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

In the Matter of the Claim of NEW YORK MARINE AND GENERAL INSURANCE COMPANY Against the Great Socialist People's Libyan Arab Jamahiriya	Claim No. LIB-II-170 Decision No. LIB-II-165

Counsel for Claimant: Steven R. Perles, Esq.
Perles Law Firm, PC

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by NEW YORK MARINE AND GENERAL INSURANCE COMPANY ("New York Marine") based upon the hijacking of EgyptAir Flight 648 by Libyan-sponsored terrorists on November 23, 1985. The claimant seeks compensation pursuant to Category F of the January Referral Letter,[1] based on having reinsured a portion of the insurance policy on the airplane that was hijacked that day; claimant states that, as a result of the efforts of Egyptian commandos to retake control of the plane, the plane was rendered effectively worthless and the reinsurers decided to declare a "'total constructive loss' of the airplane."

[1] *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 Commission denied this claim in its Proposed Decision ("PD") dated June 5, 2012. The Commission concluded it lacked jurisdiction to adjudicate the claim because the claim was not held by a U.S. national continuously from the date the claim arose through the date of the Claims Settlement Agreement ("CSA").[2] The claimant filed a notice of objection on July 6, 2012 and, on August 17, 2012, submitted a two-page document titled Further Submission of Material, as well as attachments. On September 13, 2012, the Commission held an objection hearing, and the claimant submitted a post-hearing brief on October 4, 2012.

DISCUSSION

Jurisdiction

As discussed in the Proposed Decision, EgyptAir contracted with an Egyptian insurance company, MISR Insurance Company ("MISR"), located in Cairo, Egypt to insure the aircraft; MISR then used London insurance broker, Leslie & Godwin, to reinsure with many syndicate underwriters through the insurance entity Lloyd's and "surrounding insurance companies." PD at 3-4. New York Marine states (1) that it was one of the underwriters who contracted, through Leslie & Godwin, to reinsure the MISR policy; (2) that natural persons who are nationals of the U.S. held, directly or indirectly, an interest in New York Marine equivalent to at least 50 percent of its capital stock; and (3) that with prejudgment interest, it is entitled to $1,497,750. *Id.* New York Marine also states that it was one of the plaintiffs in *Certain Underwriters at Lloyd's, London v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-731, which was

[2] *Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* (Aug. 14, 2008).

dismissed as to Libya on January 7, 2010, pursuant to the Libya Claims Resolution Act ("LCRA").[3]

Claimant's main argument on objection is that the CSA, the LCRA and Executive Order ("E.O.") 13,477, all "describe the settlement of existing claims brought by US nationals in the present tense." Claimant argues that it is a U.S. national, and since the plain language of the applicable claims agreement includes claims of U.S. nationals, claimant is eligible for compensation and there is no need to resort to international law, justice, or equity to make that eligibility determination. The claimant also argues that if the Commission "interprets the CSA's usage of US national to exclude New York Marine, then its claim was not settled."

The Proposed Decision rejected these arguments as inconsistent with the Claims Settlement Agreement, as it has been implemented by the Libya Program referral letters. PD at 4-8. The January Referral Letter states that, as a matter of jurisdiction, Category F only applies to claims of "U.S. nationals." January Referral Letter, *supra*, ¶ 8. In *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held that in order for a claim to be compensable, the claim must have been held by a "national of the United States" continuously from the date it arose until the date of the Claims Settlement Agreement. The Proposed Decision quoted *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB–I–049, Decision No. LIB–I–019 (2011), in explaining that the continuous nationality requirement is a matter of customary international law and that the United States recognizes it as such:

> As a general matter, the United States continues to recognize the continuous nationality rule as customary international law. For example,

[3] Pub. L. No. 110-301, 122 Stat. 2999 (2008).

