

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-100

Decision No. LIB-II-070

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)}

^{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 ICOSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On June 2, 2010, the Commission received from claimant a completed Statement of Claim in which he asserts a claim under Category E of the January Referral Letter, along with exhibits supporting the elements of his claim. This submission included evidence of claimant's U.S. nationality, his presence at the scene of the terrorist incident, and his alleged physical injuries for which he now claims compensation.

The claimant states that he was present at the Fiumicino Airport in Rome, Italy, on his way to Israel, at the time of the terrorist attack. According to the Statement of Claim and accompanying exhibits, claimant suffered shrapnel wounds to his left arm and his face as a result of hand grenade explosions during the attack. He states that, immediately following the incident, he went to a triage area that had been set up at the airport to treat the victims of the attack, where medical personnel "poured iodine onto . . . and bandaged his arm wound." According to the claimant, he was then placed in an ambulance and taken to San Camillo Hospital in Rome, where doctors cleansed and removed shrapnel from his arm wound and admitted him for further treatment.

Claimant alleges that, during the attack, a piece of shrapnel embedded itself under his right eye and remains there to this day. As a result, according to the claimant, he continues to suffer from various related ailments, including “chronic localized pain and headaches” and impaired vision.

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 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 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 a copy of his birth certificate, indicating that he was born in New York City, New York, a copy of his U.S. passport from the time of the incident (valid from December 1984 to December 1994), and a copy of his 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 his 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 satisfied this element of his 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 his Statement of Claim, and the pleadings in the *Buonocore* and *Simpson* cases confirm, that he was not a plaintiff in that litigation. 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 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)}, 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

According to his Statement of Claim and accompanying exhibits, claimant was standing in front of the El Al Airlines ticket counter at Fiumicino airport on December 27, 1985 when terrorists opened fire with machine guns and tossed hand grenades at waiting passengers. In his description of the incident, claimant states that one of the

grenades exploded near him as he “dove to the ground,” with the result that “shrapnel struck his outstretched left arm, in the area of his inner bicep . . . making a deep cut in his arm.” Claimant further avers that “[s]hrapnel also struck his face, and lodged under his right eye.”

In support of his claim, claimant has provided, *inter alia*, medical records, including contemporaneous medical records; copies of newspaper articles describing the incident and noting his presence at the scene of the attack, including a brief quote from claimant regarding his experience and a list of the Americans injured (including the claimant); a copy of claimant’s El Al Airlines ticket; a copy of a Rome Airport bus ticket, dated December 27; and an affidavit sworn by Traci Kamil, one of claimant’s traveling companions on the day of the attack, confirming that claimant suffered a shrapnel wound under his right eye and was taken from the scene in an ambulance.

The contemporaneous medical records provided with this claim indicate that, following the attack, claimant was admitted to San Camillo Hospital, where he was observed to have an “Open wound at the IV (4th) medial on the Left arm.” Although not all of the treatment that claimant alleges to have received is mentioned in these records, the records do indicate that doctors conducted an x-ray examination on claimant’s left arm and administered tetanus shots. They further note a prognosis of fifteen days.²

Although the contemporaneous medical records do not mention the injury to claimant’s face, the results of more recent medical examinations appear to confirm his

² A letter addressed to claimant’s counsel from San Camillo Hospital, dated May 4, 2010, states that “[claimant’s] records have been destroyed by a fire.” The letter does, however, confirm that claimant “was hospitalized at our clinic Morgani on the date of 12.27.1985 consequently to the terroristic attacks at the Airport Leonardo da Vinci – Fiumicino in Rome” It indicates that the contemporaneous medical records provided with this claim (i.e. “an admissions records and the surgery report . . . that was sent to the Judicial Authority of Rome”) are the only records concerning claimant’s treatment that survived.

assertion that shrapnel from the incident remains embedded under his right eye.³ For instance, a report accompanying a 2004 radiological examination notes the presence of a “susceptibility artifact in the subcutaneous tissues of the right cheek . . . consistent with metal.” The images associated with this report have been provided, and indicate the “metal artifact” in each image, which has been circled. A second opinion regarding these images, obtained in 2010, confirms the presence of a “metallic susceptibility artifact” in the right side of claimant’s face. In addition, a report from a 2010 medical examination notes “a scar and discoloration” on the upper portion of claimant’s right cheekbone. The same report indicates that a “firm subcutaneous foreign particle” can be felt at the site, “consistent with a metallic fragment or shrapnel wound of longstanding duration.” The report also notes the presence of a 2.5 cm long scar on claimant’s left upper arm, which the examiner concludes is “permanent and not correctible.”

Based on the evidence submitted, and in particular the contemporaneous medical records, 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 *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)}

³ This injury is also mentioned in a newspaper article regarding the incident published on December 29, 1985, in which it was reported that claimant “was hit by shrapnel in one arm and under his eye in the attack.”

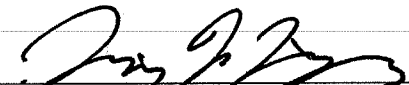
5 U.S.C. §552(b)(6) is entitled herein to an award of \$3,000,000.00 and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

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 ICSA. 22 U.S.C. §§ 1626-1627 (2006).

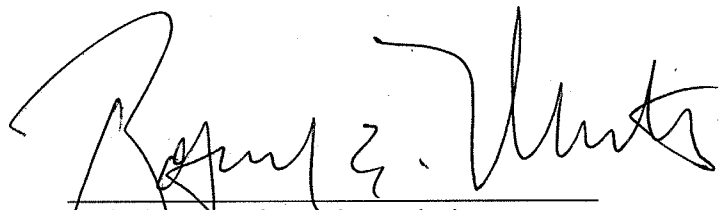
AWARD

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, July 12, 2011
and entered as the Proposed Decision
of the Commission.


Timothy J. Feighery, Chairman

**This decision was entered as the
Commission's Final Decision on**
AUG 18 2011


Rafael E. Martinez, Commissioner

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).