



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 ICOSA 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 the claimant asserts a claim under Category E of the January Referral Letter, along with exhibits supporting the elements of its claim. This submission included evidence of: the U.S. nationality of the claimant's decedent, the late Pedro Hernández; his presence at the scene of the terrorist incident; and his alleged physical injuries for which the claimant now claims compensation.

The claimant states that Mr. Hernández was present in the terminal at Lod Airport in Tel Aviv, Israel on May 30, 1972, when three terrorists armed with automatic rifles began shooting and throwing hand grenades at passengers gathered in the baggage claim area. According to the Statement of Claim and accompanying exhibits, Mr. Hernández suffered injuries from grenade shrapnel lodged in the right side of his body and in both of his legs. Claimant states that, immediately following the incident, Mr. Hernández was

taken to a local hospital, where he underwent treatment that included the cleansing of his wounds and “intensive physiotherapy.” According to the claimant, Mr. Hernández remained hospitalized in Israel for one week, and, upon his return to Puerto Rico, he received further treatment for his injuries.

The claimant alleges that Mr. Hernández “continued to suffer numerous permanent disabling injuries” throughout his lifetime, and that although he underwent numerous procedures to removal shrapnel from his body in the years following the incident, numerous “metallic fragments” could not be removed. In addition, according to the claimant, “[Mr. Hernández’] mobility was severely damaged[,]” and, as a result, he “was forced to quit his job because he could not stand all day as required.”

#### DISCUSSION

As an initial matter, the Commission has reviewed Mr. Hernández’ probated nuncupative will, executed on May 9, 2005,<sup>1</sup> which designates his children, Heriberto Hernández Ríos and Rosa María Hernández Ríos, as his “sole and universal heirs,” entitled to “the two thirds share of his estate that must be allocated to lawful heirs,” and his wife, María Magdalena González Cordero, as “heir of the one-third share of his estate at his free disposition[.]”<sup>2</sup> The claimant estate has also provided a copy of a Decision of the Puerto Rico General Court of Justice, Court of First Instance, Superior Division of Arecibo, dated February 3, 2011, appointing María Magdalena González Cordero as

---

<sup>1</sup> According to the February 3, 2011 Decision appointing María Magdalena González Cordero as administrator of the claimant estate, Mr. Hernández’ nuncupative will was admitted into evidence during the hearing held on January 25, 2011 to review the Petition for Court-Appointed Administrator filed by the beneficiaries of Mr. Hernández’ estate. Although the will itself does not bear the stamp of the probate court, the February 3 Decision notes the instrument number of the will and the name of the notary, information which appears on the copy of the will provided by the claimant with this claim.

<sup>2</sup> According to the decedent’s will, Ms. González was Mr. Hernández’ fourth wife. His children Heriberto and Rosa María were born to his first wife; he fathered no children with either his second or third wives. None of the decedent’s first three wives is included as a beneficiary in his will.

administrator of her late husband's estate. Documentation in the file reflects that all three beneficiaries are U.S. nationals by birth. Based on this review, the Commission finds that the ESTATE OF PEDRO HERNÁNDEZ RODRIGUEZ, DECEASED; MARÍA MAGDALENA GONZÁLEZ CORDERO, ADMINISTRATOR, is the proper claimant in this claim.

#### 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; in this case, Category E, 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 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 accepted principles of international law, that in order to meet the nationality requirement, 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. In the case of claims brought by estates on behalf of beneficiaries, it is a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors, the War Claims Commission and the International Claims Commission, that, for purposes of determining the nationality of a claim, the nationality of the injured person as well as the beneficiaries

of his or her estate must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.<sup>3</sup>

To meet this requirement, the claimant has provided: the birth certificate of the claimant's decedent, Pedro Hernández Rodríguez, showing his place of birth in Quebradillas, Puerto Rico; a copy of Mr. Hernández' expired U.S. passport valid from May 1972 to May 1977; a signed letter to claimant's attorney from the U.S. Department of State indicating that, in response to his inquiry, there was no record of Mr. Hernández (or any of the other numerous individuals that were the subject of the inquiry) having renounced his U.S. citizenship; copies of birth certificates for Heriberto Hernández Ríos and Rosa María Hernández Ríos, showing their place of birth in Brooklyn, New York; copies of Heriberto and Rosa María's current U.S. passports; a copy of the birth certificate for María Magdalena González Cordero, showing her place of birth in Isabela, Puerto Rico; and a copy of Ms. González' current U.S. passport.

Based on this and other evidence in the record, the Commission determines that the claim was owned by a U.S. national at the time of the incident continuously through 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 resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral Letter. January Referral

---

<sup>3</sup> See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

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.” *Id.*, Attachment 2, ¶ 1. In its Statement of Claim, the claimant sets forth a claim for physical injury suffered by the late Pedro Hernández Rodríguez as a result of the May 30, 1972 Lod Airport terrorist attack. The Commission therefore finds that the claimant has satisfied this element of its 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 and includes the *Franqui* case, which, as noted above, is the Pending Litigation related to this claim. Claimant has provided a copy of the First Amended Complaint in *Franqui*, which demonstrates that neither the claimant estate, nor any of the beneficiaries, were plaintiffs in the Pending Litigation. In addition, claimant, through its duly-appointed administrator María Magdalena González Cordero, has stated under oath in its Statement of Claim that it 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 its 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 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, Dec. No. LIB-II-015 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 the Statement of Claim and accompanying documents, the decedent suffered physical injuries on May 30, 1972 when, as discussed above, three gunmen attacked passengers waiting in the baggage claim area at Lod Airport in Tel Aviv, Israel. Specifically, claimant avers that shrapnel from an exploding grenade “tore through Pedro’s body, imbedding themselves in his right side from his waist down to his foot.” Claimant further avers that Mr. Hernández “was rushed to the Tel Hashomer/Haim Sheba Medical Center[,]” where “doctors treated his wounds and ‘intensive physiotherapy was



begun because of difficulties' with his leg." Claimant alleges that Mr. Hernández "remained at Tel Hashomer/Haim Sheba Medical Center for a week and was then flown back to Puerto Rico 'for further physiotherapy.'"

