

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579**

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-II-379
	}	
	}	Decision No. IRQ-II-258
	}	
Against the Republic of Iraq	}	
	}	

PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq violated international law when it injured the decedent, James Dunlap, in a missile attack on the U.S.S. *Stark* in 1987. Because Claimant Estate has not identified a legally authorized representative to represent it before the Commission or established that the claim satisfies the continuous nationality and pending litigation jurisdictional requirements in this program, this claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate asserts that Mr. Dunlap was a sailor enlisted in the U.S. Navy who was aboard the U.S.S. *Stark* in May 1987 when Iraq attacked the ship with cruise missiles. It further asserts that one of these missiles hit Mr. Dunlap and killed him instantly.

Although neither Mr. Dunlap nor Claimant Estate were among them, a number of U.S. nationals sued Iraq (and others) in federal court for, among other things, assaults that

were allegedly perpetrated by the Iraqi government.¹ Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.² The Agreement, which entered into force in May 2011, covered a number of personal injury claims of “U.S. nationals” arising from acts of the former Iraqi regime occurring prior to October 7, 2004, including certain physical-injury claims.³ The Agreement defined “U.S. nationals” as “natural and juridical persons who were U.S. nationals at the time their claim arose and through the date of entry into force of this Agreement.”⁴

Under the International Claims Settlement Act of 1949 (“ICSA”), the Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission.⁵ The Secretary has delegated that authority to the State Department’s Legal Adviser, who, by letter dated October 7, 2014, referred three categories of claims to this Commission for adjudication and certification.⁶ This was the State Department’s second referral of claims to the Commission under the Claims Settlement Agreement, the first having been by letter dated November 14, 2012 (“2012 Referral” or “November 2012 Referral”).⁷

¹ See, e.g., *Seyam v. Republic of Iraq*, No. 1:03-cv-00888 (D.D.C.); *Simon v. Republic of Iraq*, No. 1:03-cv-00691.

² See *Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 (“Claims Settlement Agreement” or “Agreement”).

³ See *id.* Art. III(1)(a)(ii).

⁴ See *id.* Art. I(2).

⁵ See 22 U.S.C. § 1623(a)(1)(C) (2012).

⁶ See *Letter dated October 7, 2014, 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* (“2014 Referral” or “October 2014 Referral”).

⁷ See *Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission* (“2012 Referral” or “Referral”).

One category of claims from the 2014 Referral is relevant here. That category, known as Category C, consists of

claims of U.S. nationals for any personal injury resulting from physical harm to the claimant caused by Iraq in violation of international law prior to October 7, 2004, provided that the claimant: 1) had pending litigation against Iraq arising out of acts other than hostage taking; 2) has not already been compensated pursuant to the Claims Settlement Agreement; and 3) does not have a valid claim under and has not received compensation pursuant to Category B of this referral.

2014 Referral at ¶ 5.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSA and the 2014 Referral.⁸

On July 6, 2017, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category C of the 2014 Referral.

DISCUSSION

In the case of claims brought on behalf of deceased individuals, a claimant must provide the Commission with evidence that he or she is legally entitled to bring the claim.⁹ On July 7, 2017, the Commission sent a letter to Claimant Estate, requesting that it provide legal proof of the identity of the personal representative (*e.g.* letters testamentary or letters of administration issued by the appropriate court or judge). No such evidence has been provided. We thus conclude that the Claimant Estate has failed to identify a legally authorized estate representative. On this basis alone, the claim must fail.

Nationality

This claims program is limited to claims of “U.S. nationals.” Here, that means the

⁸ *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).

⁹ See Claim No. LIB-III-064, Decision No. LIB-III-049 (Final Decision), at 5.

claim must have been held by a national of the United States when the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force.¹⁰ Because the decedent, Mr. Dunlap, died before May 22, 2011, this claim passed from him to his estate prior to May 22, 2011. In such circumstances, the estate must also be a U.S. national.¹¹ For an estate to be viewed as a U.S. national requires that all of the estate's beneficiaries also be U.S. nationals.¹² Thus, to satisfy the U.S. nationality requirement, Claimant Estate must show that Mr. Dunlap was a U.S. national from the time of the alleged injury until he died¹³ and that all of the Estate's beneficiaries were U.S. nationals from Mr. Dunlap's death until May 22, 2011.

