

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

In the Matter of the Claim of

Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6)

Against the Great Socialist People's  
Libyan Arab Jamahiriya

Claim No. LIB-I-034

Decision No. LIB-I-037

Counsel for Claimant:

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

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon physical injuries said to have been sustained by Personally Identifiable Information Redacted under 5 U.S.C. §552(b)(6) at Lod Airport in Tel Aviv, Israel on May 30, 1972.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

On December 11, 2008, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication a category of claims of United States nationals against Libya. *Letter from*

*the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* (“December Referral Letter”). The category of claims referred consists of

claims of U.S. nationals for physical injury, provided that (1) the claim meets the standard for physical injury adopted by the Commission; (2) the claim is set forth as a claim for injury other than emotional distress alone by a named party in the Pending Litigation; and (3) the Pending Litigation against Libya and its agencies or instrumentalities; officials, employees, and agents of Libya or Libya’s agencies or instrumentalities; and any Libyan national (including natural and juridical persons) has been dismissed before the claim is submitted to the Commission.

*Id.* at ¶ 3. Attachment 1 to the December Referral Letter lists the suits comprising the Pending Litigation.

The December Referral Letter 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 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 Secretary of State certified, pursuant to the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008), that the United States Government had received funds sufficient to ensure “fair compensation of claims of nationals of the United States for . . . physical injury in cases pending on the date of enactment of this Act against Libya . . . .” On the same day, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Oct. 31, 2008), espousing the claims of United States nationals coming within the terms of the Claims Settlement Agreement, barring United States nationals from asserting or maintaining such claims, terminating any pending suit within the terms of the Claims

Settlement Agreement, and directing the Secretary of State to establish procedures governing claims by United States nationals falling within the terms of the Claims Settlement Agreement.

On March 23, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this Libya Claims Program pursuant to the ICSA and the December Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 12,148 (2009).

#### BASIS OF THE PRESENT CLAIM

On July 6, 2009, the Commission received from claimant's counsel a completed Statement of Claim and accompanying exhibits supporting the claim, including evidence of: his United States nationality; his inclusion as a named party in the complaint filed in *Franqui v. Syrian Arab Republic*, 06-cv-734 (D.D.C.), part of the Pending Litigation referred to in Attachment 1 of the December Referral Letter, in which the claimant set forth a claim for injury other than emotional distress alone; the dismissal of the *Franqui* case; and the claimant's physical injuries.

The claimant, Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6) states that he 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, the claimant sustained physical injuries during the attack consisting of bullet and shrapnel wounds, for which he was given medical treatment and hospitalized for eight days. Following his return home to Puerto Rico, the claimant was hospitalized for an additional month at a Veterans Administration hospital for further treatment of his wounds. The

claimant has provided evidence of his United States nationality, both on the date of the incident and at the time of the Settlement Agreement. Additionally, claimant has provided medical records, newspaper clippings, various records from the Department for Hostile Action Casualties of the Israeli National Insurance Institute, and other documents in support of his claim.

## DISCUSSION

### Jurisdiction

The Commission must first consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the December Referral Letter is limited to claims of individuals who: (1) are United States nationals; (2) are named parties in a Pending Litigation case against Libya which has been dismissed; and (3) set forth a claim for injury other than emotional distress alone in the Pending Litigation. December Referral Letter, *supra* ¶¶ 2-3.

### *Nationality*

In the *Claim of* Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that in order for a claim to be compensable, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, from the date the claim arose until the date of the Claims Settlement Agreement. Based on the evidence submitted with this claim, the Commission determines that this claim was held by a United States national at the time of the injury on which the claim is based, and that it has been so held from that point until the effective date of the Claims Settlement Agreement.

*Pending Litigation and its Dismissal*

To fall within the category of claims referred to the Commission, the claimant must also be a named party in the Pending Litigation listed in Attachment 1 to the December Referral Letter and must provide evidence that the Pending Litigation against Libya has been dismissed. December Referral Letter, *supra*, ¶ 3. The claimant has provided a copy of the Complaint, First Amended Complaint, and a docket history for Case No. 06-cv-734 (D.D.C.), filed in the United States District Court for the District of Columbia. According to the docket history, the plaintiffs filed a Plaintiffs' Notice of Dismissal with Prejudice on December 31, 2008, and the case was ordered dismissed on January 6, 2009. Based on this evidence, the Commission finds that the claimant was a named party in the Pending Litigation and that the Pending Litigation has been properly dismissed.

