

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 ALICIA ESTRELLA-MATOS, DECEASED;
RHODE ROSARIO-ESTRELLA, ADMINISTRATOR

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} Claim No. LIB-II-064

}
} Decision No. LIB-II-073

Against the Great Socialist People's
Libyan Arab Jamahiriya

Oral hearing held on June 20, 2012.

Counsel for Claimant:

Neal M. Sher, Esq.

FINAL DECISION

This claim filed under Category E of the January Referral arises from the alleged physical injuries suffered by claimant's decedent, Alicia Estrella-Matos, as a result of the attack at Lod Airport in Israel on May 30, 1972.

By its Proposed Decision dated July 29, 2011 the Commission denied this claim on the ground that Rhode Rosario-Estrella lacked standing to pursue the claim because she failed to obtain Letters of Administration or similar authority to represent the estate. The Commission further held that the claimant had failed to establish the identity of the heirs to Ms. Estrella Matos's estate, and that the evidence submitted was insufficient to establish the nature and extent of Ms. Estrella-Matos's injury.

On August 11, 2011, the claimant filed an objection and requested an oral hearing. Under cover of letters dated December 20, 2011, January 4, 2012, January 5, 2012, February 2, 2012 and March 12, 2012, Ms. Rosario-Estrella submitted additional

evidence, including: three Decisions of the Commonwealth of Puerto Rico, Trial Court, Bayamón Division, dated August 26, 2011, July 29, 2011, and May 24, 2011 regarding the Determination of Heirs of the Estate of Alicia Estrella-Matos as well as that of her deceased daughters, Raquel Rosario Estrella and Neftaly Rosario Estrella, respectively; evidence establishing the nationality of some of the heirs to the estate of Ms. Estrella Matos; a Resolution of the Court of First Instance, Bayamón Part naming an Estate Administrator; and a 1974 decision of the Superior Court of Puerto Rico, San Juan Division, distributing ex-gratia funds received by Puerto Rico from the government of Japan for the benefit of Puerto Ricans involved in the Lod Airport attack.

The hearing on the objection was held on June 20, 2012. During the hearing, counsel for the claimant requested additional time to submit further evidence to the Commission, which request was granted. Under cover of letters dated August 1, 2012 and August 4, 2012, the claimant submitted additional documentation including evidence of the U.S. nationality of several heirs to the claimant estate, newspaper articles, documents from the Israel Archives, and the sworn statement of Rhode Rosario-Estrella dated August 3, 2012, which included a picture of Ms. Estrella-Matos allegedly taken in June 1972.

DISCUSSION

Jurisdiction

Standing

The claimant estate has submitted a Resolution of the Court of First Instance, Bayamón Part, naming Rhode Rosario-Estrella—the individual who filed the present claim on behalf of the estate—as the administrator and representative of the Estate of

Alicia Estrella-Matos. Accordingly, the Commission finds that the claimant estate has established its standing to pursue this claim.

Nationality

With regard to the national character of the present claim, as noted above, the claimant estate has now submitted evidence establishing the identity of the heirs of the estate. Based on its review of the court documents and the evidence of U.S. nationality submitted by the claimant estate, the Commission finds that the claimant estate has established the U.S. character of this claim except to the extent of the interests held by Neftaly Rosario-Estrella and Raquel Rosario-Estrella for whom no evidence of U.S. nationality has been submitted.

The Commission has previously determined that, consistent with the ICSA and the January Referral¹, its jurisdiction to adjudicate claims extends only to the portion thereof continuously held by U.S. nationals.² Accordingly, those portions of the present claim in which Neftaly Rosario-Estrella and Raquel Rosario-Estrella held an interest are hereby denied on the ground that they were not held continuously by U.S. nationals. With regard to the remaining portions of this claim, the Commission finds that the claimant has met the jurisdictional requirements under Category E of the January Referral.

Merits

The Commission determined and set forth the standard for physical injury under Category E of the January Referral in *Claim of* 5 U.S.C. §552(b)(6) Claim No.

¹ January 15, 2009 *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")

² *Claim of* 5 U.S.C. §552(b) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009).

LIB-II-039, Dec. No. LIB-II-015 (2010); namely, that a claimant must establish that he or she suffered a discernible physical injury, more significant than a superficial injury, as a result of an incident referred to in the Pending Litigation; that he or she received medical treatment for the physical injury within a reasonable time; and verify his or her injury by medical records, in order to establish a compensable claim. The Commission has applied this standard consistently to all physical injury claims within its jurisdiction in this program.

