

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

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Great Socialist People's  
Libyan Arab Jamahiriya

Claim No. LIB-II-076

Decision No. LIB-I-044

Counsel for Claimant:

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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 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.

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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 ICOSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

#### BASIS OF THE PRESENT CLAIM

On March 24, 2010, the Commission received from claimant a completed Statement of Claim, in which she asserts a claim under Category E of the January Referral Letter, along with exhibits supporting the elements of her claim, including evidence of claimant's U.S. nationality, her presence at the scene of the terrorist incident, and her alleged physical injuries.

Specifically, the claimant states that she 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 multiple shrapnel wounds in her lower body for which she received medical treatment and was hospitalized for two weeks in Israel. Claimant further states that, following her return home to Puerto Rico, she was hospitalized for an additional forty days for further treatment of her wounds, which included three skin graft surgeries, as well as two other surgeries to remove shrapnel fragments from her legs. In addition, she claims that a metal splint was

fitted to her left foot, which rendered her unable to walk without the aid of crutches for approximately two months. Claimant asserts that her physical injuries have left her with permanent scarring and ongoing pain and weakness in her legs.

## DISCUSSION

### 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; namely, 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 for the nationality requirement to have been met, 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. To meet this requirement, the claimant has provided copies of her U.S. birth certificate and her current U.S. passport.

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Based on this evidence, the Commission determines that the claim was owned by a U.S. national at the time of the incident and has been so held until the effective date of the Claims Settlement Agreement.

*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 her Statement of Claim, the claimant sets forth a claim for physical injury suffered as a result of the May 30, 1972 Lod Airport terrorist attack. The Commission therefore finds that the claimant has also satisfied this element of her 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, which in this claim, as noted above, is the *Franqui* case. Claimant has provided a copy of the First Amended Complaint in *Franqui*, which establishes that she was not a party to that litigation. In addition, claimant has averred under oath in her Statement of Claim that she 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 her claim.

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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.

*Claim of* 5 U.S.C. §552(b)(6) *supra*, at 6-7. The present Category E claim must likewise meet this standard to be compensable.

*Physical Injury*

According to her Statement of Claim and accompanying exhibits, claimant 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.

Claimant states that she was pushed to the floor by her aunt, after which she began to feel “pinches” in her lower body, which she soon realized “was covered with blood and skin.”

Claimant further states that, after the attack ended, she was rescued by “a civilian

couple,” who placed her into their vehicle, at which point she lost consciousness, and drove her to the hospital.

In support of her claim, claimant has provided, *inter alia*, medical records, including contemporaneous medical records; an affidavit describing the incident and her physical injuries; various records pertaining to her injuries from the Israeli National Insurance Institute; affidavits from two other individuals attesting to claimant’s presence at the scene of the incident; and newspaper clippings identifying her as one of the victims of the attack.

According to the contemporaneous medical records provided with this claim, claimant was admitted to the Assaf Harofeh Medical Center near Tel Aviv, where it was determined she had suffered “a wound with skin loss in the area of the gluteus on the left side.” The records further indicate that “[t]he wound was closed” and that “conservative treatment was begun” that involved the dressing of the wound. According to the discharge summary, claimant remained hospitalized for two weeks and was discharged with a recommendation that she undergo a skin graft and further surgical treatment.

Upon her return to Puerto Rico, claimant received treatment at Damas Hospital in Ponce that included surgery to remove some of the shrapnel fragments in her lower body. In the years that followed, claimant underwent periodic medical evaluations with different physicians. During these visits, claimant complained variously of weakness in her extremities, pain and numbness in her legs, and difficulty walking and standing for prolonged periods. Records from these visits indicate that claimant had multiple scars on her lower body, including scars resulting from earlier skin graft surgeries. In addition, x-

ray examinations revealed the presence of grenade fragments in claimant's left foot and right leg. A report of one such examination, conducted in December 2009, indicates that bone deposit around one of the metal fragments in claimant's foot suggests "that this is an old injury."

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

5 U.S.C. §552(b)(6) 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, 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.

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 ICSEA. 22 U.S.C. §§ 1626-1627 (2006).


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AWARD

Claimant 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, May 10, 2011  
and entered as the Proposed Decision  
of the Commission.

  
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Timothy J. Feighery, Chairman

  
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Rafael E. Martinez, Commissioner

**This decision was entered as the  
Commission's Final Decision on  
JUN 20 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).