

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579**

In the Matter of the Claim of	}	
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	}	
ESTATE OF JUANITA LOPEZ DE CONDE, DECEASED; SAMUEL CONDE LOPEZ, ADMINISTRATOR	}	Claim No. LIB-III-023
	}	
	}	Decision No. LIB-III-026
	}	
Against the Great Socialist People’s Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joshua M. Ambush, Esq. Joshua M. Ambush, LLC
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PROPOSED DECISION

Claimant Estate brings this claim against the Great Socialist People’s Libyan Arab Jamahiriya (“Libya”) based on physical injuries suffered by Juanita Lopez De Conde (the “victim”) during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In that attack, a bullet pierced Ms. Lopez De Conde’s abdomen and fractured her pelvis; shrapnel lacerated her arm; and she subsequently developed a fever while being treated in the hospital. In a previous program, the Commission awarded Claimant Estate \$3 million in compensation for these injuries. Claimant Estate now seeks additional compensation based on a claim that the severity of the victim’s injuries is a “special circumstance warranting additional compensation.” Because Claimant Estate has failed to demonstrate that Ms. Lopez de Conde’s injuries were sufficiently severe to warrant additional compensation beyond the \$3 million it has already been awarded, Claimant Estate is not entitled to additional compensation in this program. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Ms. Lopez De Conde was in the terminal at Lod Airport in Tel Aviv, Israel, on May 30, 1972, when three armed terrorists began shooting automatic rifles and throwing hand grenades at passengers gathered in the baggage claim area. Claimant Estate states that, in that attack, Ms. Lopez De Conde suffered a gunshot wound to the lower left abdomen and an exit wound in the left rump; her left ilium bone in her pelvis was fractured; and shrapnel wounded her arm. The Claimant Estate further states that, after the attack, Ms. Lopez De Conde underwent an exploratory laparotomy and spent 12 days in the hospital in Israel where she developed a fever that did not react to antibiotics, and that she was then released for continuing care in a hospital in Puerto Rico. She died in 1999 at the age 89 of causes unrelated to the attack.

Although neither Claimant Estate nor Ms. Lopez De Conde was among them, a number of the Lod Airport victims sued Libya (and others) in federal court in 2006. *See Franqui v. Syrian Arab Republic*, No. 06-cv-734 (D.D.C.). In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya, including claims “aris[ing] from personal injury ... caused by ... [a] terrorist attack.” *See Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* Art. I (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008; *see also* Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). Two months later, in October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission. *See* International Claims Settlement Act of 1949 (“ISCA”), 22 U.S.C. § 1623(a)(1)(C) (2012). The Secretary delegated that authority to the State Department’s Legal Adviser, who, by letters dated December 11, 2008, and January 15, 2009, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

In 2010, Claimant Estate filed a claim under the January 2009 Referral, alleging that Ms. Lopez De Conde had suffered physical injuries as a result of the Lod Airport attack. By Proposed Decision entered December 15, 2011, the Commission determined that Claimant Estate was eligible for compensation under Category E of that Referral and awarded it a fixed sum of \$3 million for Ms. Lopez De Conde’s physical injuries. *See* Claim No. LIB-II-121, Decision No. LIB-II-113 (2011). (“Physical-Injury Decision”). Because Claimant Estate did not file an objection to the Proposed Decision, the Proposed Decision automatically became the Commission’s Final Decision on January 18, 2012. *See* 45 C.F.R. § 509.5 (g) (2014).

The Legal Adviser referred an additional set of claims to the Commission on November 27, 2013. *Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* (“2013 Referral” or “November 2013 Referral”). One category of claims from the 2013 Referral is applicable here. That category, known as Category D, consists of

claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by our January 15, 2009 referral or by this referral, provided that (1) the claimant has received an award for physical injury pursuant to our January 15, 2009 referral or this referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or

that additional compensation is warranted because the injury resulted in the victim's death; and (3) the claimant did not make a claim or receive any compensation under Category D of our January 15, 2009 referral.

2013 Referral at ¶ 6.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of the third Libya Claims Program pursuant to the ICSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On May 13, 2014, the Commission received from Claimant Estate a Statement of Claim seeking compensation under Category D of the 2013 Referral. Claimant Estate supplemented its filing with further information and exhibits in submissions dated October 7, 2014 and December 29, 2014. Claimant Estate's submissions also incorporated by reference the evidence it had previously submitted in connection with the physical-injury claim it made under the January 2009 Referral.

