

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-018

Decision No. LIB-I-005

Counsel for Claimant:

Tracy R. Kalik, Esq.
Heideman Nudelman & Kalik, P.C.

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 the claimant at Fiumicino Airport in Rome, Italy on December 27, 1985.

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, pursuant to a delegation of authority from the Secretary of State, the State Department's 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 ICSA 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 18, 2009, the Commission received from claimant's counsel a completed Statement of Claim and accompanying exhibits supporting the claimant's claim, including evidence of: his United States nationality; his inclusion as a named party in 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 the Pending Litigation against Libya; and his physical injuries.

The claimant, Personally Identifiable Information
Redacted under 5 U.S.C. §552(b)(6) states that on December 27, 1985, he was present at the Fiumicino Airport in Rome, Italy at the time of the terrorist attack. Claimant states that he was shot in lower right leg and that he suffered permanent injury as a result. He further states that he was hospitalized in Rome and then again in his home state of North Carolina for several days. Additionally, claimant states, his leg remained in a cast for eight weeks following his discharge. The claimant has provided evidence of his United States nationality, both on the date of the incident and at the time of the Settlement Agreement. Additionally, claimant has also provided medical records,

newspaper clippings, records from a criminal trial in Rome against one of the terrorists in the attack, and other documents in support of his claim.

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 are: (1) United States nationals and (2) named parties in a Pending Litigation which has been dismissed. December Referral Letter, *supra*, ¶¶ 2-3.

Nationality

In the *Claim of* 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 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 the claimant was a United States national at the time of the injury on which his claim is based and that he has been a United States national continuously thereafter 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 complaints in Cases No. 06-cv-727 and 08-cv-529, filed in the United States District Court for the District of Columbia, which name him as a party. Additionally, the claimant has provided evidence that these cases were dismissed under an Order of Dismissal dated December 24, 2008 issued by the aforementioned court. 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.

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 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 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.

Physical Injury

According to his Statement of Claim, the claimant suffered physical injuries on December 27, 1985 while at the terminal at the Fiumicino Airport in Rome, Italy. In his Statement of Claim, the claimant states that he was shot in the lower right leg, which caused his leg bone to shatter. Additionally, he states that he was struck by shrapnel and cut and bruised near his eyebrow. The claimant indicates that the injuries to his right leg required him to be hospitalized twice—once in Rome and again in North Carolina—as well as requiring his leg to remain in a cast for eight weeks following his discharge. In support of his claim, the claimant has provided documentation, including medical records, newspaper clippings and other materials documenting his injuries and treatment.

Based on the evidence submitted, the Commission finds that the claimant's injury meets the standard for physical injury set forth above. Accordingly, 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.* Accordingly, 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.

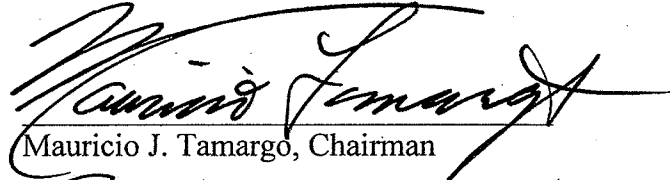
Accordingly, the Commission enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27.

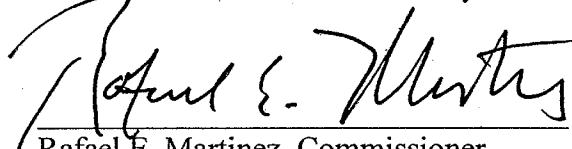
AWARD

Claimant Personally Identifiable Information
Redacted under 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.

AUG 20 2009


Mauricio J. Tamargo, Chairman


Rafael E. Martinez, Commissioner

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

SEP 30 2009

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).