

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-041

Decision No. LIB-I-030

Counsel for Claimant:

Elizabeth Smith, Esq.
Motley Rice LLC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon claimant's presence at the scene of five Provisional Irish Republican Army (PIRA) attacks occurring in Londonderry, Northern Ireland, between July 1971 and August 1973.

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.

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” 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*, 74 Fed. Reg. 12,148 (2009).

BASIS OF THE PRESENT CLAIM

On July 22, 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 complaint filed in *McDonald, et al. v. Socialist People's Libyan Arab Jamahiriya*, 06-cv-0729 (D.D.C.), part of 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 *McDonald*; and his various injuries. The claimant states that he witnessed five PIRA attacks between July 1971 and August 1973, causing him significant emotional trauma. Claimant has provided his own sworn statement and medical records in support of his claim.

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:

(1) are United States nationals, (2) have been named as parties in a Pending Litigation which has been dismissed and (3) set forth a claim for an injury other than emotional distress alone in the Pending Litigation. December Referral Letter, *supra*, ¶¶ 2-3.

Nationality

In the *Claim of* Personally Identifiable Information
Redacted under 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 accepted principles of international law, that in order for a claim to be compensable, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, from the date the claim arose until the date of the Claims Settlement Agreement. Based on the evidence submitted with this claim, the Commission determines that the claimant was a United States national at the time of the incidents on which his claim is based and that the claim has been held continuously by United States nationals 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-729, filed in the United States District Court for the District of Columbia, which names him as a party. Additionally, the claimant has provided an Order of Dismissal, dated October 28, 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

Claimant has provided, with his Statement of Claim, a copy of the First Amended Complaint in the Pending Litigation, in which he states a cause of action for, *inter alia*, battery under Count III. The Commission therefore finds that the claimant set forth a claim for injury other than emotional distress alone in the Pending Litigation.

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* Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6), *supra*, 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 claimant's affidavit in support of his claim, claimant "suffered significant emotional trauma as a result of [his] proximity to these five [PIRA] attacks" between July 1971 and August 1973 in Londonderry, Northern Ireland. Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(8) Aff. ¶ 10.

Further, claimant states that he has "experienced health problems which [he] believe[s] were caused or exacerbated by [his] emotional distress because of the attacks." *Id* at ¶ 13. However, the claimant has not identified any physical injury sustained due to his proximity to these attacks. Although extensive medical records have been provided, none of the diagnoses contained in the records establishes a causal link to any of the incidents nor are the records contemporaneous with the incidents herein described.

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.

45 C.F.R. 509.5(b)(2008).

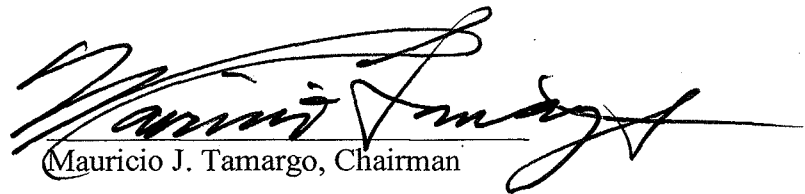
The Commission finds that the claimant has not met the burden of proof in that he has failed to provide evidence establishing that he suffered a "discernible injury, more significant than a superficial injury, as a result of an incident referred to in the Pending Litigation." In light of the foregoing, the Commission is constrained to conclude that the claimant does not qualify for compensation under the Claims Settlement Agreement and the December Referral Letter.

Accordingly, while the Commission sympathizes with the claimant for the ordeal that he must have endured during the terrorist incidents in question, his claim based on a physical injury suffered as a result of those incidents must be and is hereby denied.

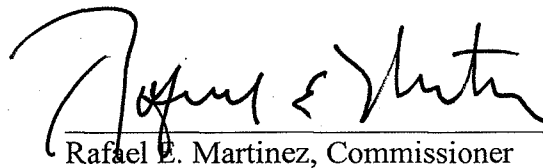
The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

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

DEC 18 2009



Mauricio J. Tamargo, Chairman



Rafael E. Martinez, Commissioner

**This decision was entered as the
Commission's Final Decision on**
JAN 26 2010

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).