

**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 PILAR MARTINEZ RIVERA, DECEASED;	}	Claim No. LIB-III-029
RAMON ENRIQUE MARTINEZ ROSA, ADMINISTRATOR	}	
	}	Decision No. LIB-III-018
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joshua M. Ambush, Esq. Joshua M. Ambush, LLC
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PROPOSED DECISION

Claimant Estate brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") for mental pain and anguish suffered by Pilar Martinez Rivera (the "estate-decedent") as a result of the death of the estate-decedent's brother, Miguel Enrique Martinez Rivera (the "victim-decedent"), who was killed in the terrorist attack at Lod Airport in Israel on May 30, 1972. Because the Claimant Estate has established that the estate-decedent was, as of the date of the November 2013 Referral, a living close relative of the victim-decedent and satisfies all other legal requirements entitling the Claimant Estate to an award of compensation from this Commission, the Claimant Estate is entitled to an award of \$200,000.00.

**BACKGROUND AND BASIS OF THE PRESENT CLAIM**

Claimant Estate alleges that the estate-decedent's brother was killed in the terrorist attack at Lod Airport in Israel on May 30, 1972, and that the estate-decedent had

a close relationship with him and was deeply affected by his death. Claimant Estate contends that it is thus entitled to compensation from Libya.

In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya. Included among those settled claims were all claims for mental pain and anguish based on wrongful death arising out of various terrorist attacks, including the one at Lod Airport. *See 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; *see also* Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). Thus, although the estate-decedent had not brought a lawsuit against Libya, the U.S. and Libya settled any claim she might have had arising out of that terrorist attack. In October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission. *See* International Claims Settlement Act of 1949 (“ICSA”), 22 U.S.C. § 1623(a)(1)(C)(2012). The Secretary has delegated that authority to the State Department’s Legal Adviser, who, by letters dated December 11, 2008, January 15, 2009, and November 27, 2013, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

The third of these referral letters is at issue here. *Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement*

*Commission* (“2013 Referral” or “November 2013 Referral”). Under the 2013 Referral, one category of claims, known as Category E, states as follows:

This category 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 under the Claims Settlement Agreement, provided that (1) the claimant was not a plaintiff 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 claim meets the standard adopted by the Commission for mental pain and anguish; and (4) the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral. We believe and recommend that a fixed amount of \$200,000 would be an appropriate level of compensation for a claim that meets the applicable standards under this Category.

*Id.* at ¶ 7. Attachment 1 to the 2013 Referral lists the suits comprising the Pending Litigation.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of this third Libya claims program pursuant to Title I of ICOSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On June 2, 2014, the Commission received from estate-decedent a completed Statement of Claim seeking compensation under Category E of the 2013 Referral, and on December 18, 2014, and April 22, 2015, Claimant Estate submitted additional evidence supporting its claim.

#### DISCUSSION

Claimant Estate has submitted a decision issued by the Court of First Instance of Puerto Rico, Superior Division of Arecibo, dated March 13, 2015, which appointed Ramon Enrique Martinez Rosa as the Administrator of the estate of Pilar Martinez Rivera. Accordingly, the Commission finds that the ESTATE OF PILAR MARTINEZ

RIVERA, DECEASED; RAMON ENRIQUE MARTINEZ ROSA, 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 in the 2013 Referral; namely, the claims of individuals who (1) are U.S. nationals; (2) were not a named party in any of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral; (3) have a close relative whose death formed the basis of a death claim compensated under the Claims Settlement Agreement; (4) are not eligible for compensation from the associated wrongful-death claim, and did not receive any compensation from the wrongful-death claim; and (5) have not received any compensation under any other distribution under the Claims Settlement Agreement, and do not qualify for any other category of compensation under the 2013 Referral. 2013 Referral, *supra*, ¶ 7.

#### *Nationality*

This claims program is limited to "claims of U.S. nationals." Here, this means that a claimant must have been a national of the United States continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, at 4 (2015).

Claimant Estate satisfies this requirement. It has provided, among other documents, copies of the estate-decedent's Puerto Rico birth certificate and the estate-decedent's Puerto Rico death certificate. This evidence establishes that this claim was held by a U.S. national at the time the victim-decedent was killed on May 30, 1972, and was so held continuously until the effective date of the Claims Settlement Agreement.

*Pending Litigation*

To be eligible for compensation under Category E of the 2013 Referral, the claimant must not have been a named party in any of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral. 2013 Referral, *supra*, ¶ 7. The estate-decedent and her counsel have represented to the Commission under penalty of 18 U.S.C. § 1001, a statute akin to a perjury statute, and the Commission has verified, that the estate-decedent was not a named party in any of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral. The Claimant Estate was not established until after the estate decedent's death in September 2014 and thus could not have been a named party in any of the Pending Litigation cases, and the Commission has verified this. Claimant Estate's claim thus satisfies this requirement.

*Death Claim Compensated Under the Claims Settlement Agreement*

Category E of the 2013 Referral also requires that the death for which Claimant seeks mental-pain-and-anguish compensation have been the basis of a death claim compensated under the Claims Settlement Agreement. Here, this element of jurisdiction has been satisfied: the Commission awarded compensation for the wrongful-death claim of the estate-decedent's brother under Category E of the 2009 Referral.<sup>1</sup> *See* Claim No. LIB-II-080, Decision No. LIB-II-150 (2012).

