

THE LEGAL ADVISER

DEPARTMENT OF STATE

WASHINGTON

January 15, 2009

The Honorable Mauricio J. Tamargo,
Chairman,
Foreign Claims Settlement Commission of the United States
Department of Justice
Washington, DC 20579

Dear Mr. Tamargo:

On August 14, 2008, the United States entered into the Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya ("Claims Settlement Agreement"). On October 31, the Secretary of State certified, pursuant to the Libyan Claims Resolution Act ("LCRA"), 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. . .". Also on October 31, 2008, in Executive Order 13477, the President ordered that claims of United States nationals coming within the terms of the Claims Settlement Agreement "are espoused by the United States." Executive Order 13477 directed the Secretary of State to establish procedures governing applications by United States nationals with claims coming within the terms of the Claims Settlement Agreement, and it prohibited United States nationals from asserting or maintaining such claims "except under the procedures provided for by the Secretary of State." Following receipt of the settlement amount provided for in the Claims Settlement Agreement, the Department of State has undertaken to distribute payments for certain claims within the scope of Article I of the Claims Settlement Agreement: the Pan Am 103 and LaBelle Discotheque settlement claims, as well as death claims set forth by named parties in cases pending in U.S. courts on the date of enactment of the LCRA.

On December 11, 2008, pursuant to the discretionary authority under 22 U.S.C. § 1623(a)(1)(C) delegated to me by the Secretary of State, I referred one category of claims within the scope of Article I of the Claims Settlement Agreement to the Foreign Claims Settlement Commission of the United States ("Commission") for adjudication and certification: claims for physical injury. With this letter, under this same discretionary authority, I am referring additional categories of claims for adjudication and certification. Again, we believe the Commission is particularly well-suited to undertake this task. The Commission is requested to make determinations with respect to six categories of claims (Categories A, B, C, D, E and F, below) in accordance with the provisions of 22 U.S.C. § 1621 et seq., the Claims Settlement Agreement and the LCRA. I have enclosed at Attachment 1 a list of cases pending in U.S. courts on the date of enactment of the LCRA in which plaintiffs allege a claim relevant to this referral ("Pending Litigation").

Category A: This category of claims shall consist of claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, provided that (1) the claimant meets the standard for such claims adopted by the Commission; (2) the claim was set forth as a claim for injury other than emotional distress alone by the claimant named in the Pending Litigation; (3) the Pending Litigation

against Libya¹ has been dismissed before the claim is submitted to the Commission; and (4) the claimant did not receive an award pursuant to our referral of December 11, 2008. Given the amount we recommended for physical injury claims in our December 11, 2008 referral, we believe and recommend that a fixed amount of \$1 million would be an appropriate level of compensation for all damages for a claim that meets the applicable standards under Category A.

Category B: 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 by the Department of State provided that (1) the claim was set forth as a claim for emotional distress, solatium, or similar emotional injury by the claimant named 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 claimant has not received any compensation under any other part of the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral; and (4) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission. 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 Category B.

Category C: This category shall consist of claims of U.S. nationals for compensation for wrongful death, in addition to amounts already recovered under the Claims Settlement Agreement, where there is a special circumstance in that the claimants obtained a prior U.S. court judgment in the Pending Litigation awarding damages for wrongful death, provided that (1) the Commission determines that the existence of a prior U.S. court judgment for wrongful death warrants compensation in addition to the amount already recovered under the Claims Settlement Agreement; and (2) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission. If the Commission decides to award additional compensation for claims that meet these criteria, we recommend that the Commission award an appropriate amount up to but no more than the amount of the part of the judgment awarded to the decedent's estate as against the state of Libya or its agencies or instrumentalities, minus any interest awarded in that judgment and minus any award to the decedent's estate given by the Department of State.

Category D: This category shall consist of claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by our December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to our December 11, 2008 referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim's death; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission. If the Commission decides to award additional compensation for claims that meet these criteria, we recommend that the Commission award up to but no more than an additional \$7 million per claim (offering the possibility that some injury cases will be compensated at the \$10 million level of the wrongful death claims processed by the Department of State).

Category E: This category shall 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. If the Commission decides to award compensation for these claims, we recommend that the

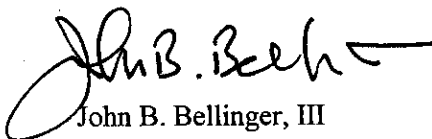
¹ Except where specifically stated otherwise, for purposes of the criteria in Categories A, B, C, D, and F, "Libya" shall include Libya and its agencies or instrumentalities; officials, employees, and agents of Libya or Libya's agencies or instrumentalities; and any Libyan national (including natural and juridical persons).