> the United States' 2006 comments on the International Law Commission's Draft Articles on Diplomatic Protection clearly convey the United States' position that the continuous nationality requirement – that nationality "be maintained continuously from the date of injury through the date of resolution" – reflects customary international law.[4]

5 U.S.C.
PD at 5 (quoting §552(b)(6) FD at 7).

New York Marine's argument that the CSA, the LCRA and E.O. 13,477 all "describe the settlement of existing claims brought by US nationals in the present tense," is therefore without merit. The mere description of U.S. nationals with wording that could be read to suggest the present tense is not sufficient to overcome the longstanding international law requirement of continuous nationality. As the Commission stated in regard to a similar argument in 5 U.S.C. §552(b)(6)

> [T]he continuous nationality requirement ... [is a] long-standing principle [] of international law consistently applied and advocated by the United States to the present day. Consequently, any departure from [this] principle [] would have been clearly articulated and not merely implied.

5 U.S.C.
§552(b)(6) FD at 6. Indeed, the Commission has long required continuous nationality of the claim (and claimant) even in programs where the relevant authorizing texts have wording that could be read to suggest U.S. nationals in the present tense and there is no articulation of an explicit continuous U.S. nationality requirement. *See, e.g.*, *Claim of ERWIN RONA & GYOENGYI RONA*, Claim No. HUNG-2-067, Decision No. HUNG-2-0780 (1976) (Hungary agreement refers to "nationals of the United States" and does not explicitly mention continuous U.S. ownership of the claim from the date of injury, but the Commission denied this claim of a U.S. national because claimants had been naturalized after the date of the loss or damage); *Claim of PAUL B. DIAMOND*, Claim No. SOV-

[4] *See International Law Commission, Comments and observations received from Governments, Diplomatic protection*, at page 19, U.N. Doc. A/CN.4/561 (2006).

40,024, Decision No. SOV-2369 (1958) (Litvinov Assignment on which the Soviet program was based only refers to claims of U.S. nationals and does not explicitly mention continuous U.S. ownership of the claim from the date of injury, but the Commission required continuous U.S. nationality and refused to presume that certain securities were owned continuously by U.S. nationals); and *Claim of LUCIE SEWELL FISCHER*, Claim No. SOV-42,835, Decision No. SOV-998 (1958) ("eligibility for compensation requires, among other things, that the property which was the subject of damage or loss must have been owned by a United States national at the time the damage or loss occurred and that the claim arising as a result of such damage or loss must have been continuously owned thereafter by a United States national.").

The Proposed Decision thus made clear, again quoting 5 U.S.C. §552(b)(6) that the law foreclosed New York Marine's argument:

> Given the fact that the continuous nationality rule is recognized by the United States as customary international law, and that this rule has been applied by both this Commission and its predecessors, a derogation from this rule will not be assumed by the Commission from the absence of language in any of the operative documents that inform and define this program. Any derogation must be clearly expressed, and there has been no such express derogation in this program. Consequently, the Commission adheres to its earlier finding that in order for a claim to be compensable in this program, it must have been owned by a U.S. national continuously from the date of injury to the date of the Claims Settlement Agreement.

PD at 5 (quoting 5 U.S.C. §552(b)(6) FD at 8).[5]

[5] Indeed, the LCRA affirms that the parties intended international law as the relevant authority for reading the CSA. The LCRA specifically states that "the term 'claims agreement' means an international agreement between the United States and Libya, *binding under international law*, that provides for the settlement of terrorism-related claims of nationals of the United States against Libya through fair compensation." LCRA § 2(2) (emphasis added).

Moreover, as the Proposed Decision explained, Commission precedent makes clear that the continuous U.S. nationality requirement applies in the context of insurance claims, where continuity of U.S. ownership of the claim is required through all of the relevant parties in the chain of insurance: the party that suffered the loss, the insurance company that directly insured the loss, and the reinsurer that paid the insurer. PD at 5-7. The Commission's jurisprudence on this score is consistent with international law, which as a rule requires continuous nationality in insurance claims. *See generally Claim of SUBROGATED INTERESTS TO PAN AMERICAN WORLD AIRWAYS, INC.*, Claim No. LIB-II-171, Decision No. LIB-II-161, at 14-15 (2013) (Final Decision); *see also Eagle Star and British Dominions Insurance Company and Excess Insurance Company* (Great Britain v. Mexico) (1931), 5 U.N.R.I.A.A. 139; David Bederman, *Beneficial Ownership of International Claims,* 38 Int'l & Comp. L.Q. 935, 942-943 (1989); and Theodor Meron, *The Insurer and the Insured Under International Claims Law,* 68 Am. J. Int'l Law 628, (1974).

