

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

In the Matter of the Claim of	}	
	}	
	}	
MIGDALIA PADILLA ROBLES	}	Claim No. LIB-II-068
	}	Decision No. LIB-II-033
	}	
Against the Great Socialist People's	}	
Libyan Arab Jamahiriya	}	

Counsel for Claimant: Jean Paul Vissepo Garriga, Esq.
Vissepo & Sanchez

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by MIGDALIA PADILLA ROBLES, based on the death of Juan Padilla Ortiz, who was killed in the terrorist attack at Lod Airport on May 30, 1972.

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 January Referral Letter, as well as a December 11, 2008 referral letter from the State Department's Legal Adviser to the Commission ("December Referral Letter"), 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 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. On October 31, 2008, the Secretary of State certified, pursuant to the Libyan Claims Resolution Act ("LCRA"), Pub. L. No. 110-301, 122 Stat. 2999 (2008), that the United States Government "has received funds pursuant to the claims agreement that are sufficient to ensure . . . payment of the settlements referred to in section 654(b) of division J of the Consolidated Appropriations Act, 2008 (Public Law 110-161; 121 Stat. 2342); and . . . fair compensation of claims of nationals of the United States for wrongful death or physical injury in cases pending on the date of enactment of this Act against Libya . . ." January Referral Letter, *supra*, ¶ 1. On the same day, the President issued Executive Order No. 13477, 73 Fed. Reg. 65,965 (Oct. 31, 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.

In addition, as specified in the December Referral Letter, following receipt of the settlement amount provided for in the Claims Settlement Agreement, the State Department distributed payments for certain claims that were within the scope of Article I of that Agreement. These claims were thus not referred to the Commission. The claims

settled in this manner included payments for death claims set forth by named parties in cases pending in U.S. courts on the date of enactment of the LCRA. Pursuant to this undertaking, the State Department made a payment of \$10 million to the estate of Juan Padilla Ortiz for the wrongful death of Mr. Ortiz during the 1972 terrorist attack at Lod Airport.

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

The claimant, through her attorney, filed a Statement of Claim with the Commission on March 15, 2010, asserting claims under Categories B and C of the January Referral Letter. The claimant also filed a statement averring that she is a half-sister of Juan Padilla Ortiz; that she was close to Mr. Ortiz and that Mr. Ortiz's death caused her emotional pain; and that the full siblings of Mr. Ortiz had made a claim for compensation with the U. S. government in regard to the death of Mr. Ortiz and had not included Mr. Ortiz's half-siblings. On May 27, 2010, the claimant, through her attorney, submitted a new Statement of Claim form and a letter to the Commission withdrawing her claims under Categories B and C and stating that her claim should have been filed as a Category E claim as she was not a party to any prior litigation in regard to the death of Mr. Ortiz.

Claims under Category E of the January Referral Letter consist 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.

Based on the claimant's request and the new submissions identified above, the Commission will now consider whether the claimant's claim qualifies as a compensable claim under Category E of the January Referral Letter.

DISCUSSION

The threshold question presented by this claim is whether the claimant here can maintain a claim for the wrongful death of Mr. Ortiz when, as noted above, \$10 million has already been paid to the estate of Mr. Ortiz for the same wrongful death arising out of the same occurrence, as is now claimed. In addressing this question, the Commission has considered the facts of this and other Category E wrongful death claims before it, the provisions of the Claims Settlement Agreement, and the applicable principles of international law, justice and equity.

In considering the application of the Claims Settlement Agreement to this question, the Commission notes that the Department of State memorialized its intent to make one uniform payment for each wrongful death claim in its July 28, 2008 letter from Deputy Secretary of State John Negroponte to Speaker of the House of Representatives Nancy Pelosi, which set out the provisions the Department of State intended to follow in administering the Agreement. In particular, this letter noted that the Department of State would be paying \$10 million "per death" without requiring claimants to prove individual economic damages. Specifically, the letter, among other things, stated:

The other pending terrorism cases against Libya by U.S. nationals for wrongful death or physical injury are listed in the attachment to this letter. In determining whether the funds are adequate for these other claimants, we intend to require amounts sufficient so that these claimants are guaranteed compensation comparable to what we understand was provided for. . . fatalities in the Pan Am 103 settlement, that is . . . \$10 million per

death. We would also intend to provide this compensation on the same basis . . . without requiring U.S. claimants for wrongful death . . . to prove liability by Libya or individual economic damages.