In support of its claim, claimant has provided, *inter alia*, medical records, including contemporaneous medical records; copies of newspaper articles, published in the days following the incident, identifying claimant as one of those wounded in the attack; a copy of a page from the decedent's expired U.S. passport, valid in May 1972, that includes entry and exit stamps from Lod Airport, dated May 30 and June 7, 1972, respectively; a copy of a letter from Air France, dated May 23, 1972, confirming the decedent's reservation to travel to the "Holy Land" on May 29, 1972; a copy of a list of persons wounded in the Lod Airport attack recovered from the Israeli State Archives, and which includes decedent's name (together with his nationality, year of birth, and passport number); and copies of several contemporaneous photographs depicting the decedent in the care of medical personnel in Israel following the incident, as well as the alleged physical injuries to the right side of his body.

The contemporaneous medical records provided with this claim indicate that, following the attack, Mr. Hernández was admitted to the emergency room at Haim Sheba Medical Center at Tel Hashomer, where it was determined that he had suffered "many . . . shrapnel wounds in both his legs and at his right flank." The records further indicate that he underwent treatment, and that "[i]ntensive [physiotherapy] was begun because of difficulties" with his leg. A notation by the treating physician recommended that the decedent undergo "further physiotherapy in his country." Finally, the records indicate that claimant was discharged on June 6, 1972, having been hospitalized at Tel Hashomer

for ten days. Newspaper articles published in the days following the attack confirm that “[grenade f]ragments imbedded themselves in Hernandez right side from his waist down to his foot[.]” and that he had been treated at Tel Hashomer Hospital.

The evidence also establishes that in the years following the incident, claimant underwent further treatment for his injuries from various physicians in Puerto Rico. For instance, an August 29, 1975 letter from Dr. Raymond Baez Murphy to an unknown recipient notes that metallic fragments had been removed from the decedent’s body on December 6, 1972. This is confirmed by a report prepared by Dr. Murphy on August 30, 1976, which notes that Mr. Hernández “was attended to for the first time on December 6, 1972, with multiple wounds and pellets incrustated in his elbows and thighs[.]” and that “[s]everal pellets were removed from him.”<sup>4</sup> In addition, an August 30, 1975 letter from Dr. Murphy to the Israeli National Insurance Institute, translated from Spanish into English, notes that “the right side of [Mr. Hernández’] back is afflicted, as is his right arm and elbow, his entire right leg to the point of disability[, and] part of his left leg[.]” and that “[h]e has had several operations and some lead fragments have been successfully extracted from the affected areas, without any very positive results[.]”

Additional information is contained in a September 1976 letter to the National Insurance Institute from the Puerto Rico Department of Social Services, which confirms that Mr. Hernández had undergone surgery to remove “grenade particles” from the right side of his body in June and July 1972, early 1973, and 1974, and that, as of the date of the letter, “[h]is surgeon has anticipated another operation on his right foot and elbow.” The letter notes that “from 1973 to 1975 Mr. Hernández was kept in crutches, a period of

---

<sup>4</sup> It is unclear from the format of the date on these documents whether the procedure to remove the shrapnel was conducted on December 6 or June 12. Either way, it is apparent that claimant underwent surgery to remove shrapnel from his body sometime in 1972 after the airport attack.

almost two years in which he could hardly walk.” In addition, the letter indicates that Mr. Hernández “shows a large scar on [his] right forearm[,]” and that “[m]ultiple smaller scars appear in his right arm, right hip, foot and whole leg . . . .” The letter further notes that “one can easily feel the existence of said [grenade fragments] which sometimes protrude from the flesh.” Additionally, an October 6, 1976 report from Armando Saavedra, M.D., indicates that Mr. Hernández “was wounded by machine gun bullets on the rt arm an hit by numerous hand granade [sic] particles[,]” and that he had personally operated on Mr. Hernández “to remove several of these particles when they became infected[.]” The report of an X-ray examination conducted on the decedent in August 1977 verifies the presence of “[n]umerous small metallic fragments” throughout the right side of the decedent’s body and in his left leg.

More recent medical records confirm the nature and extent of claimant’s physical injuries. In particular, a record of various examinations and procedures performed between 2001 and 2003 notes the continued presence of shrapnel fragments in the decedent’s body, and indicates that some of these fragments were removed and identified as “foreign bodies.”

Based on the evidence submitted, and in particular the contemporaneous medical records, the Commission finds that Mr. Hernández’ injuries meet the standard for physical injury set forth above. Accordingly, claimant ESTATE OF PEDRO HERNÁNDEZ RODRIGUEZ, DECEASED; MARÍA MAGDALENA GONZÁLEZ CORDERO, ADMINISTRATOR 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 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, ESTATE OF PEDRO HERNÁNDEZ RODRIGUEZ, DECEASED; MARÍA MAGDALENA GONZÁLEZ CORDERO, ADMINISTRATOR, 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 ICSA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

Claimant ESTATE OF PEDRO HERNÁNDEZ RODRIGUEZ, DECEASED;  
MARÍA MAGDALENA GONZÁLEZ CORDERO, ADMINISTRATOR, 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).