

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)

Against the Great Socialist People's  
Libyan Arab Jamahiriya

Claim No. LIB-II-114

Decision No. LIB-II-076

Counsel for Claimant:

Joshua M. Ambush, Esq.  
Joshua M. Ambush, LLC

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 <sup>5 U.S.C. §552(b)(6)</sup> <sub>5 U.S.C. §552(b)(6)</sub> at Lod Airport in Israel on May 30, 1972.

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 January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication 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 June 25, 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 discernable and more significant than superficial injuries from a machine gun bullet that fractured her left hand and from grenade shrapnel that lacerated her head, left shoulder and right thigh.” To substantiate her claim, the claimant has provided, *inter alia*, a contemporaneous medical record of her injuries, an affidavit from a relative who is a doctor and who flew to Israel to assist the claimant after the attack, and contemporaneous newspaper articles that identify claimant as one of the injured in the attack.

## DISCUSSION

### Jurisdiction

Under subsection 4(a) of the ICOSA, 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 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 Puerto Rico birth certificate, her U.S. passport issued in 1972, her current U.S. passport, and her current Puerto Rico voter registration card. 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 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 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* <sup>5 U.S.C. §552(b)(6)</sup>, 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.

Id. 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 terrorist attack at Lod Airport in Israel. The claimant has provided contemporaneous medical documentation from the Tel Hashomer hospital in Israel which records that: the claimant was admitted to the hospital suffering from a gunshot wound to her left hand; an x-ray showed a fracture to three of the fingers on the claimant’s left hand; the claimant had ruptured excisions that were

sutured; one of the claimant's fingers was repositioned with a Kirschner nail; and the claimant was discharged on June 1, 1972, with a splint and a recommendation to take medication and to receive further treatment in the hospital's outpatient rehabilitation clinic.

The claimant has also submitted the corroborating affidavit of her niece, Dr. Carmen Luz Sanchez de Bartolomei. In this affidavit, Dr. Bartolomei states that she traveled to Israel immediately after the Lod Airport terrorist attack and located the claimant at the Tel Hashomer hospital, where the claimant was receiving treatment for a gunshot wound that fractured fingers of her left hand. She states that the claimant also sustained shrapnel wounds from a grenade to her head, left shoulder, and right thigh, and that after returning to Puerto Rico, the claimant underwent surgery to remove orthopedic pins in her left hand. Dr. Bartolomei also states that the claimant underwent surgery a year after the attack to remove shrapnel that was causing the claimant pain, that the claimant's left hand is permanently disabled in the second, third, fourth and fifth fingers, and that the claimant has permanent scarring on her head, left shoulder and right thigh. The claimant, additionally, has provided a number of contemporaneous newspaper articles that identify her as having been injured in the terrorist attack.

Based on its review of the evidence submitted, and in particular the contemporaneous medical records, the Commission finds that the claimant's injuries meet the standard for physical injury set forth above. Accordingly, claimant <sup>5 U.S.C. §552(b)</sup><sub>(6)</sub>

<sup>5 U.S.C. §552(b)(6)</sup>

is entitled to compensation as set forth below.

COMPENSATION

In the *Claim of* <sup>5 U.S.C. §552(b)(6)</sup> *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, <sup>5 U.S.C. §552(b)(6)</sup>

<sup>5 U.S.C. §552(b)(6)</sup> 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 ICOSA. 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, September 7, 2011 and entered as the Proposed Decision of the Commission.

  
Timothy J. Feighery, Chairman

  
Rafael E. Martinez, Commissioner

**This decision was entered as the  
Commission's Final Decision on**  
OCT 12 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).