

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-082

Decision No. LIB-II-095

Counsel for Claimant:

Stuart Newberger, Esq.
Crowell & Moring LLP

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on the hostage-taking or unlawful detention of 5 U.S.C. §552(b)(6) by armed hijackers on Pan Am Flight 73 at Karachi International Airport in Karachi, Pakistan, on September 5, 1986.

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

claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, provided that (1) the claimant meets the standard for such claims adopted by the Commission; (2) the claim was set forth as a claim for injury other than emotional distress alone by the claimant named in the Pending Litigation; (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission; and (4) the claimant did not receive an award pursuant to [the Secretary of State’s] referral of December 11, 2008.

Id. at ¶ 3. 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 ICOSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

By Proposed Decision entered on September 23, 2009, the Commission denied the claimant's physical injury claim submitted pursuant to the December 2008 Referral Letter. The claimant objected to the Commission's decision and requested an oral hearing, which was held on January 13, 2010. Subsequently, the Commission issued its Final Decision on February 18, 2010, affirming its prior denial of the claim. *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-008, Decision No. LIB-I-011 (2010) (Final Decision).

BASIS OF THE PRESENT CLAIM

On April 21, 2010, the Commission received from claimant a completed Statement of Claim in which he asserts a claim under Category A of the January Referral Letter, along with exhibits supporting the elements of his claim. This submission included evidence of claimant's U.S. nationality, his presence at the scene of the terrorist incident, and his having been held hostage or unlawfully detained in violation of international law.

The claimant states that he was on board Pan Am Flight 73 in Karachi, Pakistan on September 5, 1986, when he and other passengers were held hostage by armed

hijackers for approximately sixteen hours. According to the Statement of Claim and accompanying exhibits, claimant was forced by the hijackers to sit on the floor in the aisle with his head down for several hours. Claimant states that, during this time, "I looked up for a brief moment in response to a hijacker yelling and the hijacker waived his AK-47 at me." Claimant further describes how, towards the end of the ordeal, the lights dimmed and gunfire and explosions erupted in the cabin, at which point claimant was able to escape from the plane.

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; in this case, Category A, claims of individuals who: (1) are United States nationals; (2) are named parties in a Pending Litigation case against Libya which has been dismissed; (3) set forth a claim for injury other than emotional distress alone in the Pending Litigation; and (4) did not receive an award pursuant to the December 11, 2008 referral letter. January Referral Letter, *supra*, ¶ 3.

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 to meet the nationality requirement, 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 a copy of his birth certificate, showing his place of birth in Boston, Massachusetts, and a copy of his current U.S. passport. Based on this evidence, the Commission determines that the claim was owned by a U.S. national at the time of the incident continuously through 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 January Referral Letter and must provide evidence that the Pending Litigation against Libya has been dismissed. January Referral Letter, *supra*, ¶ 3. The claimant has provided an excerpted copy of the Second Amended Complaint in *Patel v. Socialist People's Libyan Arab Jamahiriya*, Case No. 06-cv-626, filed in the United States District Court for the District of Columbia, which names him as a party. Additionally, claimant has provided evidence that the litigation was dismissed under a Stipulation of Dismissal dated December 16, 2008. 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 January Referral Letter also requires that the claimant must have set forth a claim for injury other than emotional distress alone in the Pending Litigation. January Referral Letter, *supra*, ¶ 3. Claimant alleged in the complaint in the Pending Litigation that the incident caused him “pain, suffering and economic loss.” The Commission further notes that the claimant states causes of action for, *inter alia*, battery and assault

under Counts VI and VII of the complaint. The Commission therefore finds that the claimant has satisfied this element of his claim.

Prior Award

Finally, the January Referral Letter requires that the claimant must not have received an award pursuant to the Department of State's December 11, 2008 referral letter. January Referral Letter, *supra*, ¶ 3. As noted above, while the claimant did file a claim under the December Referral Letter, the Commission denied that claim. *See Claim of 5 U.S.C. §552(b)(6) supra*. Accordingly, the Commission is satisfied that the claimant has received no such award and therefore meets 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 January Referral Letter and is entitled to adjudication on the merits.