Commission take into account the fixed amounts awarded by the Department of State for wrongful death claims and recommended for physical injury claims in our December 11, 2008 referral.

Category F: This category shall consist of commercial claims of U.S. nationals provided that (1) the claim was set forth by the claimant named in the Pending Litigation; (2) the Commission determines that the claim would be compensable under the applicable legal principles; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Please direct any inquiries you may have to the Department of State's Office of International Claims and Investment Disputes, Suite 203, South Building, 2430 E Street, NW, Washington, DC, 20037-2800.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. Bellinger, III". The signature is stylized with a large, looping initial "J" and a horizontal line extending to the right.

John B. Bellinger, III

Attachment 1¹
("Pending Litigation")

Baker v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 03-cv-749; *Pflug v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-505.

Certain Underwriters at Lloyds London v. Great Socialist People's Libyan Arab Jamahiriya (D.D.C.) 06-cv-731.

Clay v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 06-cv-707.

Collett v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 01-cv-2103.

Cummock v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 02-cv-2134.

Estate of John Buonocore III v. Great Socialist Libyan Arab Jamahiriya (D.D.C.) 06-cv-727; *Simpson v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-529.

Fisher v. Great Socialist People's Libyan Arab Jamahiriya (D.D.C.) 04-cv-2055.

Franqui v. Syrian Arab Republic, et al. (D.D.C.) 06-cv-734.

Hagerman v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 02-cv-2147.

Harris v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 06-cv-732.

Hartford Fire Insurance Company v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 98-cv-3096.

Kilburn v. Islamic Republic of Iran, et al. (D.D.C.) 01-cv-1301.

Knowland v. Great Socialist People's Libyan Arab Jamahiriya (D.D.C.) 08-cv-1309.

La Reunion Aerienne v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 05-cv-1932.

McDonald v. Socialist People's Arab Jamahiriya (D.D.C.) 06-cv-729.

MacQuarrie v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 04-cv-176.

Patel v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 06-cv-626.

¹ Included in this list are cases in which plaintiffs allege hostage taking or unlawful detention, emotional distress, wrongful death, physical injury, or commercial loss, without consideration of whether plaintiffs would meet the other criteria in the relevant category. For example, every case is included in which a plaintiff alleges emotional distress, without considering whether he or she would be eligible for compensation from an associated wrongful death claim.

Pugh v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 02-cv-2026.

Simpson v. Socialist People's Libyan Arab Jamahiriya (D.D.C.) 00-cv-1722.

Attachment 2

("Covered Incidents" for Purposes of Category E)

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.

December 17, 1983 vehicle bomb explosion near Harrods Department Store in Knightsbridge, London, England, as alleged in *McDonald v. Socialist People's Arab Jamahiriya* (D.D.C.) 06-cv-729.

November 30, 1984 (approximate) kidnapping and subsequent death of Peter C. Kilburn, as alleged in *Kilburn v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 01-cv-1301.

March 25, 1985 (approximate) kidnapping and subsequent death of Alec L. Collett, as alleged in *Collett v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 01-cv-2103.

November 23, 1985 hijacking of Egypt Air flight 648, as alleged in *Certain Underwriters at Lloyds London v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-731 and *Baker v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 03-cv-749/*Pflug v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-505.

December 27, 1985 attack at the Leonardo da Vinci Airport in Rome, Italy, as alleged in *Estate of John Buonocore III v. Great Socialist Libyan Arab Jamahiriya* (D.D.C.) 06-cv-727/*Simpson v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-529.

December 27, 1985 attack at the Schwechat Airport in Vienna, Austria, as alleged in *Knowland v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-1309.

April 5, 1986 bombing of the La Belle Discotheque in Berlin, Germany, as alleged in *Clay v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-707 and *Harris v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-732.

September 5, 1986 hijacking of Pan Am flight 73, as alleged in *Patel v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-626.

Detention beginning February 10, 1987 of the passengers and crew of the private yacht "Carin II," as alleged in *Simpson v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 00-cv-1722.

December 21, 1988 bombing of Pan Am flight 103, as alleged in *Cummock v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 02-cv-2134, *Fisher v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 04-cv-2055, *Hagerman v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 02-cv-2147, *Hartford Fire Insurance Company v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 98-cv-3096, and *MacQuarrie v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 04-cv-176.

September 19, 1989 bombing of UTA flight 772, as alleged in *La Reunion Aerienne v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 05-cv-1932 and *Pugh v. Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 02-cv-2026.