The Commission also rejects the claimant's argument that if the Commission "interprets the CSA's usage of US national to exclude New York Marine, then its claim was not settled." As the Commission also explained in 5 U.S.C. §552(b)(6)

> The question here is not whether the United States intended to settle all claims in U.S. courts against Libya – clearly it did, and the settlement of all claims was likewise a primary objective of Libya. E.O. 13477 makes this abundantly clear by directing, in sections 1(a) and (b), respectively, the settlement of claims of "United States nationals" and those of "foreign nationals."
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> The question is which settled claims were to be the subject of compensation by the Commission from the fund established in Article II of the CSA. . . . [T]he intent of the drafters of the CSA, the LCRA or the December Referral Letters to settle *all* claims against Libya does not shed

> light on when a person must be a U.S. national in order to qualify for compensation under the settlement.

5 U.S.C. §552(b)(6) FD at 5-6. Furthermore, the Commission also noted as follows in 5 U.S.C. §552(b)(6)

> [I]n [the Libya] program, letters from the State Department to members of Congress concerning claim-specific inquiries (which have been filed with the Commission by claimants with claims before the Commission) clearly evince the State Department's intent that the continuous nationality rule be applied in the program. One letter states, for example, that "it has been the consistent policy and practice of the Department to decline to espouse claims which have not been continuously owned by U.S. nationals from the date of injury. This is a well-established principle of international claims practice, and innumerable international, domestic and mixed claims arbitral tribunals have followed and applied the rule of continuous nationality."

Id. at 7. Therefore, while the CSA and E.O. 13,477 do settle all claims "within the terms of Article I of the [CSA],"[6] irrespective of nationality, for the reasons discussed above, only claims that have continuous U.S. nationality are eligible for compensation by this Commission.

The claimant additionally argues that if the Commission denies its claim, it has no further forum in which to press its claim, and notes that in the aviation reinsurance context, "a claim for compensation for the loss suffered by the original party and subrogated to the reinsurer will be orphaned if every country were to apply the continuous nationality principle." The Commission makes no determination about whether claimant has any other forum in which to bring its claim, but notes that the premise of this argument—that reinsurance claims "will be orphaned if every country were to apply the continuous nationality principle"—applies only if the only forum for a reinsurer's claim is espousal through an international claims-settlement process.[7]

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[6] Exec. Order No. 13,477 of October 31, 2008, § 1, 73 FED. REG. 65965, 65965 (Nov. 5, 2008).

[7] It appears to the Commission that this claim, which lacks continuous nationality, was "settled" but not espoused. While claimant is barred from courts in the United States by the CSA, LCRA and E.O. 13,477,

The Commission acknowledges, however, that for the limited purposes of espousal of a reinsurance claim through an international claims-settlement process, the continuous nationality requirement may create difficulties in the context of complex insurance claims, and the claimant has raised important issues for future policy makers.[8] Nonetheless, the relevant international law is currently clear, and the Commission has no authority to change the law for policy reasons. Commission precedent, U.S. practice, and customary international law all require a continuous chain of U.S. nationality in order for a claim to be espoused and, as the Commission made clear in 5 U.S.C. §552(b)(6) there is no evidence that either the parties that concluded the Claims Settlement Agreement or the State Department in its referral to this Commission intended to upend that settled legal principle.[9] *See generally Claim of SUBROGATED INTERESTS TO PAN AMERICAN WORLD AIRWAYS, INC.*, Claim No. LIB-II-171, Decision No. LIB-II-161, at 16-17 (2013) (Final Decision).