Merits

Standard for Claims under Category A

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category A must meet "the standard for such claims adopted by the Commission" for purposes of this referral. January Referral Letter, *supra*, ¶ 3. The Commission held in *Claim of 5 U.S.C. §552(b)(6)* ; Claim No. LIB-II-002, Decision No. LIB-II-002 (2009) (Proposed Decision),* that in order for a claim for hostage-taking or unlawful detention pursuant to Category A to be considered compensable, a claimant must have been:

- (a) held illegally against his or her will;

* In *Claim of 5 U.S.C. §552(b)(6)* ; Claim No. LIB-II-002, Decision No. LIB-II-002 (2011) (Final Decision), the Proposed Decision was modified as to the amount of compensation only.

- (b) in a particular area; and
- (c) for an extended period of time, or for shorter periods of time in circumstances in which he or she reasonably felt an imminent threat to his or her life.

Id. at 8.

Application of Standard to this Claim

According to his Statement of Claim and accompanying documents, on September 5, 1986, the claimant was a passenger on Pan Am Flight 73 when the aircraft was attacked and taken over by four heavily armed hijackers while waiting to take off from Karachi, Pakistan, en route to Frankfurt, West Germany. In support of his claim, claimant has provided, *inter alia*, an affidavit describing his experience aboard Pan Am Flight 73, an extensive background paper, prepared by claimant's counsel, concerning all of the *Patel* claims and containing a detailed description of the hijacking, a copy of a Pan Am Flight 73 passenger list which includes claimant's name, and a copy of a newspaper article published shortly after the incident identifying claimant as one of the survivors.

In his affidavit, claimant recounts the experiences he endured for the sixteen hours that he and the other passengers were detained by the gunmen. He describes in detail how the hijackers forced many of the passengers to sit in the aisles with their heads down, collected the passengers' passports, and continually threatened them with their weapons. Claimant states that, during this time, "[s]o many people were crammed into the area in which I was sitting that another passenger sat on top of me because there was nowhere else to sit[.]" and that he was "very uncomfortable and was nervous about what would happen next." Throughout the hijacking claimant "was very worried about standing out among the passengers as it was very obvious that [he] was an American

businessman.” Claimant further describes how, late in the day, the lights on the plane dimmed, at which point the hijackers opened fire on the passengers as the passengers attempted to escape from the airplane. Claimant goes on to explain how he crawled towards the back of the plane amid gunfire, exited the plane onto the wing, and then had to re-enter the plane in order to safely exit through another door where there was an inflatable slide deployed.

Based on the evidence submitted, the Commission finds that this claim meets the standard for hostage-taking or unlawful detention set forth above. Accordingly, claimant 5 U.S.C. §552(b)(6) is entitled to compensation as set forth below.

COMPENSATION

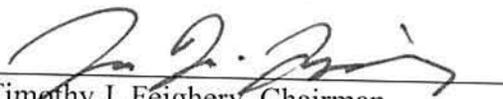
In the *Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-II-002, Decision No. LIB-II-002 (2011) (Final Decision), the Commission held that \$1 million is an appropriate amount of compensation for Pan Am Flight 73 hostage-taking victims whose claims meet the Commission’s standard under Category A, and that compensable hostage-taking or unlawful detention 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 \$1,000,000.00 and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

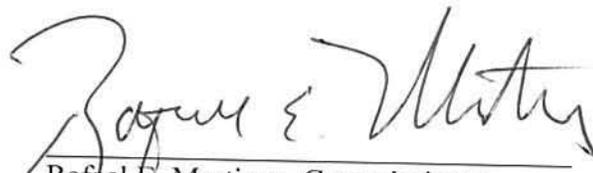
The Commission therefore enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICOSA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

Claimant 5 U.S.C. §552(b)(6) is entitled to an award in the amount of One Million Dollars (\$1,000,000.00).

Dated at Washington, DC, October 17, 2011
and entered as the Proposed Decision
of the Commission.


Timothy J. Feighery, Chairman


Rafael E. Martinez, Commissioner

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

NOV 30 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).