

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-039

Decision No. LIB-I-016

Counsel for Claimant:

Noel J. Nudelman, Esq.
Heideman Nudelman & Kalik, P.C.

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 the claimant as a passenger on Egypt Air Flight No. 648 from Athens, Greece, to Cairo, Egypt. This aircraft was hijacked on November 23, 1985 and forced to land at the airport in Malta.

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.

Related to the December Referral Letter, a number of official actions 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” December Referral Letter, *supra*, ¶ 1. 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 ICOSA and the December Referral Letter. *Notice of Commencement of Claims Adjudication Program, and of Program Completion Date*, 74 Fed. Reg. 12,148 (2009).

BASIS OF THE PRESENT CLAIM

On July 17, 2009, the Commission received from claimant's counsel a completed Statement of Claim and accompanying exhibits supporting the claimant's claim, including evidence of: her United States nationality; her inclusion as a named party in the Pending Litigation referred to in Attachment 1 of the December Referral Letter, setting forth a claim for injury other than emotional distress alone; the dismissal of the Pending Litigation against Libya; and her physical injuries.

The claimant, Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6), states that on November 23, 1985, she was a passenger on Egypt Air Flight No. 648 flying from Athens, Greece, to Cairo, Egypt, when the flight was hijacked by Libyan-sponsored terrorists and eventually diverted to the airport in Malta. Claimant further states that she suffered permanent damage and disfigurement to the right side of her head, damage to her brain, and impairment of her vision and other faculties from being shot at close range by one of the hijackers and thrown out of the airplane onto the airport tarmac. After being rescued, she was flown to Landstuhl, Germany, for emergency medical treatment and later underwent further

medical treatment in Minneapolis in 1986 and 1987. She further states that she continues to suffer headaches and visual impairment to the present day, as well as epileptic seizures and depression. The claimant has provided evidence of her United States nationality, both on the date of the incident and at the time of the Settlement Agreement. Additionally, claimant has provided medical records and other documents in support of her claim.

DISCUSSION

Jurisdiction

As an initial matter, the Commission must 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 are: (1) United States nationals and (2) named parties in a Pending Litigation which has been dismissed. 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 the claimant was a United States national at the time of the injury on which her claim is based and that she has been a United States national continuously thereafter 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 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 an Order of Dismissal in Cases No. 03-749 and 08-505, issued by the United States District Court for the District of Columbia on December 24, 2008, which names her as a party. 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.

In summary, therefore, the Commission concludes 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 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 her Statement of Claim, the claimant, Personally Identifiable Information Redacted under 5 U.S.C. §552(b)(6), was a passenger on Egypt Air Flight No. 648 en route from Athens, Greece, to Cairo, Egypt, when the flight was hijacked by Libyan-sponsored terrorists and eventually diverted to the airport in Malta. Claimant further states that she suffered permanent damage and disfigurement to the right side of her head, damage to her brain, and impairment of her vision and other faculties from being shot at close range by one of the hijackers and thrown out of the airplane onto the airport tarmac. After being rescued she was flown to Landstuhl, Germany, for emergency medical treatment and later underwent further medical treatment at the University of Minnesota Hospital in Minneapolis in 1986 and 1987. She also states that she continues to suffer headaches and visual impairment to the present day, as well as epileptic seizures and depression. In support of her claim, the claimant has provided documentation including medical records and other materials in support of her statements regarding her injuries and treatment.

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

Personally Identifiable Information Redacted under 5 U.S.C. §552(b)(6) is entitled to compensation in this claim.

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 compensable claims in this claims program were not entitled to interest as part of the award. *Id.* Accordingly, the Commission determines that the claimant, Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) 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.

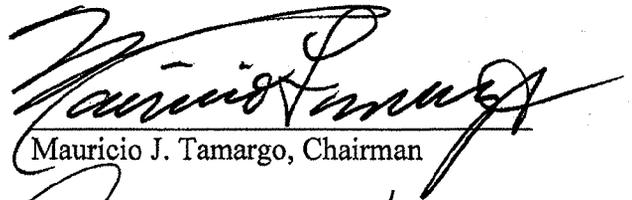
Accordingly, the Commission enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICOSA. 22 U.S.C. §§ 1626-27.

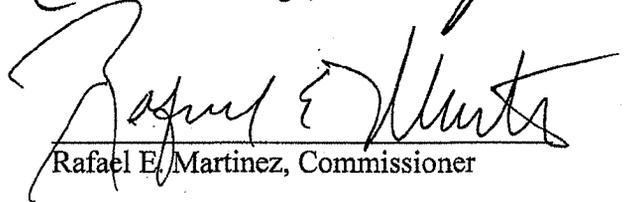
AWARD

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

SEP 23 2009


Mauricio J. Tamargo, Chairman


Rafael E. Martinez, Commissioner

**This decision was entered as the
Commissioner's Final Decision on
OCT 28 2009**

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).