DISCUSSION

Standing

The Claimant Estate has submitted a Resolution dated May 12, 2010, issued by the Court of First Instance for the Division of Carolina, Puerto Rico, which states that Ms. Lopez De Conde died a widow and without a will, and identifies her heirs as Samuel Conde Lopez, Elba Noemi Morales Lopez, Julio Gerson Morales Lopez, Eliezer Conde Lopez, and Luis Felipe Conde Lopez. *See also* Claim No. LIB-II-121, Decision No. LIB-II-113, *supra*, at 4. That same court also issued a Resolution on June 23, 2011, appointing Samuel Conde Lopez as the judicial administrator for Ms. Lopez de Conde's estate. *Id.* Accordingly, the ESTATE OF JUANITA LOPEZ DE CONDE, DECEASED; SAMUEL CONDE LOPEZ, ADMINISTRATOR is the proper claimant in this claim.

Jurisdiction

The Commission must next consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the "Category D" paragraph of the 2013 Referral is limited to claims of (1) "U.S. nationals"; who (2) have received an award for physical injury pursuant to the January 15, 2009 referral or this referral and (3) did not make a claim or receive any compensation under Category D of the January 15, 2009 referral. 2013 Referral ¶ 6.

Nationality

With respect to the first jurisdictional element, this claims program is limited to "claims of U.S. nationals." Here, that means that a claimant must have been a national of the United States continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-001, Decision No. LIB-III-001, at 5-6 (2014). 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 party 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

In its Decision on Claimant Estate's physical-injury claim under the January 2009 Referral, the Commission found that Ms. Lopez De Conde and the beneficiaries of her estate were all U.S. nationals and that the claim was thus held by a U.S. national at the

¹ *See, e.g.*, Claim No. Y-0660, Decision No. Y-1171 (1954); Claim No. W-9801, Decision No. W-2107 (1965); Claim No. G-2154, Decision No. G-1955 (1981); and Claim No. ALB-338, Decision No. ALB-321 (2008).

time of the incident continuously through the effective date of the Claims Settlement Agreement. Physical-Injury Decision, *supra*, at 6. Claimant Estate therefore satisfies the nationality requirement here.

Prior Award

To fall within the category of claims referred to the Commission, a claimant must have received an award under either the January 2009 or November 2013 Referrals. The Commission awarded Claimant Estate \$3 million based on Ms. Lopez De Conde's physical-injury claim under the January 2009 Referral. Claimant Estate has thus satisfied this element of its Category D claim.

No Claim Under Category D of the January 2009 Referral

With respect to the final jurisdictional requirement, Claimant Estate did not make a claim or receive any compensation under Category D of the January 2009 Referral. Therefore, Claimant Estate meets this element of its claim as well.

In summary, this claim is within the Commission's jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

Merits

Standard for Special Circumstances Claims

The Commission has previously drawn on decisions from the January 2009 Referral to determine what constitutes a "special circumstance" in this program. The 2009 Referral decisions, made pursuant to the same Libyan Claims Settlement Agreement and involving the same terrorist attacks, addressed the exact same question as that presented here, whether the "severity of [a victim's] injury" constitutes a "special circumstance warranting additional compensation." The Commission adopted the same standard that it applied under the 2009 Referral and held that in determining whether the severity of a

victim's physical injuries is a "special circumstance warranting additional compensation" under Category D of the 2013 Referral, the Commission would consider three factors: "[1] the nature and extent of the injury itself, [2] the impact that the injury has had on a [victim's] ability to perform major life functions and activities—both on a temporary and on a permanent basis—and [3] the degree to which the [victim's] injury has disfigured his or her outward appearance." Claim No. LIB-III-021, Decision No. LIB-III-016, at 7 (Proposed Decision).

Importantly, in all of its "additional compensation" decisions under the 2009 Referral (and its 2013 Referral "additional compensation" decisions to date), the Commission addressed these three factors in light of the unique context of the Commission's Libyan claims programs, under which every successful physical-injury claimant received an initial award of \$3 million. While noting that no amount of money can adequately compensate some victims for their injuries, the Commission recognized that \$3 million is "exceptionally high when compared to other claims programs" See Claim No. LIB-II-110, Decision No. LIB-II-111, at 5 (2011). For that reason, the Commission emphasized that "the eligible claimants in [the Libya claims] program [had], for the most part, been adequately compensated" *Id.* at 6. Starting from that premise, the Commission held that only the most severe injuries would constitute a special circumstance warranting additional compensation under Category D.

As discussed in more detail below, Claimant Estate has not shown that Ms. Lopez De Conde's injuries are among the most severe in this program, and Claimant Estate is thus not entitled to additional compensation under the November 2013 Referral beyond the \$3 million the Commission has already awarded it.