With respect to the present claim, the claimant estate originally submitted the sworn statement of Rhode Rosario-Estrella—decedent’s daughter—in which she recalls the medical treatment her mother received as well as the impact that the injury had on her mother’s life and a newspaper article identifying Ms. Estrella-Matos as being among those injured. As noted above, in support of its objection, the claimant estate has submitted additional evidence consisting of newspaper articles, documents from the Israel Archives, an additional sworn statement of decedent’s daughter, Rhode Rosario-Estrella, dated August 3, 2012, and the 1974 Decision of the Superior Court of Puerto Rico, San Juan Division. Two of the newspaper articles and the documents from the Israel Archives—in a similar fashion to the previous newspaper article submitted—merely identify Ms. Estrella-Matos as being among those injured. The third newspaper article notes that claimant was “gravely injured” without any further discussion of her injuries.

In her sworn statement, Rhode Rosario-Estrella states that her mother’s injury “was in her right leg between the tibia and her calf and required 76 suture stitches.” She further states that when she returned to Puerto Rico her “mother required medical

attention for her wound” and that her “wound had to [be] constantly disinfected because it suppurated lead particles.” The photograph submitted along with Ms. Rosario Estrella’s statement—which she asserts was taken in her apartment in June 1972—depicts a woman sitting on a couch with what appears to be a bandage on her leg. The 1974 Superior Court decision also evidences that Ms. Estrella Matos was wounded and provides a rating of the severity of effect of this attack on her relative to others who were affected as a result of the Lod Airport attack.

At the outset, the Commission notes that in this program, those claimants who suffered a significant physical injury at Lod Airport, and who were treated in Israel, have usually been able to produce hospital records—at a minimum hospital discharge records—to substantiate their claims of physical injury. However, such evidence is lacking in the present claim. Nonetheless, the Commission, considering the evidence that has been submitted in the present claim, takes particular note of the 1974 Superior Court decision. In its decision, the court described the process by which it determined the quantum of compensation to be paid to each claimant. The court explained that it had appointed several doctors—specializing in areas such as internal medicine, surgery, neurology, and psychiatry—to serve as “Special Commissioners,” tasked with determining the relative degree, expressed in terms of points, of the physical and/or emotional damage suffered by each claimant as a result of the attack. The Special Commissioners were provided a questionnaire designed to determine the degree of the effect of the Lod airport attack on each claimant based upon “the medical, medical psychiatric, medical surgical experiences that the affected persons went through during their exposure to the incident, during their post-incident stay in Tel Aviv, and since their

return to Puerto Rico up to the present... .”

The relative weight of the respective elements is not indicated in the Court’s decision. Thus, based on this description, the injury rating determined by the Superior Court is a blend of determinations encompassing both physical and psychological injuries. Indeed, the Court appears to include in the calculation of psychological harm not only the direct psychological trauma suffered by individuals as a result of their exposure to the terrible events at Lod Airport, but also mental pain and anguish suffered by individuals as a result of the death of close relatives. The lack of distinction between the physical and psychiatric components of the reported ratings is important in the present program because the Commission has previously held that claims based on psychiatric or mental suffering are not compensable as “physical injuries” under Category E of the January Referral Letter.³

Counsel has been unable to shed any light on the factors that comprise Ms. Estrella Matos’ specific rating. In an effort to determine the appropriate weight that should be afforded to this 1974 Decision, the Commission has closely scrutinized the findings of the Superior Court with respect to each Lod Airport victim who is also a claimant here. The Commission has reviewed the Superior Court’s final determination in light of the claims made here, including all of the evidence submitted, and each of the Commission’s decisions on those claims in the present program. Of particular relevance here is the fact that while claims associated with Superior Court ratings of wounded victims ranging between 625 points and 1,900 points have been found compensable under the Commission’s physical injury standard, not all claims within this rating range have been found to be compensable in this program.

³ See, *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-II-128, Decision No. LIB-II-031 (2012).

For example, one particular claim decided by the Commission in this program was rated at 975 points by the Superior Court. Here, the Commission determined that the injury identified in the contemporaneous medical report, which had been submitted by the claimant, failed to meet the Commission's test for physical injury. Presumably, the rating of the Superior Court in that case was more heavily weighted on the psychological harm suffered by the claimant, rather than physical harm. In addition, a claimant designated under the Superior Court's decision as having been "unwounded"—indicating that this points rating was based solely on psychological injuries—rated higher than Ms. Estrella-Matos.