Finally, New York Marine points to the fact that the Pending Litigation list which is annexed as Attachment 1 to the January Referral Letter specifically includes *Certain Underwriters at Lloyds London v. Great Socialist People's Libyan Arab Jamahiriya*

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that does not necessarily mean that New York Marine's claim for compensation is—or that the claims of some potential future reinsurer claimants in similar circumstances will be—"orphaned."

[8] *See Ian Brownlie, Principles of Public International Law* 481 (7th ed. 2008) (noting that the current state of international claims law in regard to claims by insurers is to require continuity of nationality, but suggesting that – because the ultimate bearer of loss may not readily be ascertainable in insurance cases, particularly because of the practice of reinsurance – there are cogent policy arguments against requiring continuity of nationality); *see also James Crawford, Brownlie's Principles of Public International Law* 705 (8th ed. 2012) (same).

[9] Claimant also argues that denying its claim creates a possible "takings" problem under the Fifth Amendment to the United States Constitution. However, the Commission has already held, in this and previous programs, that consideration of constitutional issues is outside the scope of the referrals to the Commission. *See, e.g., Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-005, Decision No. LIB-I-014, at 5 (2010) (Final Decision); *Claim of FREDERICK MUELLER*, Claim No. G-1332, Decision No. 1349, at 4 (1980) (Final Decision). Claimant provides no reason to change the Commission's approach to these issues.

(D.D.C.), 06-cv-731. Claimant alleges that it is the only U.S. national plaintiff in that suit and so argues that this demonstrates that the CSA and the January Referral Letter must have intended to allow New York Marine in particular to be compensated, regardless of the lack of continuous U.S. nationality of the claim. The January Referral Letter, though, specifically states that the mere inclusion of a case on the Pending Litigation List does not mean the claim is eligible for compensation.[10]

[10] Footnote 1 of Attachment 1 to the January Referral Letter, the "Pending Litigation" list, states that, "[i]ncluded in this list are cases in which plaintiffs allege hostage taking or unlawful detention, emotional distress, wrongful death, physical injury, or commercial loss, without consideration of whether plaintiffs would meet the other criteria in the relevant category."

CONCLUSION

In summary, for the reasons set forth above, the Commission affirms its conclusion in the Proposed Decision that it lacks jurisdiction over New York Marine's claim. Accordingly, the denial set forth in the Proposed Decision in this claim is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, February 15, 2013
and entered as the Final Decision
of the Commission.

Timothy J. Feighery, Chairman

Rafael E. Martinez, Commissioner

Anuj Desai, Commissioner

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

In the Matter of the Claim of NEW YORK MARINE AND GENERAL INSURANCE COMPANY Against the Great Socialist People's Libyan Arab Jamahiriya	Claim No. LIB-II-170 Decision No. LIB-II-165

Counsel for Claimant: Steven R. Perles, Esq.
Perles Law Firm, PC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by NEW YORK MARINE AND GENERAL INSURANCE COMPANY ("NYMG") based upon its reinsurance of an EgyptAir airplane that was hijacked by Libyan terrorists on November 23, 1985, resulting in the loss of the airplane.

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 F. According to the January Referral Letter, Category F consists of

> commercial claims of U.S. nationals provided that (1) the claim was set forth by the claimant named in the Pending Litigation; (2) the Commission determines that the claim would be compensable under the applicable legal principles; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 8. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation.

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 7, 2010, the Commission received a completed Statement of Claim asserting a claim under Category F of the January Referral Letter, along with exhibits. According to the Statement of Claim, in 1985 NYMG reinsured a portion of the insurance policy on an EgyptAir Boeing 737-200 ADV passenger airplane, registration number SU-AYH, serial number 211191. Claimant further states that on November 23, 1985 this aircraft was hijacked by Libyan terrorists and "destroyed" as a result of the efforts of Egyptian commandos to retake control of it. Subsequently, claimant states, the reinsurers decided to declare a "'total constructive loss' of the airplane."

