

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

In the Matter of the Claim of

Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6)

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-I-012

Decision No. LIB-I-008

Counsel for Claimant:

Stuart H. Newberger, Esq.
Crowell & Moring LLP

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon physical injuries said to have been sustained during the hijacking of Pan Am Flight 73 in Karachi, Pakistan, on September 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, under a delegation of authority from the Secretary of State, the State Department 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 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.

Related to the December Referral Letter, a number of official actions 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” December Referral Letter, *supra*, ¶ 1. On the same day, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Oct. 31, 2008), espousing the claims of United States nationals coming within the terms of the Claims Settlement Agreement, barring United States nationals from asserting or maintaining such claims, terminating any pending suit within the terms of the Claims Settlement Agreement, and directing the

Secretary of State to establish procedures governing claims by United States 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 ICSA and the December Referral Letter. *Notice of Commencement of Claims Adjudication Program, and of Program Completion Date*, 74 Fed. Reg. 12,148 (2009).

BASIS OF THE PRESENT CLAIM

On June 4, 2009, the Commission received from claimant's counsel a completed Statement of Claim and accompanying exhibits supporting the elements of the claimant's claim, including evidence of: his United States nationality; his inclusion as a named party in the Pending Litigation referred to in Attachment 1 of the December Referral Letter, setting forth a claim for injury other than emotional distress alone; the dismissal of the Pending Litigation against Libya; and his physical injuries. The claimant,

Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6)

Pan Am Flight 73 which was hijacked by terrorists on September 5, 1986 in Karachi, Pakistan. He further states that he was injured as he slid down the side of the airplane while escaping from the terrorists who had hijacked the airplane.

DISCUSSION

Jurisdiction

As an initial matter, the Commission must consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the December Referral Letter is limited to claims of individuals who are: (1) United States nationals and (2) named parties in a Pending Litigation which has been dismissed. December Referral Letter, *supra*, ¶¶ 2-3.

Nationality

LIB-I-012

Based on the evidence submitted with this claim, the Commission determines that the claimant was a United States national at the time of the injury on which his claim is based and that he has been a United States national continuously thereafter 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 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-626, filed in the United States District Court for the District of Columbia, which names him as a party. Additionally, the claimant has provided a Stipulation of Dismissal as evidence of the dismissal of this Pending Litigation dated December 16, 2008. 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.

In summary, therefore, the Commission concludes 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 a threshold standard for physical injury adopted by the Commission. In order to develop such a threshold standard for compensability, the Commission has considered both its own jurisprudence and pertinent sources in international and domestic law.

After careful and thorough consideration, the Commission held in *Claim of*
Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), 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 referred to in 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, claimant Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) suffered a
physical injury on September 5, 1986 while escaping from Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) Pan Am Flight
73. In his sworn statement provided to the Commission he states that “[w]hen [he] had
finished Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) [he] got up, climbed through the escape
hatch, grabbed the escape cable and slid down the side of the plane to the ground.”

Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) Aff. ¶ 14. Further, he states that “[a]s [he] slid to the ground, [he] burned [his]
back on the side of the plane, leaving a painful burn mark on [his] back.” *Id.* He also
states, however, that “[he] did not seek or receive medical treatment for [his] burn
because [he] needed to stay in the Pan Am Operations office.” *Id.* at ¶ 18. Finally, the
claimant reiterated at the end of his affidavit that “[he] did not receive medical treatment
for [his] injury.” *Id.* at ¶22.

In light of the foregoing, the Commission is constrained to conclude that the
claimant, Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) does not qualify for compensation under the Claims
Settlement Agreement and the December Referral Letter, in that the physical injury on

which his claim is based does not meet the standard for physical injury set forth above. It has not been established that he suffered a physical injury that was a “discernible injury, more significant than a superficial injury, as a result of an incident related to the Pending Litigation,” and he did not “receive[] medical treatment for the physical injury.” Accordingly, while the Commission sympathizes with the claimant for the ordeal that he must have endured during the terrorist incident in question, his claim based on a physical injury suffered as a result of that incident must be and is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

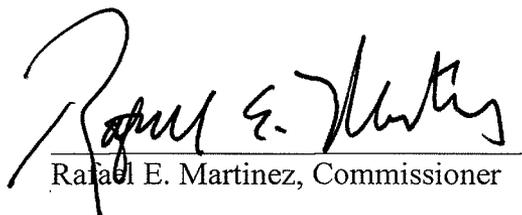
Dated at Washington, DC, and entered as the Proposed Decision of the Commission.

AUG 20 2009

**This decision was entered as the
Commission's Final Decision on
SEP 30 2009**



Mauricio J. Tamargo, Chairman



Rafael E. Martinez, Commissioner

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) (2008).