Claimant Estate has failed to satisfy the nationality requirement, because it has failed to establish the identity of Mr. Dunlap's legal heirs. On July 7, 2017, the Commission sent a letter to Claimant Estate requesting that it provide legal proof of the identity of Mr. Dunlap's heirs. To date, the Commission has not received any evidence of the identity of Mr. Dunlap's legal heirs. Without knowing who Mr. Dunlap's legal heirs are, the Commission is unable to determine if this claim has been held continuously by U.S. nationals.

Pending Litigation

Additionally, under the express terms of the 2014 Referral, quoted above, a claimant seeking compensation under Category C must have had pending litigation against

¹⁰ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

¹¹ See, e.g., Claim No. Y-0660, Decision No. Y-1171 (1954); Claim No. W-9801, Decision No. W-2107 (1965); Claim No. G-2154, Decision No. G-1955 (1981); and Claim No. ALB-338, Decision No. ALB-321 (2008).

¹² *Id.*

¹³ The essence of the underlying substantive claim appears to be that Mr. Dunlap was killed in a missile attack. If true, his injury and his death were on that same date, and so Claimant Estate would need to establish that Mr. Dunlap was a U.S. national on that date.

Iraq arising out of acts other than hostage taking.¹⁴ In a development letter dated July 7, 2017, and in several subsequent emails sent later in 2017 and 2018, the Commission requested that Claimant Estate provide evidence that it had a lawsuit pending against Iraq for an act other than hostage-taking at the time of the Claim Settlement Agreement. As yet, Claimant Estate has not submitted any such proof, and our independent research has yielded no evidence that Mr. Dunlap's estate ever brought suit against Iraq.

Moreover, the available evidence indicates that in 1989, the U.S. and Iraqi governments reached a "full and final settlement" of claims that the U.S. brought against Iraq for the deaths of 37 U.S. nationals (including Mr. Dunlap) resulting from Iraq's May 17, 1987 attack on the U.S.S. *Stark*.¹⁵

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.¹⁶

¹⁴ 2014 Referral at ¶ 5.

¹⁵ Iraq-United States: Agreement on Compensation in U.S.S. Stark Incident, Mar. 27-28, 1989, 28. I.L.M. 644. In a diplomatic note that formed part of the Agreement, the U.S. government accepted the settlement offered "on behalf of all the claimants seeking compensation as a result of the deaths of the 37 individuals involved." *Id.* at 645. It also indicated that it would "be solely responsible for the distribution of the funds." *Id.* News articles published in 1989 state that the payments were distributed to the victims' families according to a formula based on the serviceman's seniority and the financial need of his family. See Elaine Sciolino, *Iraq to Pay U.S. in Sailors' Deaths*, N. Y. TIMES, Mar. 28, 1989, A5; Richard Pyle, *Navy Ceremonies Mark 2nd Anniversary of U.S.S Stark Attack*, ASSOCIATED PRESS, May 17, 1989, Lexis.

¹⁶ 45 C.F.R. 509.5(b) (2017).

The Commission is accordingly constrained to conclude that the Claimant Estate has failed to meet its burdens to establish that (1) the claim is being brought by a legally authorized estate representative, (2) the claim has been continuously owned by U.S. nationals, and (3) the Claimant Estate had pending litigation against Iraq for acts other than hostage-taking at the time of the Claims Settlement Agreement. Therefore, this claim must be, and hereby is, denied.

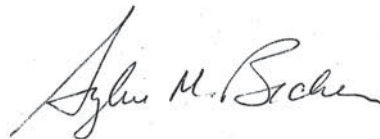
Dated at Washington, DC, April 11, 2018
and entered as the Proposed Decision
of the Commission.

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

July 10, 2018



Anuj C. Desai, Commissioner



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) (2018).