The background facts asserted concerning the insurance coverage are as follows. NYMG states that EgyptAir contracted with an Egyptian insurance company, MISR Insurance Company ("MISR"), located in Cairo, Egypt to insure the aircraft. Consistent with standard risk management practice in the insurance industry, MISR, as the primary insurer, then sought to distribute its risk among willing reinsurers and retrocessionaires. It did this through a London insurance broker, Leslie & Godwin, which contracted the reinsurance of MISR with many syndicate underwriters through the insurance entity Lloyd's and "surrounding insurance companies." NYMG states that it was one of the

underwriters who contracted, through Leslie & Godwin, to reinsure the MISR policy. NYMG further states that natural persons who are nationals of the U.S. held, directly or indirectly, an interest in NYMG equivalent to at least 50 percent of its capital stock.

NYMG asserts that its share of the damages, minus the proportionate salvage sale refund, is $253,373.38. It further claims that it is entitled to an additional $12,032.92 as its share of the reinsurers' cost for the work of attorneys and a surveyor related to assessing and paying EgyptAir's loss, and for its share of the payment to the government of Malta for storage of the aircraft prior to salvage, for a total of $265,406.29. NYMG further asserts that with prejudgment interest, it is entitled to $1,497,750. Finally, MYMG also states that it was one of the plaintiffs in *Certain Underwriters at Lloyds London v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06-cv-731, which was dismissed as to Libya on January 7, 2010, pursuant to the LCRA.

DISCUSSION

The January Referral Letter states that, as a matter of jurisdiction, Category F only applies to claims of "U.S. nationals." January Referral Letter, *supra*, ¶ 8. In *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held that in order for a claim to be compensable, the claim must have been held by a "national of the United States" from the date it arose until the date of the Claims Settlement Agreement. In this program, the Commission noted in a later case that the continuous nationality requirement is a "long-standing principle of international law consistently applied and advocated by the United States to the present day. Consequently, any departure from these principles would have been clearly articulated [in the Libya Claims Program authorizing documents] and not merely implied." *Claim of*

5 U.S.C. §552(b)(6) Claim No. LIB-I-049, Decision No. LIB-I-019 (2011), FD at 6.

In 5 U.S.C. §552(b)(6) the Commission discussed in detail the basis of its determination that the continuous nationality requirement applies to the Libya Claims Program and its conclusions apply equally here:

> As a general matter, the United States continues to recognize the continuous nationality rule as customary international law. For example, the United States' 2006 comments on the International Law Commission's Draft Articles on Diplomatic Protection clearly convey the United States' position that the continuous nationality requirement – that nationality "be maintained continuously from the date of injury through the date of resolution" – reflects customary international law.[1]
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> * * * *
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> Given the fact that the continuous nationality rule is recognized by the United States as customary international law, and that this rule has been applied by both this Commission and its predecessors, a derogation from this rule will not be assumed by the Commission from the absence of language in any of the operative documents that inform and define this program. Any derogation must be clearly expressed, and there has been no such express derogation in this program. Consequently, the Commission adheres to its earlier finding that in order for a claim to be compensable in this program, it must have been owned by a U.S. national continuously from the date of injury to the date of the Claims Settlement Agreement.

5 U.S.C. §552(b)(6) FD at 6-8.

Especially relevant here is the Commission's decision in *Claim of OCEAN-AIR CARGO*, Claim Nos. IR-1102, IR-1429, Decision No. IR-0961 (1994). There, the claimant insurer (Ocean-Air) provided evidence that both it and the original purchaser of the goods were at all relevant times U.S. nationals. Nonetheless, the Commission denied its claim for lack of continuous U.S. nationality because Ocean-Air was not the direct

[1] *See International Law Commission, Comments and observations received from Governments, Diplomatic protection*, at page 19, U.N. Doc. A/CN.4/561 (2006).

insurer, but was instead acting as an agent for French companies that initially paid the purchaser:

> The evidence establishes that upon payment of the claims by the French insurance companies, those companies became subrogated to the claims of the original cargo owners and not the claimant. As such, they became the owners of the claims. . . . In light of the foregoing, the Commission determines that these claims were not continuously owned by United States nationals and are, therefore, not claims of United States nationals as defined by the Settlement Agreement and Algiers Accords, and thus are outside the jurisdiction of the Commission as established by those agreements.