Factual Allegations

Claimant Estate states that Ms. Lopez De Conde was in the terminal at Lod Airport in Tel Aviv, Israel, on May 30, 1972, when three armed terrorists began shooting automatic rifles and throwing hand grenades at passengers gathered in the baggage claim area. Claimant Estate states that, in that attack, Ms. Lopez De Conde suffered a gunshot wound to the lower left abdomen and an exit wound in the left rump; that her left ilium² bone in her pelvis was fractured; and that shrapnel wounded her arm. Claimant Estate further states that Ms. Lopez De Conde underwent an exploratory laparotomy³ and spent twelve days in the hospital in Israel, where she developed a fever that did not react to antibiotics; and that she was released for continuing care in a hospital in Puerto Rico.

Supporting Evidence

Claimant Estate supports its claim primarily with a single document, a one-page disease summation form from the Tel Hashomer hospital in Israel with an illegible date sometime in 1972. It briefly states that Ms. Lopez De Conde suffered from a “GUNSHOT WOUND OF ABDOMEN” and a “FRACTURE OF LT>ILIUM” and that she underwent an “EXPLORATORY LAPARICTOMY [sic].” It also states in greater detail as follows:

She suffered a penetrating wound in the lower left abdomen and an exit wound in the left rump. She was not in shock. In the laparotomy, no damage to the abdominal [] organs was found. Shrapnel was removed from the fracture in the pelvis and the abdomen was closed. The post surgery course was uneventful. The patient is recovering nicely. There was fever around 38 [degrees], which did not react to antibiotics. The pelvis fracture did not impede walking. With an improvement in her general condition and healing of the external wounds, at her request she was sent for continued treatment in a hospital in Puerto Rico.

² Citing *Tabler's Cyclopedic Medical Dictionary*, Claimant states that “the ilium is ‘[o]ne of the bones of each half of the pelvis. It is the superior and widest part and serves to support the flank.’”

³ A laparotomy is a surgical incision into the abdomen.

The Tel Hashomer disease summation also states that the victim left the hospital on “6.11.72,” 12 days after the May 30, 1972 attack.

The Claimant’s only other evidence related to Ms. Lopez De Conde’s injuries is a 1974 decision of the Superior Court of Puerto Rico addressing the distribution of *ex-gratia* funds that Japan provided to the Commonwealth of Puerto Rico for the benefit of Puerto Ricans harmed by the Lod Airport attack. The Special Commissioners appointed by the court established a point system for distributing those funds and awarded the victim 1,475 points out of a possible total of 2,000.

Application of Special Circumstances Factors to Evidence

In making award determinations for additional compensation, we must take into account the severity of the injuries of all the victims who have sought additional compensation in these Libyan claims programs. See Claim No. LIB-II-110, Decision No. LIB-II-111, *supra*, at 5. Moreover, as noted above, “to the extent that a monetary award can ever adequately compensate for a physical injury,” the Commission views these claims for additional compensation through the lens of the \$3 million previously awarded to Claimant (and all successful claimants in this program) -- an amount that is “exceptionally high when compared to other programs.” *Id.* Seen through that lens, Claimant Estate’s evidence is insufficient to meet its burden to prove that the severity of Ms. Lopez De Conde’s physical injuries is a “special circumstance” warranting additional compensation in this claims program.

First, the nature and extent of Ms. Lopez De Conde’s initial injuries in the attack, in and of themselves, were not sufficiently severe to warrant additional compensation beyond the \$3 million already awarded. While we are sympathetic to all that she had to go through during the attack and its immediate aftermath, the nature and extent of her injuries were not

among the most severe when compared with all the other claimants who have sought additional compensation in these Libyan claims programs. Indeed, the Tel Hashomer disease summation notes that “[i]n the laparotomy, no damage to the abdominal [] organs was found”; and “[t]he post surgery course was uneventful.”⁴ The Commission has previously denied additional compensation to other claimants whose physical injuries were similar to, or worse than, Ms. Lopez De Conde’s. *See, e.g.*, Claim No. LIB-II-148, Decision No. LIB-II-185 (2012) (denying claim for additional compensation where claimant had bullet wounds to his chest, buttocks and leg; had spent eight days in the hospital after the terrorist attack; had to fly back home while lying on his abdomen and then spent another four weeks in a hospital near his home; and had medical records showing continued pain in his lower leg, thigh and back for the first few years after the attack); Claim No. LIB-II-109, Decision No. LIB-II-112 (2011) (denying claim for additional compensation where claimant suffered bullet wounds to her right foot with entry and exit wounds, requiring immediate surgery and hospitalization for ten days); Claim No. LIB-II-110, Decision No. LIB-II-111, *supra* (denying claim for additional compensation where claimant suffered a through and through gunshot wound to the chest, which required four days of hospitalization and a course of antibiotics, and which left a 3-inch scar on his

