

six categories of claims of U.S. nationals against Libya. *Letter dated January 15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* (“January Referral Letter”).

The present claim is made under Category E. According to the January Referral Letter, Category E consists 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.

Id. at ¶ 7. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December Referral Letter”) from the State Department, 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 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and 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 President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 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 July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On April 9, 2010, the Commission received from claimant a completed Statement of Claim, in which she asserts a claim under Category E of the January Referral Letter, along with accompanying exhibits supporting her claim, including evidence of her U.S. nationality and her physical injuries. Specifically, the claimant states that on May 30, 1972, she was present at the Lod Airport in Israel at the time of the terrorist attack and asserts that she “sustained serious discernable injuries in a grenade blast during the Lod Airport massacre.”¹ The claimant has provided contemporaneous medical records and newspaper articles to substantiate her claim.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission’s jurisdiction here is limited to the category of claims defined under the January Referral Letter; namely, claims of individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for

¹ The estate of the claimant’s late husband, ⁵ U.S.C. §552(b)(6) has also filed with the Commission a separate Category E claim for his wrongful death as a result of this terrorist attack.

wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral letter, *supra* ¶ 7.

Nationality

In *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 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 the claimant has provided copies of her birth certificate, her U.S. passport used on the day of the terrorist attack, and her current U.S. passport. Based on this evidence the Commission finds that this claim was held by a U.S. national at the time of the incident, and that it has been so held until the effective date of the Claims Settlement Agreement.

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must also assert a claim for wrongful death or physical injury that resulted from one of the Covered Incidents listed in Attachment 2 to the January Referral letter. January Referral Letter, *supra*, ¶ 7. This list includes the "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." January Referral Letter, *supra*, Attachment 2, ¶ 1. In her Statement of Claim, the claimant sets forth a claim for physical injury suffered as a result of this terrorist attack.

Accordingly, the Commission finds that the claimant has also satisfied this element of her claim.

Pending Litigation

Finally, the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident, which, in this claim, as noted above, is the *Franqui* case. Claimant has provided a copy of the First Amended Complaint in *Franqui*, which establishes that she was not a party to this litigation. In addition, claimant has stated under oath in her Statement of Claim that she was not a plaintiff in the Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has also satisfied this element of her claim.

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

Merits

Standard for Physical Injury

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category E must meet "the standard for physical injury or wrongful death, as appropriate, adopted by the Commission" for purposes of this referral. January Referral Letter, *supra*, ¶ 7. The Commission held in *Claim of* ^{5 U.S.C. §552(b)(6)}

Claim No. LIB-II-039, Decision No. LIB-II-015, that that in order for

a claim for physical injury pursuant to Category E to be considered compensable, a claimant:

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

Claim of ^{5 U.S.C. §552(b)(6)} *supra*, at 6-7. The present Category E claim must likewise meet this standard to be compensable.

Physical Injury

According to her Statement of Claim and accompanying exhibits, the claimant suffered physical injuries on May 30, 1972, during the attack at Lod Airport in Israel. The claimant has provided contemporaneous medical documentation with her claim that reflect that she suffered shrapnel wounds to her right thigh, right ankle and left arm, as well as various lesser wounds. This documentation also records that claimant was hospitalized for several days after the terrorist attack as a result of her injuries. The claimant has also provided medical documentation attesting that she received subsequent medical treatment for her injuries from the attack, including surgery to her right leg. In addition to this medical documentation, the claimant has provided a number of newspaper articles that identify her as having been injured in the attack, including an article that notes that the claimant was transported by ambulance from the airport after returning home to Puerto Rico.

Based on its review of the evidence submitted in support of this claim, the Commission finds that the claimant suffered the injuries enumerated above as a result of the Lod Airport terrorist attack on May 30, 1972 and concludes that claimant's injuries meet the standard for physical injury set forth above. Accordingly, claimant^{5 U.S.C. §552(b)(6)} is entitled to compensation in this claim.

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 under Category E, and that compensable physical injury claims in this claims program are not entitled to interest as part of the awards granted therein. 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 hereby enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27 (2006).

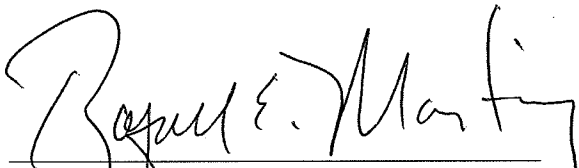
AWARD

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, May 10, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

**This decision was entered as the
Commissioner's Final Decision on
JUN 20 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).