

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-II-091

Decision No. LIB-II-054

Counsel for Claimant:

Noel J. Nudelman, Esq.
Heideman Nudelman Kalik, PC

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 Airport¹ 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 January 15, 2009, pursuant to a delegation of authority from the Secretary of
State, the State Department's Legal Adviser referred to the Commission for adjudication
six categories of claims of U.S. nationals against Libya. *Letter dated January 15, 2009,*

¹ Also known as Rome Leonardo da Vinci Airport or Leonardo da Vinci-Fiumicino Airport.

from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission (“January Referral Letter”).

The present claim is made under Category E. According to the January Referral Letter, Category E consists of

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

Id. at ¶ 7. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December Referral Letter”) from the State Department, 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 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and 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 President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 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 July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On May 6, 2010, the Commission received from claimant a completed Statement of Claim, in which she asserts a claim under Category E of the January Referral Letter, along with exhibits supporting the elements of her claim, including evidence of claimant's U.S. nationality, her presence at the scene of the terrorist incident, and her alleged physical injuries for which she now claims compensation.

The claimant states that she was present at the Fiumicino Airport in Rome, Italy, on her way to Israel, at the time of the terrorist attack. According to the Statement of Claim and accompanying exhibits, claimant suffered shrapnel wounds to her right hip and calf as well as to her face as a result of hand grenade explosions during the attack. She states that, immediately following the incident, she went to the airport parking lot where a "small mobile hospital had been assembled to triage the casualties at the airport." Before being treated, she called her father in the United States to advise him of the attack. Claimant states that her father, a physician, advised her to "have her wounds cleaned and stitched in the field hospital" and to continue on her journey to Israel as planned, and that he "would arrange for fuller treatment for her there when she arrived." According to the

claimant, she proceeded to receive additional treatment for her injuries the next day from doctors in Israel, who determined that it would be too dangerous to actually remove the shrapnel. She further states that, upon her return to the United States in late March 1986, x-rays taken at the Yale Hospital revealed “one metallic foreign body seen in the calf laterally and posteriorly.”² According to the claimant, however, doctors at Yale similarly advised her that surgery to remove the embedded shrapnel would cause greater damage. Finally, she states that the shrapnel injuries and embedded grenade fragment severely affect her ability to walk normally and pain-free, and that she continues to receive treatment for these ailments to the present day.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission’s jurisdiction here is limited to the category of claims defined under the January Referral Letter; namely, claims of individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral Letter, *supra* ¶ 7.

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

² Claimant has not provided the actual x-ray of her leg; instead, she has provided a “Radiological Consultation Report,” dated March 24, 1986.

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 her birth certificate indicating that she was born in New Haven, Connecticut and a copy of her current U.S. passport. Based on this evidence, the Commission determines that the claim was owned by a U.S. national at the time of the incident and has been so held until the effective date of the Claims Settlement Agreement.

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must also assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral Letter. January Referral Letter, *supra*, ¶ 7. This list includes the "December 27, 1985 attack at the Leonardo da Vinci Airport in Rome, Italy, as alleged in *Estate of John Buonocore III v. Great Socialist Libyan Arab Jamahiriya* (D.D.C.) 06-cv-727/*Simpson v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-529." *Id.*, Attachment 2, ¶ 6. In her Statement of Claim, the claimant sets forth a claim for physical injury suffered as a result of the December 27, 1985 Rome Airport terrorist attack. The Commission therefore finds that the claimant has also satisfied this element of her claim.

Pending Litigation

Finally, the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, are the *Buonocore* and *Simpson*

cases. Claimant has stated under oath in her Statement of Claim, and the pleadings in the *Buonocore* and *Simpson* cases confirm, that she was not a plaintiff in that litigation. Based on this evidence, the Commission finds that the claimant has satisfied this element of her 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 January Referral Letter and is entitled to adjudication on the merits.

Merits

Standard for Physical Injury

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category E must meet "the standard for physical injury or wrongful death, as appropriate, adopted by the Commission" for purposes of this referral. January Referral Letter, *supra*, ¶ 7. The Commission held in *Claim of*^{5 U.S.C. §552(b)(6)} 5 U.S.C. §552(b)(6) Claim No. LIB-II-039, Dec. No. LIB-II-015 that in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; and
- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

Claim of^{5 U.S.C. §552(b)(6)} *supra*, at 6-7. The present Category E claim must likewise meet this standard to be compensable.

Physical Injury

Claimant has provided significant contemporaneous and more recent corroborative evidence establishing her presence at the scene of the incident as well as her injuries.³ In addition, she has submitted affidavits from a fellow victim of the incident and from a doctor, who was also a family friend, who drove claimant to the hospital upon her arrival in Israel. These affidavits indicate that the treatment the claimant received at the airport in Rome included the removal of multiple pieces of shrapnel from her face and legs and the cleaning of a deep abrasion in her eye. The evidence also indicates that a day later in Israel, she received even more extensive treatment for the injuries. Additionally, claimant has provided a "Radiological Consultation Report" establishing that, upon returning to the United States in late March 1986, x-rays revealed that "one metallic foreign body" remained in her leg muscle. Subsequent medical records revealed similar diagnoses of the danger of removing the embedded shrapnel. In addition, a recent x-ray submitted by claimant clearly reveals that a "small metallic body" remains embedded in her leg.

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.

³ This evidence includes a letter dated June 9, 1986 from President Ronald Reagan to the claimant's father regarding the incident; a letter dated January 27, 1986 from a Union College official to the claimant's father regarding the incident; and an article dated January 30, 1986 from Concordiensis, the student newspaper at Union College, headlined "Terrorism Hits Students Abroad," which described claimant's involvement in the incident and specifically that she "was struck in the leg with shrapnel which was removed in Rome and treated again in Tel Aviv."

COMPENSATION

In *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 under Category E, and that compensable physical injury claims in this claims program are not entitled to interest as part of the awards granted therein. 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.

The Commission therefore 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).

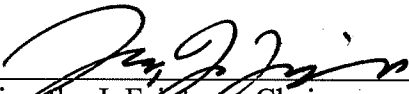
AWARD

Claimant ^{5 U.S.C. §552(b)(6)}

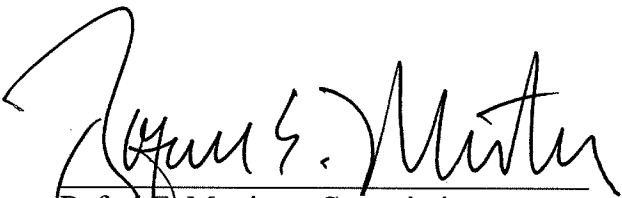
is entitled to an award in the amount of

Three Million Dollars (\$3,000,000.00).

Dated at Washington, DC, June 3, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Felghery, Chairman



Rafael E. Martinez, Commissioner

**This decision was entered as the
Commissioner's Final Decision on
JUL 14 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).