

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-I-036

Decision No. LIB-I-047

Counsel for Claimant:

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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)} 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 U.S. 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.

The December Referral Letter 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 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” On the same day, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Oct. 31, 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 March 23, 2009, the Commission published notice in the *Federal Register* announcing the commencement of the Libya Claims Program pursuant to the ICSA and the December Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 12,148 (2009).

BASIS OF THE PRESENT CLAIM

On July 17, 2009, the Commission received from claimant a completed Statement of Claim and accompanying exhibits supporting the claim, including evidence of: claimant's U.S. nationality; his inclusion as a named party in the complaints filed in *Estate of John Buonocore III v. Socialist People's Libyan Arab Jamahiriya*, 06-cv-727 (D.D.C.), and *Simpson v. Socialist People's Libyan Arab Jamahiriya*, 08-cv-529 (D.D.C.), part of the Pending Litigation referred to in Attachment 1 of the December Referral Letter; the dismissal of the Pending Litigation against Libya; and his physical injuries.

The claimant, ^{5 U.S.C. §552(b)(6)}, states that he was present at the Fiumicino Airport in Rome, Italy with his parents and three siblings at the time of the terrorist attack. According to the Statement of Claim and accompanying exhibits, claimant was a minor at the time, and as a result of the attack suffered shrapnel wounds to his right arm and left leg. These physical injuries required four days of hospitalization in two different hospitals in Rome, and have purportedly left claimant with permanent, visible scarring. The claimant has provided evidence of his U.S. nationality, both on the date of the

incident and at the time of the Settlement Agreement. Additionally, claimant has 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

The Commission must first consider whether this claim falls within the category of claims referred to it by the Department of State. Under subsection 4(a) of the ICSEA, the Commission's jurisdiction here is limited to the category of claims defined under the December Referral Letter; namely, claims of individuals who: (1) are U.S. nationals; (2) are named parties in a Pending Litigation case against Libya 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 for the nationality requirement to have been met, 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 current U.S. passport showing his place of birth in Illinois. Based on this evidence and other evidence in the record, the Commission determines that this claim was held by a U.S. national at the time of the injury on which the claim is based, and that it has been so held from that point until the effective date of

the Claims Settlement Agreement.

Pending Litigation and its Dismissal

To fall within the present category of claims referred to the Commission, the claimant must also 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 Order of Dismissal in Cases No. 06-cv-727 and 08-cv-529, filed in the United States District Court for the District of Columbia, which name claimant as a party, and which shows that these cases were ordered dismissed on December 24, 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 December Referral Letter also requires that the claimant have set forth a claim for injury other than emotional distress alone in the Pending Litigation. December Referral Letter, *supra* ¶ 3. The Commission's records reflect the claimant's assertion in the complaints in the Pending Litigation that he suffered "personal injury" as a result of the defendants' actions, terrorist acts, and activities. In particular, the Commission notes that the claimant stated causes of action for, *inter alia*, battery and assault under Counts II and III of the complaints. Based on this evidence, the Commission finds that the claimant has satisfied this element of his claim.

In summary, the Commission concludes, on the basis of the foregoing, 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 provided 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*, at 8-9, 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 and accompanying documents, claimant suffered physical injuries on December 27, 1985, while in the terminal at the Fiumicino Airport in Rome, Italy. Specifically, claimant suffered shrapnel wounds described in the translated medical records as "excoriated wounds" caused by "metal shards" that penetrated his right arm and left leg. The contemporaneous medical records indicate that,

following the attack, claimant was immediately taken to the emergency room at San Agostino Hospital in Rome, where he was admitted to the surgery department and received unspecified treatment.* The records further indicate a “5 days prognosis.” The day after the incident, claimant was transferred to the C.T.O. Hospital, also in Rome, where he received treatment that included, *inter alia*, “dressing of the wounds of the left leg and of the right forearm.” Claimant remained hospitalized at the C.T.O. Hospital until December 31, 1985, at which time the medical records reflect that “[t]he patient [left] the hospital against the physician’s advice.”

In support of his claim, claimant has provided documentation including medical records (both contemporaneous and otherwise) from both San Agostino Hospital and the C.T.O. Hospital; contemporaneous newspaper clippings listing him as having been injured in the attack; an excerpted copy of the sentencing order from a criminal trial in Rome against one of the terrorists, also listing him as having been injured in the attack; a recent letter from a medical doctor noting permanent, visible scars consistent with claimant’s description of his shrapnel injuries; and other materials corroborating his claim of physical injury resulting from the Rome Airport attack.

Based on the evidence submitted, the Commission finds that the claimant’s injuries meet the standard for physical injury set forth above. Accordingly, claimant

5 U.S.C. §552(b)(6) is entitled to compensation.

* Claimant has submitted a copy of a March 15, 2010 letter from Osedale G.B. Grassi, the successor facility to San Agostino Hospital, which states that the medical record of claimant’s treatment at that facility on December 27, 1985, was destroyed in a fire in 1999; thus, no detailed record of the specific treatment he received is available. Similarly, a December 11, 2009 letter from the C.T.O. Hospital to claimant, presumably in response to a request for x-rays taken during his hospitalization in 1985, states that such records, in accordance with Italian law, are retained for only ten years, after which they are destroyed. Therefore, the results of any x-ray examinations performed on claimant at C.T.O. Hospital in 1985 are no longer available.

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)} ^{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 ICOSA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

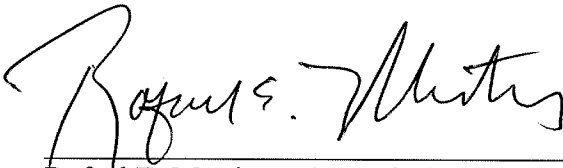
Claimant 5 U.S.C. §552(b)(6) is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

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).