



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

#### BASIS OF THE PRESENT CLAIM

On October 1, 2009, the Commission received from claimant a completed Statement of Claim and accompanying exhibits supporting the claim, including evidence of claimant's U.S. nationality, his presence at the scene of the terrorist incident, and his alleged physical injuries.

The claimant, <sup>5 U.S.C. §552(b)(6)</sup> states that he was standing inside the La Belle Discotheque in West Berlin, Germany on April 5, 1986, when a bomb exploded ten feet away from him, throwing him several feet into the air and against a back wall. According to the Statement of Claim and accompanying exhibits, claimant suffered “[f]irst to second degree burns” to his face and arms, wounds on both legs, and a ruptured eardrum as a result of the blast. He states that he was hospitalized for approximately two weeks, during which time he underwent surgery to treat his wounds, and received further outpatient care after his release.

The claimant has provided evidence of his U.S. nationality, both on the date of the incident and at the time of the Settlement Agreement. Additionally, claimant has provided extensive medical records, an affidavit in which he describes the incident and

his injuries, newspaper clippings describing the incident and noting his presence at the scene of the attack, 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. Under subsection 4(a) of the ICOSA, 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) were not plaintiffs in a Pending Litigation case against Libya; and (3) set forth a claim for wrongful death or physical injury resulting from one of the Covered Incidents. January Referral letter, *supra* ¶ 7.

### *Nationality*

In the *Claim of*<sup>5 U.S.C. §552(b)(6)</sup>, 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 his U.S. birth certificate, 2008 Texas voter registration card, and his U.S. passport valid from January 1994 through January 2004. 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 Category E of the January Referral Letter, the claimant must assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to that letter, and must not have been a plaintiff in the related Pending Litigation. January Referral Letter, *supra*, ¶ 7. Listed in Attachment 2 to the January Referral letter are the “Covered Incidents” for purposes of Category E. This list includes the “April 5, 1986 bombing of the La Belle Discotheque in Berlin, Germany, as alleged in *Clay v. Socialist People’s Libyan Arab Jamahiriya* (D.D.C.) 06-cv-707 and *Harris v. Socialist People’s Libyan Arab Jamahiriya* (D.D.C.) 06-cv-732.” January Referral Letter, *supra*, Attachment 2, ¶ 8.

In his Statement of Claim, the claimant sets forth a claim for physical injury suffered as a result of the April 5, 1986 La Belle Discotheque terrorist attack. Additionally, the claimant has stated under oath in his Statement of Claim, and Commission records confirm, that he was not a plaintiff in the Pending Litigation against Libya. The Commission therefore finds that the claimant has satisfied these elements 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 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 . . . adopted by the

Commission” for purposes of this referral. January Referral Letter, *supra*, ¶ 7. The December Referral Letter similarly requires that, in order to qualify for compensation, a claimant asserting a claim for physical injury pursuant to that letter must meet the standard for physical injury adopted by the Commission. In order to develop the appropriate standard, the Commission considered both its own jurisprudence and pertinent sources in international and domestic law. The Commission concluded in the *Claim of*<sup>5 U.S.C. §552(b)(6)</sup>, *supra*, at 8-9, 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.

In the *Claim of*<sup>5 U.S.C. §552(b)(6)</sup>, Claim No. LIB-II-039, Dec. No. LIB-II-015, at 6-7, the Commission held that this standard would also apply to claims for physical injury pursuant to Category E of the January Referral Letter; thus, in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant (or claimant’s decedent, as applicable):

- (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.

*Physical Injury*

According to his Statement of Claim and accompanying documents, claimant was standing inside the La Belle Discotheque when a bomb exploded approximately ten feet away and “threw [him] about 25 feet in the air . . . .” Claimant states that he landed “near the back wall where a hole had been blown open[,]” and that he “could not hear anything” after the explosion. He further states that, in addition to sustaining several deep cuts and gashes to his legs and forehead, he suffered burns to his arms and face, and that “numerous nails, and other debris [were] protruding from both of [his] legs.”

The medical records provided with this claim indicate that claimant was admitted to the University Clinic at Steglitz,\* Free University of Berlin, where it was determined he had suffered “total eardrum perforation on the right side,” as well as “first to second degree burns on the face and right forearm . . . [and] long soft tissue wounds on both lower legs.” Claimant received treatment that included, *inter alia*, surgery to repair his ruptured eardrum, and, “under full anesthesia,” “lancing” of the wounds on his legs and treatment for the burns on his face and lower legs. Audiogram testing also revealed that he had suffered some degree of hearing loss. Documentation submitted indicates that claimant remained in the hospital for approximately two weeks, during which time he received additional treatment that included the stitching of his leg wounds—which required daily dressing changes—and additional care for the burns on his face and legs.

The results of a recent medical examination conducted on January 6, 2010 indicate that claimant has a large scar and an “old burn soft-tissue injury” on his right leg. In his affidavit, claimant also complains of lingering numbness and nerve pain in his calf,

---

\* In 1994, the clinic was renamed the “University Clinic Benjamin Franklin,” and in 2003 it became the “Campus Benjamin Franklin.”

as well as back pain which he attributes to his leg injuries. In addition, he complains of ongoing ear pain, which he asserts is caused by the “plastic eardrum” expanding and contracting with the change in seasons.

Based on the evidence submitted, and in particular the contemporaneous medical records, the Commission finds that the claimant’s injuries meet the standard for physical injury set forth above. Accordingly, claimant <sup>5 U.S.C. §552(b)(6)</sup> is entitled to compensation as set forth below.

### COMPENSATION

In the *Claim of* <sup>5 U.S.C. §552(b)(6)</sup> <sup>1</sup>, *supra*, the Commission held that, in light of the Commission’s decision in *Claim of* <sup>5 U.S.C. §552(b)(6)</sup> <sup>2</sup>, *supra*, \$3 million is an appropriate amount of compensation for physical injuries that meet the Commission’s standard under Category E. In addition, the Commission held in *Claim of* <sup>5 U.S.C. §552(b)(6)</sup> <sup>3</sup>, *supra*, as it had held in *Claim of* <sup>5 U.S.C. §552(b)(6)</sup> <sup>4</sup>, *supra*, 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, <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.

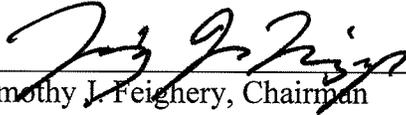
The Commission therefore enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSEA. 22 U.S.C. §§ 1626-1627 (2006).

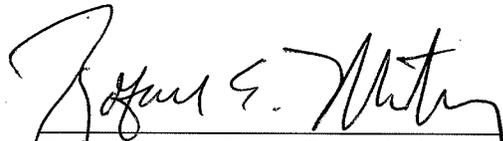
AWARD

Claimant 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.

APR 07 2011

  
\_\_\_\_\_  
Timothy J. Feighery, Chairman

  
\_\_\_\_\_  
Rafael E. Martinez, Commissioner

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

MAY 13 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).