

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 claimant's claim, including evidence of: claimant's U.S. nationality; his inclusion as a named party in the complaints filed in *Baker v. Socialist People's Libyan Arab Jamahiriya*, 03-cv-749 (D.D.C.), and *Pflug v. Socialist People's Libyan Arab Jamahiriya*, 08-cv-505 (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 on November 23, 1985, he was a passenger on Egypt Air Flight No. 648 en route from Athens, Greece, to Cairo, Egypt, when the flight was hijacked by Libyan-sponsored terrorists and diverted to Malta, where it was forced to land after a mid-air shootout. He further states that, after the plane landed, the hijackers called him to the front of the cabin, where he was shot in the head at close range and twice thrown outside onto the tarmac—the second time after being retrieved from the tarmac by the hijackers—causing him to suffer a concussion and a

laceration to the right side of his head, as well as numerous contusions and abrasions to his back, elbows, and knees. According to documentation provided with the claim, claimant was hospitalized for medical treatment in Malta for four days. Claimant asserts that, as a result of his physical injuries, has suffered permanent cognitive impairment and psychological difficulties.

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, a brief narrative of the incident, a newspaper clipping in which claimant is identified as a victim of the hijacking, 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 ICSA, 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, as well as a copy of his U.S. passport issued in September 1985. Based on this evidence, 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 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. 03-cv-749 and 08-cv-505, filed in the United States District Court for the District of Columbia, which named the claimant as a party, and which indicates 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 asserted in the Pending Litigation causes of action for, *inter alia*, battery, assault, and false imprisonment under Counts II, III, and IV of the complaints. Based on this evidence, the Commission finds that the claimant has satisfied this element of his claim.

In summary, therefore, 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 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*, 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 attached documentation, the claimant was a passenger on Egypt Air Flight No. 648 en route from Athens, Greece, to Cairo, Egypt, when the flight was hijacked by Libyan-sponsored terrorists and diverted to Malta after a mid-flight exchange of gunfire. After the plane was forced to land at the airport in Malta, he (along with certain other passengers) was brought to the front of the cabin, forced to kneel, and shot execution-style in the back of the head. He states that the bullet did not penetrate his skull, but rather “skipped around the skull, exiting behind his jaw.”* Claimant was then thrown out the cabin door and down the metal stairs, striking the tarmac below. Apparently unsure whether claimant had been killed, the hijackers then retrieved his body from the tarmac and tossed him from the door of the airplane a second time; claimant recalls that this time he struck the mirror of a parked vehicle before hitting the tarmac and, as reported to an evaluating neuropsychologist, “black[ed] out for a while on the ground.” Claimant states that, after an unknown period of time, he regained consciousness, stood up, and ran under the plane’s fuselage, where he hid until being rescued by security personnel. Claimant was hospitalized for four days at St. Luke’s Hospital in Malta, during which time he received treatment for his physical injuries and was monitored for potential brain injuries.

The documentation provided with this claim, including contemporaneous medical records, establishes that claimant suffered a laceration wound to the right side of his head

* Claimant apparently lost consciousness after being shot, but when and to what degree is unclear. During a December 11, 2009 medical evaluation, claimant suggested that the impact of the bullet “caused him to lose consciousness”; however, during a March 3, 2010 evaluation with a clinical neuropsychologist, claimant reportedly had a “vivid, sequential, hyper-real recollection of events leading up to moment of discharge through to the time he was slumped near the ground.”

as a result of being shot at point blank range, as well as contusions to his back and numerous abrasions to his elbows and knees as a result of being thrown from the plane.

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 as set forth below.

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 ICSA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

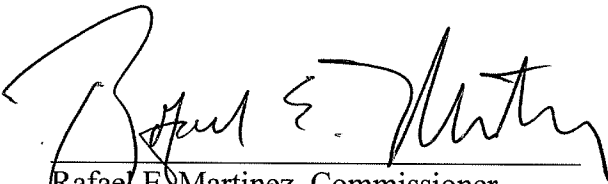
Claimant 5 U.S.C. §552(b)(6) is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

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).