

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, DC 20579

In the Matter of the Claim of	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-I-004
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	Decision No. LIB-I-045
	}	

Counsel for Claimant:

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Perles Law Firm, PC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon physical injuries said to have been sustained by 5 U.S.C. §552(b)(6) at the La Belle Discotheque in West Berlin, Germany on April 5, 1986.

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 December 11, 2008, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication a category of claims of United States nationals against Libya. *Letter from*

*the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission*

(“December Referral Letter”). The category of claims referred consists of

claims of U.S. nationals for physical injury, provided that (1) the claim meets the standard for physical injury adopted by the Commission; (2) the claim is set forth as a claim for injury other than emotional distress alone by a named party in the Pending Litigation; and (3) the Pending Litigation against 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) has been dismissed before the claim is submitted to the Commission.

*Id.* at ¶ 3. Attachment 1 to the December Referral Letter lists the suits comprising the Pending Litigation.

The December Referral Letter 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 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 Secretary of State certified, pursuant to the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008), that the United States Government had received funds sufficient to ensure “fair compensation of claims of nationals of the United States for . . . physical injury in cases pending on the date of enactment of this Act against Libya . . . .” On the same day, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Oct. 31, 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 March 23, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this Libya Claims Program pursuant to the ICOSA and the December Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 12,148 (2009).

#### BASIS OF THE PRESENT CLAIM

On May 13, 2009, the Commission received from claimant a completed Statement of Claim and accompanying exhibits supporting the claim, including evidence of: claimant's U.S. nationality; his inclusion as a named party in the complaint filed in *Clay v. Socialist People's Libyan Arab Jamahiriya*, 06-cv-707 (D.D.C.), part of the Pending Litigation referred to in Attachment 1 of the December Referral Letter, in which the claimant set forth a claim for injury other than emotional distress alone; the dismissal of the *Clay* case; and the claimant's alleged physical injuries.

The claimant 5 U.S.C. §552(b)(6) states that he was standing at the bar inside the La Belle Discotheque in West Berlin, Germany on April 5, 1986, when an explosion tore through the building, lifting him into the air and throwing him onto the floor approximately ten feet away. Claimant further states that he landed forcefully on the floor, striking his back and head. According to the Statement of Claim and accompanying exhibits, claimant suffered lacerations to his arms and knees, a ruptured eardrum, and injuries to his tailbone and lumbar discs. According to the claimant, he was unable to

move “for some time,” but eventually was assisted out of the club and taken to a hospital, where he was treated for his wounds.

The claimant has provided evidence of his United States nationality, both on the date of the incident and at the time of the Settlement Agreement. Additionally, claimant has provided the results of recent medical evaluations; a CID casualty list,<sup>1</sup> dated April 10, 1986, that lists him as one of the injured; copies of his medical records from the date of the incident and subsequently; a copy of U.S Army Permanent Order 82-2, dated May 16, 1986, awarding him a Purple Heart; and other documents in support of his claim.

## DISCUSSION

### Jurisdiction

The Commission must first consider whether this claim falls within the category of claims referred to it by the Department of State. Under subsection 4(a) of the ICOSA, the Commission’s jurisdiction here is limited to the category of claims defined under the December Referral Letter; namely, claims of individuals who: (1) are U.S. nationals; (2) are named parties in a Pending Litigation case against Libya which has been dismissed; and (3) set forth a claim in the Pending Litigation for injury other than emotional distress alone. December Referral Letter, *supra* ¶¶ 2-3.

### *Nationality*

In the *Claim of 5 U.S.C. §552(b)(6)*, Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally

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<sup>1</sup> The acronym “CID” refers to the U.S. Army Criminal Investigation Command. It is described on its website as “the Army’s primary criminal investigative organization and DoD’s premier investigative organization,” and “is responsible for conducting criminal investigations in which the Army is, or may be, a party of interest.” U.S. Army Criminal Investigation Command Mission, <http://www.cid.army.mil/mission.html> (last visited June 2, 2010). Claimant’s counsel states that it was the CID that prepared the casualty list submitted as an exhibit with this claim.

accepted principles of international law, that in order for the nationality requirement to have been met, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. To meet this requirement, claimant has provided, *inter alia*, a copy of his birth certificate and a copy of his current voter registration card. Based on this evidence and other evidence in the record, the Commission determines that this claim was held by a U.S. national at the time of the injury on which the claim is based, and that it has been so held from that point until the effective date of the Claims Settlement Agreement.

*Pending Litigation and its Dismissal*

To fall within the category of claims referred to the Commission, the claimant must also be a named party in the Pending Litigation listed in Attachment 1 to the December Referral Letter and must provide evidence that the Pending Litigation against Libya has been dismissed. December Referral Letter, *supra*, ¶ 3. The claimant has provided a copy of the complaint in Case No. 06-cv-707, filed in the United States District Court for the District of Columbia, which names him as a party. Additionally, the claimant has provided a copy of an Order dated May 5, 2009, as evidence of the dismissal of this Pending Litigation. Based on this evidence, the Commission finds that the claimant was a named party in the Pending Litigation and that the Pending Litigation has been properly dismissed.

