

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-143

Decision No. LIB-II-083

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, as well as additional compensation for physical injuries allegedly resulting from the hijacking incident.

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 Categories A and D. 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. Category D of the January Referral consists of

claims of U.S. nationals for compensation for physical injury in addition, to amounts already recovered under the Commission process initiated by our December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to our December 11, 2008 referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim's death; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 6. 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 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 July 1, 2010, the Commission received from claimant a completed Statement of Claim in which he asserts claims under Categories A and D of the

January Referral Letter, along with exhibits supporting the elements of his claims. For his Category A 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. For his Category D claim, claimant essentially relied on the evidence submitted in connection with his physical injury claim made under the December Referral Letter.

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 remain seated for several hours with no access to food and water. Claimant states that, during this time, he "went numb from sitting with [his] head down for so long." Claimant further describes how, towards the end of the ordeal, the lights dimmed and gunfire erupted in the cabin, at which point claimant lifted his legs and "crunched into a ball to protect [himself]." He asserts that he injured his back jumping off the wing of the plane in his effort to escape the hijackers' assault on the passengers. Claimant asserts that this injury caused him permanent and significant pain, and "seriously impacted his quality of life."

DISCUSSION

Category D Claim

Claimant's claim under the December Referral for physical injury was denied by the Commission's Final Decision dated August 31, 2011. As is clear from the

language of the January Referral Letter quoted above, Category D establishes a category of claims for additional compensation for injuries that meet certain criteria. Should a claim meet these criteria, the Commission may, in its discretion, award an additional amount of compensation beyond that awarded by the Commission to the claimant for his or her physical injury claim under the December Referral Letter. Accordingly, as specified in the January Referral Letter, in order for a claim under Category D to be compensable, the claimant, *inter alia*, must have “received an award pursuant to [the Department of State’s] December 11, 2008 referral.” Given the Commission’s Final Decision denying claimant’s claim under the December Referral Letter, claimant has not, and cannot, meet this critical element of Category D. Accordingly, the Commission finds that this claim requesting compensation under Category D of the January Referral must be, and hereby is, denied.

Category A Claim

Jurisdiction

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. This portion of the claim is made under Category A, that is, 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 Certificate of Naturalization, demonstrating that he became a U.S. citizen by naturalization on April 16, 1985, 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, and so held 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. Accordingly, the claimant has met 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;
- (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, along with his sister, 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 73, an extensive background paper, prepared

* 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.

by claimant's counsel, concerning all of the *Patel* claims and containing a detailed description of the hijacking, and a copy of a Pan Am 73 passenger list which includes claimant's name.

In his affidavit, claimant recounts the experiences he endured for the sixteen hours that he and the other passengers, including his sister, were detained by the gunmen. He describes how the hijackers forced the passengers to put their heads down and denied them food and water for several hours. Throughout the hijacking, claimant feared what would happen to he and his sister. 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 well as how he exited the airplane onto the wing. Claimant notes that while there was not an escape slide from the wing, one had deployed at a nearby exit so he "ran as fast as [he] could and leapt from the wing."

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 ICSA. 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).

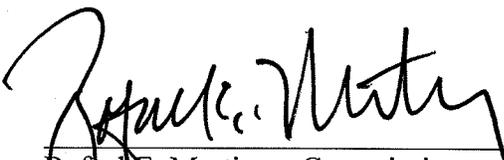
Dated at Washington, DC, September 7, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman

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

OCT 12 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).