

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-I-030
	}	
	}	Decision No. LIB-I-041
	}	
Against the Great Socialist People's	}	
Libyan Arab Jamahiriya	}	
	}	

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 ^{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 the Honorable 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), which, among other things, 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 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 July 2, 2009, the Commission received from claimant a completed Statement of Claim and accompanying exhibits supporting the elements of her claim, including evidence of: her U.S. nationality; her inclusion as a named party in the complaint filed in *Patel, et al. v. Socialist People's Libyan Arab Jamahiriya*, 06-cv-626 (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 her physical injuries.

The claimant states that she 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, she sustained bilateral calcaneal (heel bone) fractures when she jumped from the wing of the plane while escaping from the hijackers. The claimant has provided voluminous contemporary medical records and her own sworn statement in support of her claim. According to the medical reports, claimant sustained bilateral calcaneal fractures. Further, the medical records submitted indicate that claimant was initially treated in Pakistan, which included casting her legs in short leg casts and that subsequently, she was transported, via a medical evacuation airplane, to an American military hospital in Germany where she was operated on and hospitalized for 16 days. In addition, the medical reports indicate that the claimant was placed on a non-

weight bearing status for at least eight weeks. According to the claimant, upon her return to the United States she received further treatment at St. Jude Medical Center in Fullerton, California where she remained for approximately seven days.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICOSA, the Commission's jurisdiction here is limited to the category of claims defined in the December Referral Letter; namely the claims of individuals who: (1) are U.S. nationals, (2) have been named as parties in a Pending Litigation which has been dismissed, and (3) set forth a claim in the Pending Litigation for injury other than emotional distress alone. December Referral Letter, *supra*, ¶¶ 2-3.

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 copies of her U.S. passport and certificate of naturalization, as well as a sworn affidavit attesting to her continuous U.S. nationality. Based on this and other evidence in the record, the Commission finds that this claim was held by a U.S. national at the time of the injury upon which the claim is based and that it has been so held 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 her as a party. Additionally, the claimant has provided a Stipulation of Dismissal dated December 16, 2008, as evidence of the dismissal of this Pending Litigation. 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 her Statement of Claim, a copy of the Second Amended Complaint in the Pending Litigation, in which she states a cause of action for, *inter alia*, battery and assault under Counts VI and VII of the complaint. Based on this evidence, the Commission finds that the claimant set forth a claim for injury other than emotional distress alone in the Pending Litigation.

In summary, 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 the standard for physical injury adopted

by the Commission for purposes of this Referral. In order to develop the appropriate standard for compensability, the Commission considered both its own jurisprudence and pertinent sources in international and domestic law. The Commission concluded in the *Claim of* ^{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.

Id. at 8-9.

Physical Injury

Based on its review of the evidence in support of this claim, including medical reports, the Commission finds that claimant was a passenger on Pan Am Flight 73 which was hijacked by terrorists on September 5, 1986 in Karachi, Pakistan. The Commission further finds that claimant sustained bilateral calcaneal (heel bone) fractures when she jumped from the wing of the plane while escaping from the hijackers. In addition, the Commission finds that claimant received immediate and significant medical treatment for her injuries, both abroad and domestically.

Based on these findings, the Commission concludes that the claimant's injuries meet the standard for physical injury set forth above. Accordingly, the claimant, ^{5 U.S.C. §552(b)(6)} , is entitled to compensation in this claim.

COMPENSATION

In the *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 in this claims program. The Commission also held that compensable physical injury claims in this claims program were not entitled to interest as part of the award. *Id.* Accordingly, the Commission determines that the claimant, 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.

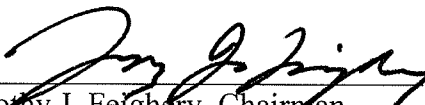
Therefore, the Commission enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSEA. 22 U.S.C. §§ 1626-27.

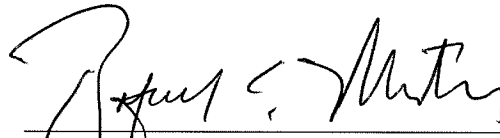
AWARD

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.

APR 07 2011


Timothy J. Feighery, Chairman


Rafael E. Martinez, Commissioner

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

MAY 13 2011

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).