

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 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 May 27, 2010, the Commission received from claimant a completed Statement of Claim in which the claimant asserts a claim under Category E of the January Referral Letter, along with exhibits supporting the elements of its claim. This submission included evidence of: the U.S. nationality of the claimant's decedent, the late Esther Chapelski; her presence at the scene of the terrorist incident; and her alleged physical injuries for which the claimant now claims compensation.

The claimant states that Ms. Chapelski 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, Ms. Chapelski suffered "[m]ultiple [t]rauma," including extensive shrapnel wounds to her right hand and other parts of her body as a result of a hand grenade explosion. The claimant further states that, immediately following the incident, Ms. Chapelski was taken to a local hospital, where she underwent treatment that included the amputation of the index finger of her right hand and the suturing of a shrapnel wound on her right thigh. According to

the claimant, Ms. Chapelski remained hospitalized for two weeks, and after her discharge, underwent physical therapy and received additional treatment “over a period of months.”

DISCUSSION

As an initial matter, the Commission has reviewed the “Letters of Office- Decedent’s Estate” issued by the Circuit Court of Cook County, Illinois, County Department, Probate Division, on September 1, 2010, appointing Abe Goldstein as executor of Ms. Chapelski’s estate. Based on this review, the Commission finds that the ESTATE OF ESTHER CHAPELSKI, DECEASED; ABE GOLDSTEIN, EXECUTOR, is the proper claimant in this claim.

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 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. To meet this requirement, the claimant has provided copies of three of Ms. Chapelski's cancelled U.S. passports (valid from 1963 to 1966, 1971 to 1976, and 1993 to 2003, respectively); a copy of her U.S. passport issued in 2003, valid both on the date of the Claims Settlement Agreement and on the date of her death; her death certificate, issued by the Israeli Ministry of the Interior, listing her date of death as July 21, 2009; and copies of her Will and First Codicil thereto, executed in 2004 and 2005, respectively, both of which were notarized in the State of Illinois and identify Ms. Chapelski as being "of Skokie, Illinois." 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 its 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 satisfied this element of its claim.

Pending Litigation

Finally, the January Referral Letter states that the claimant may not have been a plaintiff in a Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the

January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident and includes the *Franqui* case, which, as noted above, is the Pending Litigation related to this claim. Claimant has provided an excerpted copy of the First Amended Complaint in *Franqui*, which demonstrates that neither the claimant estate, nor any of its beneficiaries, were plaintiffs in the Pending Litigation. In addition, claimant, through its duly-appointed executor Abe Goldstein, has stated under oath in its Statement of Claim that it 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 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.

Id. at 6-7. The present Category E claim must likewise meet this standard to be compensable.

Physical Injury

According to the Statement of Claim and accompanying exhibits, Ms. Chapelski suffered physical injuries on May 30, 1972 when terrorists opened fire and tossed hand grenades at people gathered in the terminal at Lod Airport in Tel Aviv, Israel. In a brief filed with its claim, claimant avers that Ms. Chapelski suffered “extensive shrapnel injury in her right leg and other parts of her body” and “crushing of the soft tissue of her right hand, along with fractures of the bones in that hand . . . and permanent disability and disfigurement of her right hand and wrist”

In support of its claim, claimant has provided, *inter alia*, medical records, including contemporaneous medical records; an affidavit from Alan Chapelski, one of the decedent’s three children, describing the incident, as well as his mother’s physical injuries and the treatment she received; and an October 5, 1972 letter from Magen David Adom in Israel,* expressing sympathy for the “wounds [Ms. Chapelski] suffered” during the Lod Airport attack, and including a check to her from the Japanese Red Cross.

The medical records provided with this claim indicate that, following the attack, Ms. Chapelski was admitted to Tel Hashomer Hospital, where it was determined she had suffered “[m]ultiple [t]rauma” as a result of being “wounded by a hand grenade” In particular, according to a letter written by a Dr. Engel of Tel Hashomer Hospital on

* Magen David Adom in Israel is described in a brochure provided on its website as “Israel’s national rescue organization . . . providing first aid and emergency medicine, offering training activities and other professional services to the public at large and the medical system, collecting blood donations and supplying them to hospitals and undertaking humanitarian activities for the community.” I.D. 2009, Magen David Adom in Israel, <http://www.mdais.com/271/>.

August 15, 1972, Ms. Chapelski “was wounded by shrapnell [sic] in her Rt Hand Rt thigh and had peritoneal sign besides being in Cardio vascular shock.” Dr. Engel also noted that doctors had found an “Intra Abdominal injury,” and that the index finger on Ms. Chapelski’s right hand “was completely crushed and not viable. Therefore it was removed.” In addition, the letter states that Ms. Chapelski’s “Rt. thigh was sutured” A medical certificate issued by Tel Hashomer Hospital on June 26, 1972 confirms Ms. Chapelski’s injuries, indicating that “[a]mongst the other injuries that she suffered, the 2nd finger on her right hand was amputated; she had crushed bones in her palm and suffered destruction of the soft tissue.” The discharge summary from Tel Hashomer notes that Ms. Chapelski was hospitalized for two weeks, until June 14, 1972, and was advised to return on June 27, “at which time the sutures [would] be removed from her hip.”

Based on the evidence submitted, and in particular the contemporaneous medical records, the Commission finds that Ms. Chapelski’s injuries meet the standard for physical injury set forth above. Accordingly, claimant ESTATE OF ESTHER CHAPELSKI, DECEASED; ABE GOLDSTEIN, EXECUTOR, 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 interest is not to be applied. Accordingly, the Commission determines that the claimant, ESTATE OF ESTHER CHAPELSKI, DECEASED; ABE GOLDSTEIN, EXECUTOR, 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 ICOSA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

Claimant ESTATE OF ESTHER CHAPELSKI, DECEASED; ABE GOLDSTEIN, EXECUTOR, is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

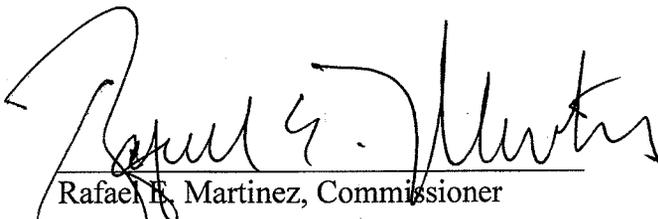
Dated at Washington, DC, July 12, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman

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

AUG 18 2011



Rafael E. Martinez, Commissioner

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).