

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

In the Matter of the Claim of

ESTATE OF ANTONIA CRUZ,
DECEASED; MAGALY HOFMANN,
ADMINISTRATOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-152

Decision No. LIB-II-176

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 brought by the Estate of Antonia Cruz (the "claimant") based upon physical injuries said to have been sustained by Ms. Cruz during the terrorist attack at Lod Airport in Israel on May 30, 1972. Ms. Cruz died in 1999 of causes unrelated to the attack.

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 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 July 2, 2010, the Commission received from claimant a Statement of Claim in which the claimant asserts a claim under Category E of the January Referral Letter. The submission also included exhibits supporting the elements of the claim, including evidence of the late Ms. Cruz's U.S. nationality at the time of her injury and subsequent death in 1999 from cerebral thrombosis, and evidence of the physical injuries she suffered in the Lod Airport attack on May 30, 1972.

According to the Statement of Claim, the claimant's decedent, Antonia Cruz, was present at the Lod Airport in Israel on May 30, 1972, at the time of the terrorist attack, and was seriously injured from a bullet that fractured her right humerus. Claimant further alleges that Ms. Cruz was admitted to the hospital on the day of the shooting, that her treatment included the application and subsequent removal of plaster, and that she was not released from the hospital until July 4, 1972. In support of the claim, the claimant has

provided contemporaneous medical documents and newspaper articles that describe Ms. Cruz's physical injuries.

The claimant estate has also submitted Letters of Administration, and an Order for Subsequent Administration of Estate, both issued on May 23, 2012, by the Circuit Court for Hernando County, Florida. The Order for Subsequent Administration of Estate authorizes Magaly Hofmann to act on behalf of Ms. Cruz's estate. The Order also notes that the beneficiaries of Ms. Cruz's estate are Magaly Hofmann and Juan Ramon Soto Acevedo. The claimant has further provided Ms. Cruz's death certificate and her will, which identifies as the residual beneficiaries Juan Ramon Soto Acevedo, and Ms. Cruz's sister, Carmen A. Soto *per stirpes*. The claimant has also provided Ms. Soto's death certificate and her will, which identifies as her residual beneficiaries Juan Ramon Soto Acevedo, Magaly Hofmann, and Reinaldo Soto Acevedo. In addition, the claimant has provided the death certificate for Reinaldo Soto Acevedo and the Declaration of Heirs issued by the Court of First Instance, Utuado Division, Commonwealth of Puerto Rico on May 6, 2010, which identifies Juan Ramon Soto Acevedo and Magaly Hofmann as the heirs to the estate of Reinaldo Soto Acevedo. In addition, the claimant estate has provided documents evidencing the U.S. nationality of Ms. Cruz's heirs from the time of Ms. Cruz's death in 1999, when they inherited the claim, until August 14, 2008, the date of the Claims Settlement Agreement.

DISCUSSION

As an initial matter, the Commission notes that the Order for Subsequent Administration of Estate, issued on May 23, 2012, by the Circuit Court for Hernando County, Florida, authorizes Magaly Hofmann, to act on behalf of Ms. Cruz's estate. The

Order also notes that the beneficiaries of Ms. Cruz's estate are Magaly Hofmann and Juan Ramon Soto Acevedo. Accordingly, the Commission finds that the ESTATE OF ANTONIA CRUZ, DECEASED; MAGALY HOFMANN, ADMINISTRATOR is the proper claimant in this claim.

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction is limited to the category of claims defined in the January Referral Letter; namely the 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 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. 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 Based on this precedent and its review of the documents submitted by claimant, the Commission determines that, during the pertinent time period, an interest in this claim has been held by Antonia Cruz, Juan Ramon Soto Acevedo, Carmen A. Soto, Magaly Hofmann, and Reinaldo Soto Acevedo. To meet the nationality requirement, the claimant has provided copies of the birth certificate and death certificate for Antonia Cruz, the birth certificate and passport for Juan Ramon Soto Acevedo, the birth certificate and death certificate for Carmen A. Soto, the birth certificate and voter identification card for Magaly Hofmann, and the birth certificate and death certificate for Reinaldo Soto Acevedo. Based on this and other evidence in the record, the Commission determines that the claim was held by a U.S. national at the time of the incident continuously through 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 which resulted 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.* at Attachment 2, ¶ 1. In the Statement of Claim, the claimant sets forth a claim for physical injury suffered by Ms. Cruz as a result of this terrorist attack. Accordingly, the Commission finds that the claimant has also satisfied this element of its claim.

¹ See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

Pending Litigation

Finally, the January Referral Letter states that the claimant must 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 averred under oath in the Statement of Claim, and the pleadings in the *Franqui* case confirm, that neither the claimant, nor the claimant's decedent, was a plaintiff in the Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has satisfied this element of its 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 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

The claimant estate has provided contemporaneous medical documentation from the Tel Hashomer hospital in Israel which records that Ms. Cruz was admitted to that hospital on May 30, 1972 with a gunshot wound that had caused a fracture of the right humerus and entry and exit wounds on both sides of the right arm; that she was given general anesthesia, her wounds were excised, and she was given a plaster cast; and that she was discharged more than a month later, on July 4, 1972. In addition, the claimant estate has provided a number of newspaper articles that identify Ms. Cruz as one of the individuals harmed in the attack.

Based on the evidence submitted, and in particular the contemporaneous medical records, the Commission finds that Ms. Cruz suffered physical injuries on May 30, 1972, at the Lod Airport in Israel, as a result of the terrorist attack and that her injuries meet the standard for physical injury set forth above. Accordingly, claimant ESTATE OF ANTONIA CRUZ, DECEASED; MAGALY HOFMANN, ADMINISTRATOR is entitled to compensation as set forth below.

COMPENSATION

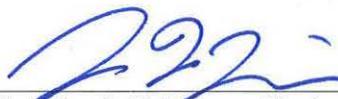
In *Claim of* 5 U.S.C. §552(b)(6), *supra*, the Commission held that \$3 million is an appropriate amount of compensation for physical injuries that meet the Commission's standard under Category E, and that compensable physical injury claims in this claims program are not entitled to interest as part of the awards granted therein. Accordingly, the Commission determines that the claimant, ESTATE OF ANTONIA CRUZ, DECEASED; MAGALY HOFMANN, ADMINISTRATOR, 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).

AWARD

Claimant ESTATE OF ANTONIA CRUZ, DECEASED; MAGALY HOFMANN, ADMINISTRATOR is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

Dated at Washington, DC, June 20, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj Desai, Commissioner

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

August 28, 2012

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) (2011).