Negroponte Letter at Page 2 (emphasis added).

The Department of State's payment of a single, fixed amount for each death without regard to economic damages is consistent with the Commission's prior practice. Specifically, in deciding claims made pursuant to the War Claims Act of 1948, the Commission paid a single, fixed amount for wrongful death claims without regard to economic damages. In one such case, the Commission noted that the War Claims Act sought to accomplish a "humane purpose" and that to "hold that one life is more valuable than another on the basis of rules that govern tort actions would serve only to defeat that purpose" and therefore awarded, in that program, a single, fixed amount of \$25,000 per wrongful death without requiring a showing of financial dependence on the decedent. *See, Claim of CLARA EMMA TINNEY*, Claim No. W-1276, Decision No. W-8 (Proposed Decision on May 13, 1964, Final Decision on May 13, 1964, Supplemental Final Decision on Dec. 8, 1965).

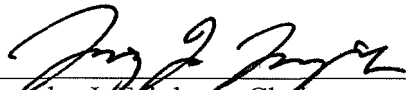
Payment of a single, fixed amount for each death without regard to economic damages is also similar to the approach taken by the United Nations Compensation Commission ("UNCC") in compensating its Category "B" wrongful death claims resulting from Iraq's invasion and occupation of Kuwait. Specifically, in regard to Category "B" claims the UNCC stated that "[d]ocumentation of the actual amount of loss resulting from the death . . . will not be required" and "no more than \$10,000 will be paid for death . . . with respect to any one family" UNCC Decision 1, paragraphs 12 and 13, S/AC.26/1991/1 (August 2, 1991). *See, also, Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" Claims)*, S/AC.26/1994/1 (May 26, 1994).

That payment of \$10 million for the wrongful death of Mr. Ortiz has already been made is clear. The December Referral Letter states: “[f]ollowing receipt of the settlement amount provided for in the Claims Settlement Agreement, the Department of State has undertaken to distribute payments for . . . death claims set forth by named parties in cases pending in U.S. courts on the date of enactment of the LCRA.” December Referral Letter at ¶ 1. The death claim for Mr. Ortiz was set forth by a named party in a case pending in a U.S. court on the date of enactment of the LCRA and payment was made to that named party. Specifically: (1) the Pending Litigation list appended as Attachment 1 to the January Referral Letter includes *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734; (2) the estate of Juan Padilla Ortiz was a named plaintiff in that suit; (3) the claimant has acknowledged that the death of Juan Padilla Ortiz formed the basis of a death claim submitted to the U.S. government; and (4) that death claim, according to information provided to the Commission by the Department of State, was found compensable and the compensation was paid to the estate of Mr. Ortiz.

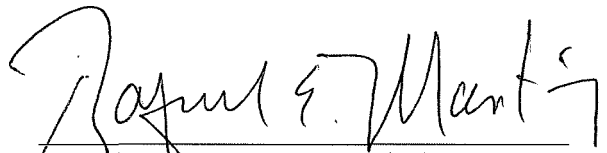
Considering all of the above, the Commission concludes that, with the payment of \$10 million to the estate of Juan Padilla Ortiz, for the wrongful death of Mr. Ortiz at Lod Airport during the 1972 terrorist attack, that wrongful death claim has been paid, and there is no further claim to be made by the claimant here. The Commission takes no position as to whether the claimant was or should have been deemed a beneficiary of the estate of Mr. Ortiz, and any claim by the claimant against the estate or the paid beneficiaries must be pursued in a different forum.