*Claim for Injury Other than Emotional Distress*

The December Referral Letter also requires that the claimant must have set forth a claim for injury other than emotional distress alone in the Pending Litigation. December Referral Letter, *supra* ¶ 3. The Commission's records reflect that the claimant asserts in the amended complaint in the Pending Litigation that he was injured in the Lod Airport attack. In addition, the Commission notes that the claimant states causes of action for, *inter alia*, battery, assault, and false imprisonment under Counts I, II, and III of the complaint. The Commission therefore finds that the claimant has satisfied this element of his 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 December Referral

Letter and is entitled to adjudication on the merits.

Merits

*Standard for Physical Injury*

As stated in the December Referral Letter, to qualify for compensation, a claimant asserting a claim for physical injury must meet a threshold standard for physical injury adopted by the Commission. In order to develop such a threshold standard for compensability, the Commission has considered both its own jurisprudence and pertinent sources in international and domestic law. After careful and thorough consideration, the Commission held in the *Claim of* Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6) *supra*, that in order for a claim for physical injury to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of an incident related to the Pending Litigation; and
- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

*Physical Injury*

According to his Statement of Claim, Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6) suffered physical injuries on May 30, 1972 when, as discussed above, three terrorists attacked passengers waiting in the baggage claim area at Lod Airport in Tel Aviv, Israel. According to documents provided by the claimant, he was taken immediately to the Haim Sheba Medical Center at Tel Hashomer, where he was treated for "shrapnel wounds due to an explosion." The hospital discharge summary indicates that the claimant suffered multiple gunshot or shrapnel wounds to his chest and the right side of his body, and that he

received treatment that included the “excision of [his] wounds.”<sup>1</sup> The discharge sheet also notes that the claimant was hospitalized for eight days before being discharged; that he required further medical treatment for his wounds; and that he could travel via airplane only by lying on his abdomen.<sup>2</sup>

Medical records from the Veterans Administration (VA)<sup>3</sup> indicate that the claimant did indeed receive further medical treatment for his wounds; specifically, these records indicate that the claimant was hospitalized in a VA facility for an additional month after returning to Puerto Rico, where he was administered antibiotics and underwent surgery to reconstruct an “unclosed bullet wound.” In addition, notes taken during an examination of claimant by his family physician in Puerto Rico seven months after the attack mention the presence of scar tissue at the site of the wounds as described in claimant’s other medical records.

Based on the evidence submitted, the Commission finds that the claimant’s injuries meet the standard for physical injury set forth above. Accordingly,

Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6) is entitled to compensation as set forth below.

#### COMPENSATION

In the *Claim of* Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6), *supra*, the Commission held that \$3,000,000.00 is an appropriate amount of compensation for physical injuries that meet the Commission’s standard in this claims program. The Commission also held that

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<sup>1</sup> Claimant’s counsel explained in a September 10, 2009 letter to the Commission that the Tel Hashomer hospital only retained medical records for 25 years, after which only a discharge summary was available. Counsel further explained that, for this reason, no contemporaneous medical records from the hospital pertaining to claimant’s injury in the Lod Airport attack were available other than the discharge summary.

<sup>2</sup> Claimant has submitted a newspaper photograph apparently showing him flying back to Puerto Rico in this position.

<sup>3</sup> Claimant served in the United States Army from 1963 to 1965. After completing his military tour (including time spent in Korea), he was honorably discharged; however, he continued to serve in the Puerto Rico National Guard until he was medically discharged in 1977.

compensable claims in this claims program were not entitled to interest as part of the award. *Id.* Accordingly, the Commission determines that the claimant, <sup>5 U.S.C. §552(b)(6)</sup>

is entitled herein to an award of \$3,000,000.00 and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

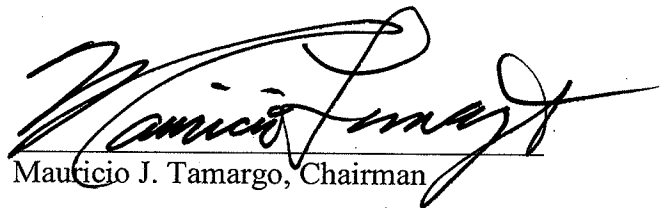
The Commission enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27.

AWARD

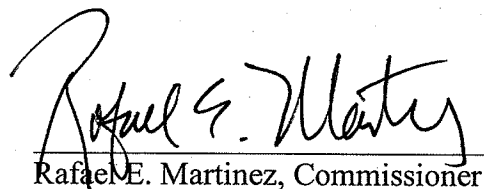
Claimant <sup>5 U.S.C. §552(b)(6)</sup> is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

Dated at Washington, DC, and  
Entered as the Proposed Decision  
Of the Commission.

FEB 18 2010

  
Mauricio J. Tamargo, Chairman

**This decision was entered as the  
Commission's Final Decision on  
MAR 24 2010.**

  
Rafael E. Martinez, 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) (2008).