Id. at 4-5.

Indeed, the Commission has consistently required U.S. nationality for all of the relevant parties in the chain of insurance: the party that suffered the loss, the insurance company that directly insured the loss, and the reinsurer that paid the insurer. *See, e.g., Claim of FORTRESS RE, INC.*, Claim No. IR-0893, Decision No. IR-2210 (1994); *see also Claim of TALBOT, BIRD & COMPANY, INC.*, Claim No. IR-0342, Decision No. IR-1722 (1993) (denying claim of the agent of an insurance company for, among other reasons, failing to meet its burden of demonstrating that it, its principal, and its principal's subrogor were U.S. nationals); *Claim of COMMERCIAL UNION INSURANCE COMPANY*, Claim No. IR-0759, Decision No. IR-2280 (1994) (denying claim for lack of jurisdiction where claimant did not meet burden of proof of continuous U.S. nationality for itself and its subrogor); *Claim of ROYAL GLOBE INSURANCE COMPANY*, Claim No. IR-2730, Decision No. IR-0519 (1992) (denying claim for lack of jurisdiction where claimant insurance company failed to meet its burden of proof of demonstrating continuous U.S. nationality through the "chain of ownership" of the claim,

including the "various subrogors"); and *Claim of NEW HAMPSHIRE INSURANCE COMPANY*, Claim No. IR-2731, Decision No. IR-0518 (1992) (same).[2]

This precedent applies equally here. As discussed above, the present claim arises from a commercial loss that was first suffered by an Egyptian entity, EgyptAir. Through its insurance contract, this loss was then passed on to MISR, another Egyptian company. MISR, in turn, passed part of the loss, through an English broker, Leslie & Godwin, to a syndicate of underwriters at an English entity, Lloyd's, which included the claimant. The loss began with an Egyptian company, was passed to another Egyptian company, and only then was a portion of the loss passed along to the claimant.

Given these facts, the Commission concludes that the claim was not held by a U.S. national continuously from the date the claim arose through the date of the Claims Settlement Agreement, and thus is not within the jurisdiction conferred upon it by the ICSA and the January Referral Letter.

In sum, based on: (1) the language of the Libya program authorizing documents, including the January 15, 2009 Referral Letter, the Claims Settlement Agreement, the LCRA, and Executive Order No. 13,477; (2) Commission precedent to date in the Libya program; (3) Commission precedent relating to insurance claims in programs prior to the Libya program; and (4) generally recognized standards of international law — all of which require a continuous chain of U.S. nationality — the Commission must conclude

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[2] *See also Claim of GREAT AMERICAN INSURANCE COMPANY*, Claim No. IT-10,260, Decision No. IT-487 (1959) (denying U.S. insurance company's claim for loss because company failed to provide evidence the insured were nationals of the United States, stating that any "break in the chain of title or ownership of the claim by assignment or otherwise which results in the claim having been owned at any time by a non-citizen defeats the right to such claims."); and *Claim of ALBINE ZIBERT SCHROIF*, Claim No. Y-764, Decision No. 1342 (1954) (Commission denied claim based on lack of U.S. nationality, relying on, among other things, State Department practice as reflected in an August 11, 1926 letter which stated that the United States requires continuous U.S. nationality and that the United States would not espouse the claim of a foreign insurance company.).

that it lacks jurisdiction under the January Referral Letter over the claimant's claim. Accordingly, this claim must be and it is hereby denied. The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, DC, June 5, 2012
and entered as the Proposed Decision
of the Commission.

Timothy J. Feighery, Chairman

Rafael E. Martinez, Commissioner

Anuj Desai, Commissioner

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) (2011).