrongful Death

As stated in the January Referral, to be eligible for compensation, a claimant asserting a claim for wrongful death under Category E must meet the standard for wrongful death adopted by the Commission. January Referral, *supra*, ¶ 7. The Commission held in *Claim of ESTATE OF VIRGEN MILAGROS FLORES, DECEASED; CRUCITA FLORES SUÁREZ, PERSONAL REPRESENTATIVE*, Claim No. LIB-II-065, Dec. No. LIB-II-043 that in order for a claim for wrongful death pursuant to Category E to be considered compensable, a claimant must:

- 1) provide evidence sufficient to establish the fact of death in the form of a death certificate or other similar document; and
- 2) provide evidence sufficient to establish that the decedent died as the proximate result of a Covered Incident.

Id. at 12. The present Category E claim for wrongful death must likewise meet this standard to be compensable.

Wrongful Death

According to the Statement of Claim, the claimant's decedent, Ramon Figueroa-Viera, died in 1976 as a result of the injuries he sustained on May 30, 1972 at the Lod Airport in Israel. In support of its claim for wrongful death, the claimant has provided a report dated June 12, 2010, prepared by Angel A. Roman-Franco, M.D. In the report, Dr. Roman-Franco states that Mr. Figueroa-Viera died as a result of a colonic malignancy which, Dr. Roman-Franco concludes was caused by a bullet that was not removed from Mr. Figueroa-Viera's abdomen after the terrorist incident. The Commission staff, by its

letter dated July 20, 2010 requested that the claimant submit documents supporting Dr. Roman-Franco's conclusions. The claimant has not done so. Further, as noted above, the contemporaneous medical record submitted by the claimant does not support Dr. Roman-Franco's contention—upon which his conclusion is based—that a bullet remained in claimant's abdomen after his surgery in Israel. Based on the foregoing, the Commission finds that the claimant has not met its burden of proof in establishing that Mr. Figueroa-Viera's death was the proximate result of the Lod airport attack.²

In summary, the Commission finds that claimant has satisfied the Commission's standard for physical injury, but has failed to meet its burden of proof under the wrongful death standard. Accordingly, the Commission concludes that claimant's physical injury claim qualifies for compensation as detailed below; however, its wrongful death claim must be and is hereby denied.

COMPENSATION

In *Claim of* ^{5 U.S.C. §552(b)(6)} _____, *supra*, the Commission held that \$3 million is an appropriate amount of compensation for physical injuries that meet the Commission's standard under Category E, and that compensable physical injury claims in this claims program are not entitled to interest as part of the awards granted therein. Accordingly, the Commission determines that the claimant, ESTATE OF RAMON FIGUEROA-VIERA, DECEASED; JOSE RAMON FIGUEROA MORALES, ADMINISTRATOR, is entitled herein to an award of \$3,000,000.00 and that this amount

² Section 509.5(b) of the Commission's regulations provides:

The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

45 C.F.R. 509.5(b) (2010).

constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

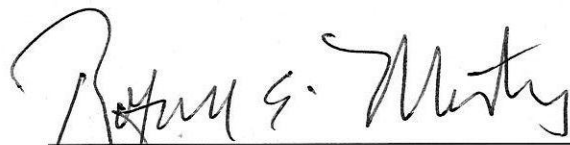
The Commission hereby enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICOSA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

Claimant, ESTATE OF RAMON FIGUEROA-VIERA, DECEASED; JOSE RAMON FIGUEROA MORALES, ADMINISTRATOR, is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

Dated at Washington, DC, February 23, 2012
and entered as the Proposed Decision
of the Commission.


Timothy J. Feighery, Chairman


Rafael E. Martinez, Commissioner

**The decision was entered as the
Commission's Final Decision on**

April 10, 2012

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).