In light of its analysis of the Court's decision, the Commission finds that the mere rating of the Superior Court without more detailed evidence supporting the severity of the physical injury allegedly suffered by Ms. Estrella-Matos is, in and of itself, insufficient to support a determination by the Commission that the *physical* injuries she allegedly suffered were more than superficial.

The other evidence submitted by claimant includes a photograph of the injured area of the decedent's body. The photograph, however, is not helpful in determining the nature or extent of the injury for which compensation is now claimed because in the photograph, the affected area is covered by what appears to be a bandage. Consequently, the photograph fails to further the Commission's understanding of the extent of the injury. Likewise, the inclusion of Ms. Estrella-Matos on lists of wounded persons and descriptions of her being "gravely injured" in a newspaper article are neither individually nor cumulatively sufficient to establish the extent of her injury.

CONCLUSION

The Commission concludes, based on the evidence and information submitted in this claim as supplemented, that the claimant estate has not met its burden of proof in establishing that the injuries assertedly sustained by Ms. Estrella-Matos were discernible and more significant than superficial or that she received treatment for those injuries within a reasonable time as set out in the Commission's standard for compensable physical injury.⁴ Accordingly, the denial set forth in the Proposed Decision in this claim must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, October 26, 2012
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

⁴ 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).

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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 RHODE ROSARIO-ESTRELLA, based upon injuries said to have been sustained by Alicia Estrella Matos as a result of the terrorist attack at Lod Airport in Israel on May 30, 1972. Ms. Estrella Matos died in 1994 of causes unrelated to the attack.

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 dated January 15, 2009,*

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 E. According to the January Referral Letter, 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 Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

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 (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 Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On March 3, 2010, the Commission received a Statement of Claim asserting a claim under Category E of the January Referral Letter, together with exhibits supporting the elements of the claim. This submission included evidence of the U.S. nationality of Alicia Estrella Matos and that of the purported beneficiaries of her estate; a copy of a Death Certificate reflecting the date and place of the late Ms. Estrella Matos's death; and evidence relating to her presence at the terrorist incident at Lod Airport in Israel on May 30, 1972 as well as the injuries she allegedly suffered.

According to the Statement of Claim, Ms. Estrella Matos suffered grenade shrapnel injuries to her right leg during the Lod airport attack requiring treatment and hospitalization in Israel immediately following the incident. In support of the claim, a sworn statement from the claimant and a copy of a contemporaneous newspaper report in the Spanish language has been submitted.

DISCUSSION

Standing

As a threshold matter, claimant must establish that she is the proper claimant in this claim. In the case of claims brought on behalf of deceased victims, a claimant must

provide the Commission with evidence that he or she is legally entitled to bring the claim. *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). To this end, the Commission staff requested, by letters dated March 15, 2010 and March 18, 2011, that the claimant provide the Commission with evidence establishing the identity of the legal representative and the heirs of the estate. Claimant has failed to respond to these requests.¹ On this basis alone, the claim must fail.²

Claim for Death or Injury Resulting From a Covered Incident

The Commission held in *Claim of* ^{5 U S C §552(b)(6)} , Claim No. LIB-II-039, Dec. No. LIB-II-015 (2010), 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. *Claim of* ^{5 U S C §552(b)(6)} , *supra*, at 6-7. The claimant asserts that Ms. Estrella Matos suffered grenade shrapnel injuries to her right leg during the Lod airport attack. In support of this assertion the claimant has provided only her own sworn statement describing the injuries, and the subsequent effects of the injuries, suffered by Ms. Estrella


¹ 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).

² Given that the claimant has failed to establish the identity of the legal representative and beneficiaries of the estate, necessarily the claim must fail on the additional ground that claimant has failed to prove the continuous U.S. nationality of the legal representative and beneficiaries of the estate. *See Claim of* ^{5 U S C §552(b)(6)} ⁽⁶⁾ , *Claim No. LIB-I-001, Decision No. LIB-I-001 (2009)*.

Matos.³ As noted above, however, the Commission's physical injury standard requires that claimants must verify an injury by medical records, which have not been provided herein. Accordingly, the Commission further finds that this claim also fails to satisfy its physical injury standard.

In summary, the Commission finds that the claimant has failed to meet her burden to establish that she is the proper claimant in this claim, that the claim was held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement, or that the injury sustained by Ms. Estrella Matos satisfies the Commission's standard for physical injury. For any or all of these reasons, the Commission concludes that this claim does not qualify for compensation under Category E of the January Referral Letter. Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, July 29, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael V. 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).

³ 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).