⁴ As noted above, Claimant’s only other evidence besides the Tel Hashomer disease summation that relates to Ms. Lopez De Conde’s injuries is the 1974 court decision distributing the *ex gratia* funds from Japan. The court decision adds little to our understanding of the nature and extent of her initial injuries. The decision did award her 1,475 out of a possible 2,000 points. But Claimant Estate has not provided any evidence explaining how the Special Commissioners determined how many points to award Ms. Lopez De Conde. Other Lod Airport victims in these Libyan claims programs have provided the related “Report From Special Commissioners,” a victim-specific document that provides details about how the Special Commissioners determined the point totals in individual cases, but Claimant has not done so here. In any event, the Special Commissioners’ formula differs from the 2013 Referral’s mandate and the Commission’s standards for determining whether the severity of a claimant’s injuries warrants additional compensation in this program (as well as the 2009 Referral’s mandate and the Commission’s standard for physical-injury claims under the 2009 Referral). *See* Claim No. LIB-II-064, Decision No. LIB-II-073, 5-7 (2012) (discussing this same Report in the context of another Lod Airport victim); Claim No. LIB-II-088, Decision No. LIB-II-108, 4-6 (2012) (same). The 1974 Superior Court decision by itself is therefore of little help in adjudicating this claim.

chest); Claim No. LIB-II-116, Decision No. LIB-II-166 (2012) (denying claim for additional compensation where the claimant had nerve damage to his right leg requiring him to wear a foot brace for 18 months to mitigate “foot drop,” had shrapnel remaining in both legs, and was assessed as having a partial permanent disability in both legs).

Claimant does not appear to allege that the second factor—the impact of the injury on the victim’s ability to perform major life functions and activities—is relevant to its claim. Claimant has provided no evidence suggesting any impact on Ms. Lopez De Conde’s ability to perform major life functions and activities.⁵ While the Tel Hashomer disease summation states that Ms. Lopez De Conde was sent for continued treatment in a hospital in Puerto Rico, it also states, “[t]he patient is recovering nicely”; “[t]he pelvis fracture did not impede walking”; and prior to discharge the victim showed an “improvement in her general condition and healing of the external wounds.” Claimant Estate has not provided any other evidence of the long-term or medium-term impact of the attack injuries on Ms. Lopez De Conde, let alone demonstrated that the injuries had a particularly severe impact on her ability to perform major life functions and activities, and/or a life-changing impact on her personal or professional life. *See* Claim No. LIB-II-116, Decision No. LIB-II-166, *supra* at 5 (denying claim for additional compensation to claimant who, although unable to continue in his prior profession after his injuries, was eventually able to find work in a lower paying job).

Finally, with regard to the third factor to be considered, Claimant Estate does not contend that Ms. Lopez De Conde was significantly disfigured by the attack. We have no information that she had any long term scars, or, if she did, about their size, the degree of

⁵ Other than the Tel Hashomer discharge summary, Claimant Estate has provided no medical records at all. Thus, we have no medical documents that either discuss the victim’s subsequent medical condition or in any way connect her injuries in the 1972 attack to any subsequent medical condition.

their severity, or whether, and to what degree, they had an impact on her life. In sum, the severity of Ms. Lopez De Conde's injuries does not rise to the level of a special circumstance warranting additional compensation under Category D.

Conclusion

Having considered all of Claimant Estate's evidence in light of the severity of the injuries suffered by all the victims who have sought additional compensation in these Libyan claims programs, the Commission concludes that the severity of the injuries in this claim does not rise to the level of a special circumstance warranting additional compensation. While we sympathize with all that Ms. Lopez De Conde endured, the Claimant Estate is not entitled to additional compensation beyond the \$3 million the Commission has already awarded it. Accordingly, this claim must be and is hereby denied.

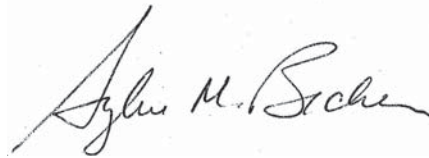
Dated at Washington, DC, July 16, 2015
and entered as the Proposed Decision
of the Commission.



Anuj C. Desai, Commissioner

**This decision was entered as the
Commission's Final Decision on**

September 15, 2015



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery 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 delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2014).