

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

In the Matter of the Claim of

Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6)

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-I-011

Decision No. LIB-I-020

Counsel for Claimant:

Stuart H. Newberger, Esq.
Crowell & Moring LLP

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon physical injuries said to have been sustained by Personally Identifiable Information Redacted under 5 U.S.C. §552(b)(6) during the hijacking of Pan Am Flight 73 in Karachi, Pakistan, on September 5, 1986.

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 December 11, 2008, under a delegation of authority from the Secretary of State, the State Department Legal Adviser referred to the Commission for adjudication a category of claims of United States nationals against Libya. *Letter from the Honorable*

John B. Bellinger, III, Legal Adviser, Department of State, to Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission (“December Referral Letter”). The category of claims referred consists of

claims of U.S. nationals for physical injury, provided that (1) the claim meets the standard for physical injury adopted by the Commission; (2) the claim is set forth as a claim for injury other than emotional distress alone by a named party in the Pending Litigation; and (3) the Pending Litigation against Libya and its agencies or instrumentalities; officials, employees, and agents of Libya or Libya’s agencies or instrumentalities; and any Libyan national (including natural and juridical persons) has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 3. Attachment 1 to the December Referral Letter lists the suits comprising the Pending Litigation.

Related to the December Referral Letter, a number of official actions were taken with respect to the settlement of claims between the United States and Libya. Specifically, 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 Secretary of State certified, pursuant to the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008), that the United States Government had received funds sufficient to ensure “fair compensation of claims of nationals of the United States for . . . physical injury in cases pending on the date of enactment of this Act against Libya” December Referral Letter, *supra*, ¶ 1. On the same day, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Oct. 31, 2008), espousing the claims of United States nationals coming within the terms of the Claims Settlement Agreement, barring United States nationals from asserting or maintaining such claims, terminating any

pending suit within the terms of the Claims Settlement Agreement, and directing the Secretary of State to establish procedures governing claims by United States nationals falling within the terms of the Claims Settlement Agreement. On March 23, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this Libya Claims Program pursuant to the ICOSA and the December Referral Letter. *Notice of Commencement of Claims Adjudication Program, and of Program Completion Date*, 74 Fed. Reg. 12,148 (2009).

BASIS OF THE PRESENT CLAIM

On June 4, 2009, the Commission received from claimant's counsel a completed Statement of Claim and accompanying exhibits supporting the elements of the claim, including evidence of: his United States nationality; his inclusion as a named party in the complaint filed in *Patel, et al. v. Socialist People's Libyan Arab Jamahiriya*, 06-cv-0626 (D.D.C.), part of the Pending Litigation referred to in Attachment 1 of the December Referral Letter, setting forth a claim for injury other than emotional distress alone; the dismissal of *Patel*; and his physical injuries.

The claimant states that he was a passenger on Pan Am Flight 73 which was hijacked by terrorists on September 5, 1986 in Karachi, Pakistan. According to the Statement of Claim and accompanying exhibits, he was injured by shrapnel during the final attack by the terrorists who had hijacked the plane. The claimant has provided medical records, his own sworn statement, contemporaneous newspaper articles, and court documents filed in the case of the United States v. Safarini* in support of his claim.

* *United States v. Masud al Safarini*, 257 F. Supp. 2d 191. Zaid Hassan Abd Latif Safarini led the group of men who hijacked Pan Am Flight 73. The documents submitted by the claimant had been filed by the U.S. Government in the United States District Court for the District of Columbia in connection with the entry of a plea agreement and sentencing of Mr. Safarini.

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 December Referral Letter is limited to claims of individuals who: (1) are United States nationals, (2) have been named as parties in a Pending Litigation which has been dismissed, and (3) set forth a claim for an injury other than emotional distress alone in the Pending Litigation. December Referral Letter, *supra*, ¶¶ 2-3.