The Commission sympathizes with the claimant for the loss she suffered as the result of the death of Mr. Ortiz. Nevertheless, for the reasons set forth above, the Commission is constrained to conclude that her claim does not qualify as a claim for wrongful death or physical injury under Category E of the January Referral Letter. Accordingly, this claim is denied. The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, DC, May 10, 2011
and entered as the Proposed Decision
of the Commission.



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).

For the reasons discussed below, the Commission finds the claimant's arguments unavailing and affirms its denial as set forth in the Proposed Decision.

DISCUSSION

Claimant's first argument is that she meets the requirements of Category E of the January Referral Letter because: (1) she was not a plaintiff in a Pending Litigation; (2) Mr. Ortiz was her half-brother who was killed in a Covered Incident; (3) under Puerto Rico law she is not part of the estate of Mr. Ortiz and therefore could not participate in the federal lawsuit against Libya; (4) her claim before the Commission "is one of compensation for [her] emotional distress and suffering as a result of [her] brother's death, and to preclude [her] right of compensation as such goes against the very nature of the monies destined to the families of the victims of this ill-fated act;" and (5) her right to compensation for her emotional harm is recognized under Puerto Rico law. OM at 2-3.

Even if claimant's assertions are correct, claimant fails to recognize that the Commission's jurisdiction is limited to the claim categories referred to it by the Department of State, and that the January Referral Letter created categories of claims distinct from the causes of action that may have previously existed under state or federal law. *See*, 22 U.S.C. § 1623(a)(1)(C). Emotional harm claims are addressed in Category B of the January Referral Letter, and to be eligible for compensation under Category B the claimant must, *inter alia*, 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, ¶ 4.² Category E of the January Referral Letter does cover wrongful death claims (and physical injury claims) by claimants who were not plaintiffs in a Pending Litigation. However, the wrongful death claim for Mr. Ortiz has already been paid by the Department of State. To that point, the Commission noted in the Proposed Decision that the Department of State memorialized its intent to make one uniform payment for each wrongful death claim in its July 28, 2008 letter from Deputy Secretary of State John Negroponte to Speaker of the House of Representatives Nancy Pelosi, which set out the provisions that the Department of State intended to follow in administering the *Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* (“Claims Settlement Agreement”). In particular, this letter noted that the Department of State would be paying \$10 million “per death” without requiring claimants to prove individual economic damages. Specifically, the letter, among other things, stated:

The other pending terrorism cases against Libya by U.S. nationals for wrongful death or physical injury are listed in the attachment to this letter. In determining whether the funds are adequate for these other claimants, we intend to require amounts sufficient so that these claimants are guaranteed compensation comparable to what we understand was provided for. . . fatalities in the Pan Am 103 settlement, that is . . . \$10 million per death. We would also intend to provide this compensation on the same basis . . . without requiring U.S. claimants for wrongful death . . . to prove liability by Libya or individual economic damages.

Negroponte Letter at Page 2 (emphasis added).

² Claimant first filed her claim under Categories B and C of the January Referral Letter. After the Commission inquired as to how the claimant satisfied the requirements of those categories, the claimant withdrew her Category B and Category C claim and stated that her claim should have been filed as a Category E claim since she was not a party to any prior litigation in regard to the death of Mr. Ortiz.

The Commission also noted in the Proposed Decision that the Department of State's payment of a single, fixed amount for each death without regard to economic damage is consistent with the Commission's prior practice. Specifically, in deciding claims made pursuant to the War Claims Act of 1948, the Commission paid a single, fixed amount for wrongful death claims without regard to economic damage. In one such case, the Commission noted that the War Claims Act sought to accomplish a "humane purpose" and that to "hold that one life is more valuable than another on the basis of rules that govern tort actions would serve only to defeat that purpose" and therefore awarded, in that program, a single, fixed amount of \$25,000 per wrongful death without requiring a showing of financial dependence on the decedent. *See, Claim of CLARA EMMA TINNEY*, Claim No. W-1276, Decision No. W-8 (Proposed Decision on May 13, 1964, Supplemental Final Decision on Dec. 8, 1965).