*Claim for Injury Other than Emotional Distress*

The December Referral Letter also requires that the claimant must have set forth a claim for injury other than emotional distress alone in the Pending Litigation. December

Referral Letter, *supra* ¶ 3. The Commission's records reflect the claimant's assertion in the complaint in the Pending Litigation that he was injured in the La Belle Discotheque bombing. In particular, the Commission notes that the claimant states causes of action for, *inter alia*, assault and battery under Count II of the complaint. Based on this evidence, the Commission finds that the claimant has satisfied this element of his claim.

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

#### Merits

##### *Standard for Physical Injury*

As stated in the December Referral Letter, to qualify for compensation, a claimant asserting a claim for physical injury must meet the standard for physical injury adopted by the Commission for purposes of this referral. In order to develop the appropriate standard for compensability, the Commission considered both its own jurisprudence and pertinent sources in international and domestic law. The Commission concluded in the *Claim of 5 U.S.C. §552(b)(6)* *supra*, at 8-9, that in order for a claim for physical injury to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of an incident related to the Pending Litigation; and
- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

*Physical Injury*

According to his Statement of Claim and accompanying documents, claimant was standing near the bar inside the La Belle Discotheque when a massive explosion “launched [him] backwards through the air” and threw him to the ground “about 10 feet from where [he] had been standing.” Claimant states that the force of the blast threw him onto his back, causing him to strike his head on the floor. He further states that he was unable to move “for some time,” but that eventually, aided by another person, he managed to escape from the club through “a hole in a wall.” After exiting the building, claimant states that he was unable to hear with his left ear, had a ringing in his right ear, and was bleeding from his right tricep and right wrist.

Following the explosion, claimant was taken to a hospital where he received treatment for his injuries, including those described above, as well as cuts to his knees and a deep laceration to his left tricep which he had not previously noticed. In support of this claim, claimant has provided contemporaneous medical records and a CID casualty list verifying his injuries and presence at the scene of the incident. He has also provided a copy of the U.S. Army order awarding him the Purple Heart “[f]or wounds received in West Berlin, Federal Republic of Germany, as the result of an international terrorist attack.” The citation further notes the date of April 5, 1986, the date of the attack in question.

The medical records submitted by the claimant reflect that he suffered “bilateral TM perforations,” and that a patch was placed on his ruptured left ear drum as treatment. The records also reflect that a blood clot covered claimant’s right ear, and that on May 7, 1986, nearly a month after the incident, a small scar was still visible on this ear. In

addition, the entry in the medical records from April 6, 1986 notes that claimant suffered “slight bruises and cuts to [his] upper arms,” and was experiencing “slight pain” in his left ear. It should be noted, however, that although the claimant states that he suffered injuries to his tailbone and lumbar discs, the 1986 medical records make no mention of such injuries. Nonetheless, claimant asserts that he has continued to experience chronic back pain.

In light of the evidence provided, the Commission is satisfied that the claimant suffered a ruptured left eardrum as a result of the blast. Based on this evidence, the Commission finds that the claimant’s injuries meet the standard for physical injury set forth above. Accordingly, 5 U.S.C. §552(b)(6) is entitled to compensation as set forth below.

#### COMPENSATION

In the *Claim of* 5 U.S.C. §552(b)(6) *supra*, the Commission held that \$3 million is an appropriate amount of compensation for physical injuries that meet the Commission’s standard in this claims program. The Commission also held that compensable physical injury claims in this claims program were not entitled to interest as part of the award. *Id.* Accordingly, the Commission determines that the claimant, 5 U.S.C. §552(b)(6) is entitled herein to an award of \$3,000,000.00 and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

The Commission therefore enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSEA. 22 U.S.C. §§ 1626-1627 (2006).

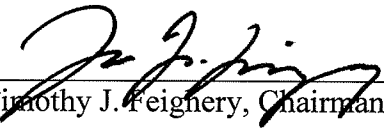


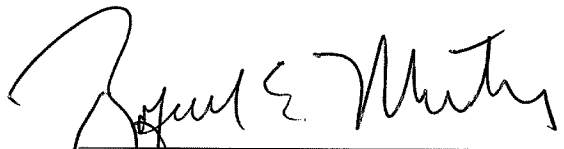
AWARD

Claimant 5 U.S.C. §552(b)(6) is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

Dated at Washington, DC, and Entered as the Proposed Decision Of the Commission.

APR 07 2011

  
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Timothy J. Feighery, Chairman

  
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Rafael E. Martinez, Commissioner

**This Decision was entered as the  
Commissioner's Final Decision on  
MAY 13 2011**

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).