

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

In the Matter of the Claim of

ESTATE OF CLAIRE SMITH GOLDEN, DECEASED;
CAROL GOLDEN, EXECUTOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-147

Decision No. LIB-II-092

Counsel for Claimant:

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the Estate of Claire Smith Golden (the "claimant"), based upon physical injuries said to have been sustained by Ms. Golden at Lod Airport in Tel Aviv, Israel on May 30, 1972. Ms. Golden died in 2002 of causes unrelated to the attack.

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 July 2, 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 Claire Smith Golden; her presence at the scene of the terrorist incident; and her alleged physical injuries for which the claimant now claims compensation.

The claimant states that Ms. Golden 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. Claimant asserts that Ms. Golden suffered physical injuries "from a machine gun bullet that fractured her right knee" Claimant further states that Ms. Golden was eventually taken by taxi to a local hospital, where she underwent treatment for her wounds. According to the claimant, Ms. Golden remained hospitalized in Israel for fourteen days.

DISCUSSION

As an initial matter, the Commission notes that letters testamentary issued on October 4, 2010 by the Superior Court of California, County of Marin, appointed Carol Golden as executor of the estate of Claire Smith Golden. Accordingly, the Commission finds that the ESTATE OF CLAIRE SMITH GOLDEN, DECEASED; CAROL GOLDEN, EXECUTOR, 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.¹ The claimant estate has submitted as evidence of the identity of its heirs, a copy of the probated will of Claire Smith Golden along with the trust documents associated with the Claire S. Golden 1991 Trust. Having reviewed said documents, the Commission determines that the sole heir of the estate of Claire Smith Golden is her daughter, Carol Golden.

To meet the nationality requirement, the claimant has provided: the birth certificate of the claimant's decedent, Claire Smith Golden, showing her place of birth in Columbus, Ohio;² a copy of her expired U.S. passport, valid from April 1983 to April 1993; a copy of the birth certificate for Carol Golden, showing her place of birth in New York City; and a copy of Carol Golden's 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.

¹ 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).

² The decedent's birth certificate lists her name as "Clara Shmidt." However, a copy of a December 12, 1941 affidavit sworn by the decedent's father, Nathan Smith, states that his daughter's original birth certificate is incorrect, and that her name is actually "Claire Smith." The copy of the affidavit bears the signature of the Ohio Chief of the Division of Vital Services, certifying that the affidavit was "attached to the original birth certificate of Clara Schmidt." Notwithstanding the various discrepancies in the spelling of the decedent's surname between the birth certificate and the Ohio affidavit, the Commission is satisfied that these documents, taken altogether, establish satisfactorily the identity and U.S. nationality of decedent.

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 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 Claire Smith Golden 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 executor Carol Golden, 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* 5 U.S.C. §552(b)(6), 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, Claire Smith Golden 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 asserts that Ms. Golden was "struck by machine gun

bullets that tore through her right knee and fractured her patella bone.” Claimant further asserts that, “[d]uring a break in the shooting,” Ms. Golden and her son, Tom Golden, who was also present, ran outside the terminal, at which point “Tom attempted to stop the profuse bleeding coming from Claire’s knee by removing his T-shirt to apply pressure to the wound.” Claimant states that she “was rushed to the Tel Hashomer/Haim Sheba Medical Center[.]” where doctors sutured the patella and cleaned the affected area. In addition, claimant states that Ms. Golden “underwent a second procedure where ‘[p]laster was placed’ in a cast from her ankle to her hip.”

In an affidavit provided in support of this claim, Carol Golden, who was on board a flight which had arrived at Lod Airport at the time of the incident and arranged to meet her mother and brother in the terminal upon her arrival, states that, following the attack, she went to the Tel Hashomer Hospital, where her mother had been taken for treatment. She states that “[w]hen I arrived at my mother’s hospital room, she was in bed, with her leg in a cast from her ankle to her hip[.]” and that she “learned that [her mother] had just undergone surgery on her right knee”

Claimant alleges that “Claire was hospitalized for fourteen days[.]” and “was discharged with her right leg still bound in a full leg cast, wheelchair bound, with orders to rest at home.” According to the claimant, “Claire was rendered largely immobile by her knee injury and was confined to her home for approximately two months.” Claimant further states that Ms. Golden “was dependent upon [her daughter] Carol to perform basic tasks for her” Although, as claimant alleges, Ms. Golden “eventually graduated from [a] wheelchair to crutches[.]” and later “was able to walk with a cane . . . [f]or the

rest of her life, Claire's right leg bore a deep scar[.]" and she "permanently suffered from impaired movement in her right knee."

In support of its claim, claimant has provided, *inter alia*, a contemporaneous medical record from Tel Hashomer hospital; copies of newspaper articles, published in the days following the incident, describing the incident and identifying Claire Golden as one of those wounded in the attack; the above-referenced affidavit from Carol Golden; a copy of a telegram sent by Carol to her mother on May 29, 1972, informing her that she would be arriving in Tel Aviv on May 30, 1972, and requesting that she meet her at 10:15p.m.; and an authenticated copy of a photograph apparently depicting a large scar on Claire Golden's right knee.

The contemporaneous medical record provided with this claim indicates that, following the attack, Claire Golden was admitted to the emergency room at Haim Sheba Medical Center at Tel Hashomer, where it was determined that she had suffered a "[g]unshot wound [to the] right knee" and a "[f]racture of the right patella[.]" According to the record, doctors had observed "a small exit wound . . . in the right knee[.]" and discovered the fracture after conducting a radiological examination. The record further indicates that Ms. Golden "underwent surgery on 5.30.72 under a general anesthesia[.]" in which her "patella was sutured and the area cleaned." In addition, "[p]laster was placed" and Ms. Golden was "discharged home for a month's rest[.]" with a notation indicating an "appointment in another fortnight." Finally, the record indicates that Ms. Golden was discharged on June 13, 1972, having been hospitalized at Tel Hashomer for two weeks. As previously noted, claimant has provided a copy of a photograph, allegedly taken sometime between 1973 and 1975, apparently depicting a large, uneven

scar extending from Ms. Golden's right thigh to the area below the front of her right knee.

Based on the evidence submitted, and in particular the contemporaneous medical records, the Commission finds that Ms. Golden's injuries meet the standard for physical injury set forth above. Accordingly, claimant ESTATE OF CLAIRE SMITH GOLDEN, DECEASED; CAROL GOLDEN, EXECUTOR, 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 CLAIRE SMITH GOLDEN, DECEASED; CAROL GOLDEN, EXECUTOR, 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.

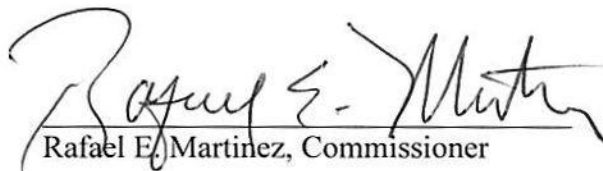
The Commission therefore enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

Claimant ESTATE OF CLAIRE SMITH GOLDEN, DECEASED; CAROL GOLDEN, EXECUTOR, is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

Dated at Washington, DC, October 17, 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**
NOV 30 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).