As also noted in the Proposed Decision, payment of a single, fixed amount for each death without regard to economic damage is also similar to the approach taken by the United Nations Compensation Commission ("UNCC") in compensating its Category "B" wrongful death claims resulting from Iraq's invasion and occupation of Kuwait. Specifically, in regard to Category "B" claims the UNCC stated that "[d]ocumentation of the actual amount of loss resulting from the death . . . will not be required" and "no more than \$10,000 will be paid for death . . . with respect to any one family" UNCC Decision 1, paragraphs 12 and 13, S/AC.26/1991/1 (August 2, 1991).

As the Commission stated in the Proposed Decision, it is clear that payment of \$10 million for the wrongful death of Mr. Ortiz has already been made. The December

Referral Letter³ states: “[f]ollowing receipt of the settlement amount provided for in the Claims Settlement Agreement, the Department of State has undertaken to distribute payments for . . . death claims set forth by named parties in cases pending in U.S. courts on the date of enactment of the LCRA.” December Referral Letter at ¶ 1. The death claim for Mr. Ortiz was set forth by a named party in a case pending in a U.S. court on the date of enactment of the LCRA⁴ and payment was made to that named party. Specifically: (1) the Pending Litigation list appended as Attachment 1 to the January Referral Letter includes *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734; (2) the estate of Juan Padilla Ortiz was a named plaintiff in that suit; (3) the claimant has acknowledged that the death of Juan Padilla Ortiz formed the basis of a death claim submitted to the U.S. government; and (4) that death claim, according to information provided to the Commission by the Department of State, was found compensable and the compensation was paid to the estate of Mr. Ortiz.

The claimant’s second argument is that the Commission incorrectly paid the \$10 million “to individuals who supposedly had the sole right to collect the aforementioned monies.” OM at 4. The Objection Memo reiterates the claimant’s previously made assertion that the full siblings of Juan Padilla Ortiz improperly did not include the half-siblings in their “claim for compensation filed with the U.S. government.” OM at 1. In furtherance of this second argument, claimant contends that the “Commission acted upon

³ 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”).

⁴ Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008).

flawed and fraudulent information as [the claimant was] not included,” and that because this payment, which she mistakenly believes was made by the Commission,⁵ was based on fraudulent information, it “should not be considered final.” OM at 4. The claimant further states that the Commission erred when it stated in the Proposed Decision that it was not the proper forum to resolve these assertions; and that the Commission should at “the very least, refer this conduct to the relevant U.S. Government agency so an investigation may be conducted accordingly.” *Id.*

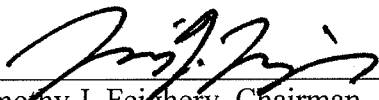
Claimant’s arguments notwithstanding, as the Commission stated in the Proposed Decision, and as discussed above, with the Department of State’s payment of \$10 million to the estate of Juan Padilla Ortiz for the wrongful death of Mr. Ortiz, that wrongful death claim has been paid, and there is no further claim to be made by the claimant here. Claimant argued at the oral hearing that the payment by the Department of State was based on a submission made by Mr. Ortiz’s full siblings which fraudulently did not identify his half-siblings.⁶ Such assertions or arguments cannot be decided by the Commission. The wrongful death payment was made by the Department of State, not by the Commission, and moreover, as noted in the Proposed Decision, the Commission is not the proper forum to address disputes the claimant has with the estate of Mr. Ortiz or the paid beneficiaries regarding distribution of the estate.

⁵ In fact, the Department of State distributed \$10 million to the estate of Mr. Ortiz from the settlement amount received by it pursuant to the Claims Settlement Agreement.

⁶ Claimant failed to articulate, let alone prove, the fraud alleged, and failed to provide any evidence of fraud. Indeed, it is unclear what fraud the claimant is alleging was perpetrated, as the Commission understands that the Department of State made payments to the wrongful death decedents’ estates, and the claimant acknowledges that she was not part of Mr. Ortiz’s estate.

In conclusion, for the reasons set forth above, the claim does not meet the requirements of Category E of the January Referral Letter. The denial set forth in the Proposed Decision in this claim is therefore affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, September 28, 2011
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner