

**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)	}	Claim No. LIB-III-031
	}	
	}	Decision No. LIB-III-011
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant: Michael G. Dave, Esq.
Marcus, Watanabe & Dave, LLP

PROPOSED DECISION

Claimant brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") alleging that he was unlawfully detained or held hostage in violation of international law. Because he has established that he was unlawfully detained during the hijacking of Pan Am Flight 73 in Karachi, Pakistan, on September 5, 1986, he is entitled to an award of \$1 million.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was a passenger on board Pan Am Flight 73 on September 5, 1986, when four heavily armed gunmen attacked the plane while it was on the tarmac in Karachi, Pakistan. He further alleges that those gunmen, supported by Libya and in violation of international law, unlawfully detained him or held him hostage on the plane for about 17 hours; that the incident ended when the gunman fired their automatic weapons and detonated explosives inside the plane, killing and injuring many

of the passengers and crew; and that he and his wife managed to escape during the ensuing commotion and mayhem.

Although Claimant was not among them, a number of the Pan Am Flight 73 victims sued Libya (and others) in federal court in 2006. *See Patel v. Socialist People's Libyan Arab Jamahiriya*, No. 06-cv-626 (D.D.C.). In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya, including claims of "hostage taking or detention." *See 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; *see also* Libyan Claims Resolution Act ("LCRA"), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). In October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission. *See* International Claims Settlement Act of 1949 ("ISCA"), 22 U.S.C. § 1623(a)(1)(C)(2012). The Secretary has delegated that authority to the State Department's Legal Adviser, who, by letters dated December 11, 2008, January 15, 2009, and November 27, 2013, has referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

In 2010, the Claimant filed two claims under the January 2009 Referral, alleging that he was held hostage or unlawfully detained on board Pan Am Flight 73 and, additionally, that he had suffered physical injuries as a result of the hijacking. The

Commission denied both claims on the ground that Claimant had failed to meet his burden to establish that he was a national of the United States continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-II-188, Decision No. LIB-II-050 (2012) at 4-5. Additionally, the Commission denied the hostage-taking/unlawful-detention claim on the basis that Claimant had failed to establish, as required under that category of the January 2009 Referral, that he was a plaintiff in one of the Pending Litigation cases listed in Attachment 1 to the referral. *Id.* Moreover, with respect to the physical-injury claim, the Commission held that Claimant failed to establish that he had suffered “a discernible injury, more significant than superficial,” as required by the standards the Commission set up for physical-injury claims. *Id.* at 6.

The Legal Adviser referred an additional set of claims to the Commission on November 27, 2013. *Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* (“2013 Referral” or “November 2013 Referral”). One category of claims from the 2013 Referral is applicable here. That category, known as Category C, consists of

claims of U.S. nationals who were held hostage or unlawfully detained in violation of international law during one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), provided that (1) the claimant was not a plaintiff in the Pending Litigation; (2) the claim meets the standard for such claims adopted by the Commission; and (3) the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral.

2013 Referral at ¶ 5. Attachment 2 to the 2013 Referral lists the Covered Incidents, and it includes the “September 5, 1986 hijacking of Pam Am flight 73.”

On December 13, 2013, 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 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On June 9, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category C of the 2013 Referral, together with exhibits supporting the elements of his claim. His submission also incorporates by reference the evidence he had previously submitted in connection with the physical-injury claim he made under the January 2009 Referral.

DISCUSSION

Jurisdiction

As an initial matter, the Commission must consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the "Category C" paragraph of the 2013 Referral is limited to claims of (1) "U.S. nationals"; who (2) have alleged that they were held hostage or unlawfully detained in violation of international law during one of the "Covered Incidents" listed in Attachment 2 to the 2013 Referral; provided that the Claimant (3) was not a plaintiff in any of the lawsuits listed in Attachment 1 to the 2013 Referral (the "Pending Litigation") and (4) has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in the 2013 Referral. 2013 Referral ¶ 5.

Nationality

As noted above, this claims program is limited to “claims of U.S. nationals.” Here, that means that a claimant must have been a national of the United States continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-001, Decision No. LIB-III-001 (2014) at 5-6.

Claimant satisfies this requirement. Claimant has submitted a copy of his New York birth certificate and a copy of his U.S. passport, valid from February 2008 through February 2018, also showing his place of birth in New York. 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.¹

Covered Incident and No Pending Litigation

The list of “Covered Incidents” in Attachment 2 to the 2013 Referral includes the “September 5, 1986 hijacking of Pan Am flight 73.” Claimant’s allegations in this claim arise out of that hijacking. Moreover, the list of “Pending Litigation” cases in Attachment 1 to the 2013 Referral is identical to the list attached to the January 2009 Referral. The Commission has already found that he was not a plaintiff in any of the Pending Litigation cases on that list. *Id.* at 5. Accordingly, Claimant has satisfied the covered-incident and pending-litigation requirements here.

¹ In its Proposed Decision on Claimant’s claims under the January 2009 Referral, the Commission found that Claimant failed to satisfy the continuous-nationality requirement. This conclusion, however, was based on the insufficiency of the evidence in the record at the time. Despite repeated requests from the Commission staff, Claimant failed to submit evidence establishing that his U.S. nationality was continuous. With the submission of his current passport, Claimant has remedied the deficiency in evidence, and the Commission now has evidence sufficient to establish that he satisfies the continuous-nationality requirement.

Compensation Under the Claims Settlement Agreement

Moreover, Claimant did not receive any compensation under any other distribution under the Claims Settlement Agreement and does not qualify for any other category of compensation in the 2013 Referral. While the Claimant did file claims for physical injury and hostage-taking/unlawful detention pursuant to the January 2009 Referral, the Commission denied those claims. Claim No. LIB-II-188, Decision No. LIB-II-050 (2012). Our independent review of Commission records from the two previous Libyan claims programs confirms that he has not received compensation from the Commission under the Libyan Claims Settlement Agreement, and we have no evidence that the State Department has provided him any compensation under the Claims Settlement Agreement either. Further, Claimant has stated on his Statement of Claim, under penalty of 18 U.S.C. § 1001, akin to that for perjury, that he “has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral.” Therefore, Claimant meets this element of his claim.

In summary, this claim is within the Commission’s jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

Merits

To make out a substantive claim under Category C, a claimant must establish that he meets the standard adopted by the Commission for claims of those “who were held hostage or unlawfully detained in violation of international law.” 2013 Referral ¶ 5. The Commission has held that in order for claims of those held hostage or unlawfully

detained pursuant to Category C 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.²

See Claim No. LIB-III-001, Decision No. LIB-III-001(2014) at 8.

Application of Standard to this Claim

Claimant satisfies this standard. He alleges that, along with his spouse, he was on board Pan Am Flight 73 on September 5, 1986, when four heavily armed hijackers attacked and took over the aircraft while it was on the tarmac in Karachi, Pakistan. Claimant's evidence consists of a statement he submitted with his present claim and an earlier statement that he submitted in support of his claims under the January 2009 Referral. Further, in connection with claims arising out of Pan Am Flight 73 in the two earlier Libya claims programs, the Commission has a copy of the Pan Am 73 flight manifest (list of passengers), which includes Claimant's name.

The evidence in this claim establishes that Claimant was on board Pan Am Flight 73 during the terrorist attack and that the gunmen on that flight (a) held him illegally against his will (b) on the airplane and (c) for 16 hours in circumstances in which he

² This standard is effectively one for an unlawful-detention claim, not a hostage-taking claim. As the Commission has previously noted, an unlawful-detention claim in international law is not the same as a hostage-taking claim, but is instead a lesser-included offense, one that excludes the element of third-party coercion. See Claim No. LIB-II-011, Decision No. LIB-II-105, at 9. Since Category C of the 2013 Referral (like Category A of the 2009 Referral) is for claims of those who were *either* unlawfully detained *or* taken hostage, claimants only need to prove the former in order to be entitled to compensation here. It thus makes no difference to the determination of the merits of this claim whether Claimant was taken hostage, as long as he can show that he was unlawfully detained.

reasonably felt an imminent threat to his life. The evidence conclusively shows that Claimant was on Pan Am Flight 73 during the hijacking, which is enough to show that he was “(a) held illegally against . . . his will” and “(b) in a particular area.” In addition, Claimant’s Declaration and other written statements, together with the Commission’s own records regarding the Pan Am Flight 73 hijacking, provide extensive detail concerning the harrowing ordeal experienced by the passengers, both during their captivity and in the moments prior to their escape, when the gunmen began firing automatic weapons and detonating explosives. The Commission has evidence that the gunmen killed at least 20 people during the attack. *See* Claim No. LIB-III-004, Decision No. LIB-III-003 (2014) at 7. In such circumstances, we have no doubt that Claimant satisfies the standard for the third element, that he “(c) . . . reasonably felt an imminent threat to his . . . life.”

In sum, this claim meets the standard for unlawful detention, and Claimant is thus entitled to compensation.

COMPENSATION

The Commission has 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 C, and that such claims are not entitled to interest as part of the awards granted therein. *See* Claim No. LIB-III-001, Decision No. LIB-III-001 (2014) at 10-11. Accordingly, Claimant is entitled to an award of \$1,000,000.00, and 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 the Treasury for payment under sections 7 and 8 of the ICSEA. 22 U.S.C. §§ 1626-1627 (2012).

AWARD

Claimant is entitled to an award in the amount of One Million Dollars (\$1,000,000.00).

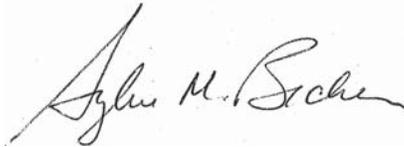
Dated at Washington, DC, January 13, 2015
and entered as the Proposed Decision
of the Commission.

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

February 18, 2015



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery 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 delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2014).