*Other Compensation*

Category E of the 2013 Referral is limited to claims where the claimant is not eligible for compensation from the associated wrongful-death claim; the claimant did not receive any compensation from the wrongful-death claim; the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement;

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<sup>1</sup> 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 ("2009 Referral").

and the claimant does not qualify for any other category of compensation under the 2013 Referral. 2013 Referral, *supra*, ¶ 7. Neither Claimant Estate nor the estate-decedent was a beneficiary of the award made by the Commission in the wrongful-death claim arising out of the estate-decedent's brother's death. See Claim No. LIB-II-080, Decision No. LIB-II-150, *supra*, at 6. The estate-decedent and her counsel have further represented under penalty of 18 U.S.C. § 1001, a statute akin to a perjury statute, that she is not eligible for compensation from the associated wrongful-death claim; that she did not receive any compensation from the wrongful-death claim; that she did not receive any compensation under any other distribution under the Claims Settlement Agreement; and that she did not qualify for any other category of compensation under the 2013 Referral. The Commission has no reason to doubt these representations. Since the Claimant Estate was not established until after the estate-decedent's death in September 2014, we presume it was not eligible for compensation from the associated wrongful-death claim; did not receive any compensation from the wrongful-death claim or any other distribution under the Claims Settlement Agreement; and could not qualify for any other category under the 2013 Referral, because estate-decedent herself did not so qualify. Claimant Estate thus satisfies these final jurisdictional requirements.

In summary, therefore, the Commission concludes that this claim is within the Commission's jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

#### Merits

##### *Claimant Must Have Been Living at the Time of the 2013 Referral*

To be eligible for compensation under Category E, the 2013 Referral states that a claimant must be a "living" close relative of a decedent. The Commission has previously held that a claimant must have been living as of the date of the relevant referral from the

State Department as well as at the time of the incident which served as the basis of the Pending Litigation case and caused the mental pain and anguish. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 6. Claimant Estate has satisfied this requirement, as evidenced by the estate-decedent's birth certificate, recording that she was born on November 1, 1925, and the estate-decedent's death certificate, recording that she died after the 2013 Referral, on September 4, 2014. *See* Claim No. LIB-II-180, Decision No. LIB-II-079 at 5-6 (2011) (allowing a claim under the nearly identical Category B of the second Libya claims program which was brought by the estate of a decedent who died after the relevant referral letter).

*Claimant Must Be a Close Relative of the Decedent*

The 2013 Referral Letter also requires a Category E claimant to be a "close relative" of a decedent. The Commission has previously held that, in this category of claims, the term "close relatives" comprises those relatives who are immediate family to the decedent: spouses, children, parents, and siblings. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 6-7; *see also* Claim No. LIB-II-044, Decision No. LIB-II-001 at 6 (2010).

Claimant Estate has established that the estate-decedent was the victim-decedent's sister, as evidenced by the estate-decedent's and the victim-decedent's birth certificates, which list the same mother and father. Claimant Estate's decedent was thus a "close relative" of the victim-decedent, and the Claimant Estate has therefore met this standard.

*Mental Pain and Anguish Standard*

The 2013 Referral Letter requires that a claim meet "the standard adopted by the Commission for mental pain and anguish." 2013 Referral ¶ 7. In adjudicating claims under this category of the 2013 Referral and the similar Category B of the 2013 Referral, the Commission has presumed that all spouses, children, parents, and full siblings of a

decedent suffered mental pain and anguish. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 7; and Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 7.

Since the estate-decedent is a full sibling of the victim-decedent, the Claimant Estate is entitled to this presumption. *See* 2013 Referral ¶ 7. Moreover, Claimant Estate has provided an affidavit from one of the estate-decedent and victim-decedent's sisters describing the estate-decedent's close relationship with the victim-decedent, and the Commission has no evidence to the contrary. Claimant Estate has thus satisfied the standard adopted by the Commission for mental pain and anguish.

#### COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation. The 2013 Referral recommends a fixed amount of \$200,000 for claims that meet the applicable standard under Category E. 2013 Referral, *supra* ¶ 7. This is the same fixed amount that was recommended for compensable claims in the similar Category B of the 2013 Referral and the similar Category B of the 2009 Referral. In its first decision addressing compensation for mental pain and anguish under the 2009 Referral, the Commission carefully reviewed its prior claims programs, as well as those of other tribunals and commissions that had adjudicated wrongful-death claims, including the September 11th Compensation Fund of 2001. The Commission noted the nature and tragedy of the events associated with the Pending Litigation cases and determined that \$200,000 was an appropriate amount of compensation for mental-pain-and-anguish claims. *See* Claim No. LIB-II-044, Decision No. LIB-II-001, at 9-10 (2010). This fixed sum was therefore awarded to all claimants under the 2009 Referral with compensable mental-pain-and-anguish claims. The same \$200,000 fixed amount has been awarded to mental-pain-and-anguish claims in the 2013



Referral, *see* Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 7-9, including in other Category E claims, *see* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 7-8. The Commission has also previously determined, based on consideration of the applicable principles of international law and its own precedent, that it will not award interest in this category of claims. *Id.* Accordingly, Claimant Estate is entitled to an award of \$200,000.00, and this amount constitutes the entirety of the compensation that the Claimant Estate is entitled to in the present claim.

The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICOSA. 22 U.S.C. §§ 1626-27 (2012).

AWARD

Claimant Estate is entitled to an award in the amount of Two Hundred Thousand Dollars (\$200,000.00).

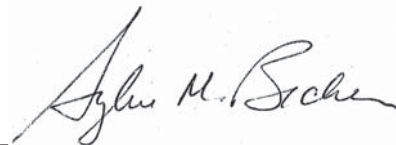
Dated at Washington, DC, May 12, 2015  
and entered as the Proposed Decision  
of the Commission.

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

**July 1, 2015**



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Anuj C. Desai, Commissioner



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Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery 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 delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2014).