

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

November 14, 2012

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

Dear Mr. ^{Tim}Feighery:

On September 2, 2010, The United States entered into the Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq ("Claims Settlement Agreement"). The Claims Settlement Agreement was approved by the Iraqi Parliament, and on June 21, 2011, Iraq transferred the \$400 million settlement amount to the U.S. Treasury. The Claims Settlement Agreement covers claims of U.S. nationals against Iraq that "arise from alleged personal injury (whether physical or non-physical, including emotional distress) or death caused by any act of torture, extrajudicial killing, aircraft sabotage, hostage-taking, or the provision of material support or resources for such an act" for acts that occurred prior to October 7, 2004, as well as physical injury claims that were the subject of an exchange of diplomatic notes in 1990. The Agreement settled and extinguished all claims falling within its ambit, and the United States agreed to terminate all legal proceedings in U.S. courts arising from such claims, to nullify all attachments and judgments obtained in connection with such claims, and to preclude all further U.S. litigation based on such claims. Following the receipt of the settlement funds transferred by Iraq, the Department of State has undertaken to distribute payments for certain claims covered by the Claims Settlement Agreement, including claims of former prisoners of war, claims of the spouses of prisoners of war, claims of former hostages and human shields with unpaid judgments against Iraq or those with pending litigation against Iraq, and compensation for U.S. servicemen injured in the 1987 attack on the U.S.S. Stark.

Pursuant to the discretionary authority under 22 U.S.C. §1623(a)(1)(C) delegated to me by the Secretary of State, I am referring a category of claims within the scope of the Claims Settlement Agreement to the Foreign Claims Settlement Commission of the United States ("Commission") for adjudication and certification. We believe that the Commission is particularly well-suited to undertake this task. The Commission is requested to make determinations with respect to the claims described below, in accordance with the provisions of 22 U.S.C. §1621 et seq.

Category of Referred Claims: This category shall consist of claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq¹ in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking² provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State³ for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, "serious personal injury" may include instances of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.

If the Commission decides to award compensation for claims that meet these criteria, we recommend that the Commission award up to but no more than \$1.5 million per claim.

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 St, NW, Washington, DC 20038-2800.

Sincerely,



Harold Hongju Koh
Legal Adviser

¹ For purposes of this referral, "Iraq" shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

² Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

³ The payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.