Nationality

In the *Claim* Personally Identifiable Information
Redacted under 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 for a claim to be compensable, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, from the date the claim arose until the date of the Claims Settlement Agreement. Based on the evidence submitted with this claim, the Commission determines that this claim was held by a United States national at the time of the injury on which the claim is based, and that it has been held by a United States national continuously until 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 December Referral Letter and must provide evidence that the Pending Litigation against Libya has been dismissed. December Referral Letter, *supra*, ¶ 3. The claimant has provided a copy

of the complaint in Case No. 06-cv-626, filed in the United States District Court for the District of Columbia, which names him as a party. Additionally, the claimant has provided a Stipulation of Dismissal as evidence of the dismissal of this Pending Litigation 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

Claimant has provided, with his Statement of Claim, a copy of the Second Amended Complaint in the Pending Litigation, in which he states a cause of action for, *inter alia*, battery and assault under Counts VI and VII of the complaint. The Commission therefore finds that the claimant set forth a claim for injury other than emotional distress alone in the Pending Litigation.

In summary, therefore, the Commission concludes that this claim is within the Commission's jurisdiction pursuant to the December Referral Letter and is entitled to adjudication on the merits.

Merits

Standard for Physical Injury

As stated in the December Referral Letter, to qualify for compensation, a claimant asserting a claim for physical injury must meet a threshold standard for physical injury adopted by the Commission. In order to develop such a threshold standard for compensability, the Commission has considered both its own jurisprudence and pertinent sources in international and domestic law.

After careful and thorough consideration, the Commission held in the *Claim of*

Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6)

, *supra*, 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 referred to in 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.

Physical Injury

According to his Statement of Claim, claimant was a passenger on Pan Am Flight 73 which was hijacked by terrorists on September 5, 1986 in Karachi, Pakistan. In his sworn statement, the claimant states that, during the hijackers' final attack on the passengers, he was hit in both legs by grenade shrapnel. He further states that after he escaped from the plane, he was taken by ambulance to a hospital where he spent one night, then to another hospital where his legs were cleaned and bandaged. He was transported the following day, via medical evacuation, to a German hospital where an operation was performed on his legs. Claimant has stated that contemporaneous medical records were unavailable. Accordingly, he has provided 2 letters dated from 1988 from his treating physician, current medical records, contemporaneous news articles, and court documents filed in the case of the United States v. Safarini, *supra*, in support of the claimed injury.

After careful review of the claim file as supplemented the Commission finds that the 1988 letters from claimant's treating physician, together with the contemporaneous news reports, form a nexus between the physical injury claimed and the Pan Am Flight 73 incident. Further, the court documents submitted specifically note that the claimant suffered shrapnel wounds to both legs and characterized his injuries as a serious bodily injury. Moreover, the current medical records submitted by the claimant indicate that effects from this injury have persisted.

Based on the totality of the evidence submitted, the Commission finds that the claimant's injury meets the standard for physical injury set forth above. Accordingly, the claimant, Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6), is entitled to compensation in this claim.

COMPENSATION

In the *Claim of* Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) *supra*, the Commission held that \$3,000,000.00 is an appropriate amount of compensation for physical injuries that meet the Commission's standard in this claims program. The Commission also held that compensable claims in this claims program were not entitled to interest as part of the award. *Id.* Consequently, the Commission determines that the claimant, Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) 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.

Therefore, the Commission 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. §§ 1626-27.

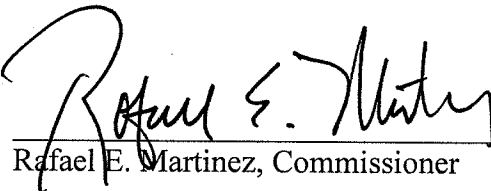
AWARD

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.


Mauricio J. Tamargo, Chairman

FEB 18 2010


Rafael E. Martinez, Commissioner

**This decision was entered as the
Commission's Final Decision on**
MAR 24 2010

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) (2008).