

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)	5		Claim No. LIB-II-105
			Decision No. LIB-II-133
Against the Great Socialist People's Libyan Arab Jamahiriya			

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 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 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

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

six categories of claims of U.S. nationals against Libya. *Letter dated January 15, 2009, 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”).

The present claim is made under Category E. According to the January Referral, 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 lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral, as well as a December 11, 2008 referral letter (“December Referral”) 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. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

#### BASIS OF THE PRESENT CLAIM

On June 21, 2010, the Commission received from claimant a completed Statement of Claim in which she asserts a claim under Category E of the January Referral, 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 a shrapnel wound to her right calf as a result of a hand grenade explosion. She states that, immediately following the incident, she went to a triage area that had been set up at the airport to treat the victims of the attack, and shortly thereafter, was taken by ambulance to San Camillo Hospital in Rome, where doctors cleansed and treated her wound. According to claimant, x-rays taken at the hospital revealed the presence of shrapnel "embedded" in her right calf. She states that, following her initial treatment in Rome, she returned to the United States, where she

was hospitalized, underwent further treatment, and was “discharged the next day on crutches . . . .”

Claimant alleges that, as a result of her injuries, she suffers from “permanent pain and restricted mobility” to the present day. In particular, she contends that shrapnel remains embedded in her calf, resulting in “localized pain in her right leg,” and “directly caus[ing] a number of additional conditions and complications.”

## 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; 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, *supra* ¶ 7.

### *Nationality*

In the *Claim of*<sup>5</sup> 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 her birth certificate, indicating that she was born in New York City, New York, a copy of her expired U.S. passport (valid from October 1991 to October 2001), and a declaration of the claimant attesting to her continuous U.S. nationality and

that she has not applied for a renewal since the expiration of her passport issued in 1991. In addition, the Commission has verified that claimant is currently registered to vote in the State of New Jersey. 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. January Referral, *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 satisfied this element of her claim.

*Pending Litigation*

Finally, the January Referral 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 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 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, *supra*, ¶ 7. The Commission held in *Claim of*<sup>5</sup> 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.

*Id.* at 6-7. The present Category E claim must likewise meet this standard to be compensable.

#### *Physical Injury*

According to her 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 her description of the incident, claimant states that, when the attack started, “[a] security guard . . . seized her and threw her to the ground, under a table.” She alleges that, while she was on the floor, “a hand grenade rolled past her” and “[s]he heard more grenades exploding[,]” at which point “[h]ot shrapnel struck her right calf, tearing through her blue jeans, penetrating her skin and embedding in her calf muscle.” Claimant alleges that she experienced “excruciating pain through her right leg.” She “looked at her leg and saw that her blue jeans were soaked in blood and a hole had been torn in them at the right calf area.” She further alleges that, when the attack ended, she was unable to walk and was “taken to a makeshift “triage area” at the airport. Shortly thereafter, she was taken by ambulance to San Camillo Hospital in Rome.

Claimant states that, once at the hospital, she was admitted to the emergency room, where she underwent treatment that included the cleansing, disinfecting, and debridement of her wound. In addition, she states that x-rays were taken, which revealed shrapnel embedded in her leg. Claimant adds that “[h]er leg was wrapped and elevated in bed, pending surgery.” She further states that, after speaking with her father via telephone from the hospital, she decided to leave Rome and return to the United States for treatment. Having “left the hospital on crutches[,]” claimant alleges that she flew to New York and was admitted to the White Plains Hospital Medical Center, where, under local anesthesia, her wound was further debrided and irrigated, and additional x-rays were taken evidencing the shrapnel in her leg. She states that the doctor advised her that “although she would continue to suffer pain in her leg from time to time as a result of the shrapnel, the best course of action was to leave the shrapnel in her calf . . . .”

In support of her claim, claimant has provided, *inter alia*, extensive medical records, including contemporaneous medical records; a copy of a newspaper article describing the incident and noting her presence at the scene of the attack, including a description of her alleged physical injury; a narrative description of the incident detailing claimant's experience during the attack, her alleged physical injuries, and her subsequent medical treatment; and an affidavit sworn by Traci Kamil, one of claimant's traveling companions on the day of the attack, confirming the shrapnel injury claimant sustained to her right leg and her treatment at a hospital in Rome.

The contemporaneous medical records provided with this claim confirm that, following the attack, claimant was admitted to San Camillo Hospital, where doctors observed the "[p]resence of foreign metallic object(s) in proximity of the soft tissues of . . . the ligaments of the right leg." According to these records, claimant underwent "[b]lood work exams, Human immunology, [and] Anti tetanus[,]" as well as x-ray imaging on her right leg, and was given a prognosis of "20 days." In the above-referenced affidavit, Ms. Kamil states that claimant "left the hospital on crutches[]" and "could not walk without my assistance."

Further contemporaneous medical records indicate that claimant was admitted to White Plains Hospital Medical Center in White Plains, New York on December 29, 1985, where she was observed to have a "shrapnel wound" to the "[right] Lat. calf[.]" In particular, the examining physicians noted that "[e]xamination of the right calf shows a clean, 6 x 4 mm. wound in the lateral aspect" which was described as "secondary to a small piece of shrapnel." Medical personnel also noted that claimant's right leg was "cool to touch, pale[,]" and that her right foot was cooler than the left. According to the



records, claimant underwent surgery in which her shrapnel wound “was sharply debrided of all non-viable tissue and copiously irrigated[,]” after which “antibiotic ointment and a dry sterile conforming dressing were applied.” An imaging test performed the same day revealed the presence of a “foreign body, which measures about 5-6 mm. in diameter, [and] is lateral to the anterior tibial artery . . . .” Doctors indicated “IV antibiotics and then 3-4 days of oral penicillin when she goes home.” Claimant was discharged the following day with a prescription for antibiotics and an indication for a follow-up appointment.

More recent medical records corroborate the claimant’s physical injury. For example, the report of a March 2010 radiological examination, submitted by the claimant with copies of the relevant images, notes the presence of “a metallic foreign body measuring 6mm” in claimant’s right leg. The fragment can clearly be seen in the attached images.

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<sup>5 U.S.C. §552(b)(6)</sup> is entitled to compensation as set forth below.

#### COMPENSATION

In the *Claim of* <sup>5 U.S.C. §552(b)(6)</sup> , *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,<sup>5 U.S.C. §552(b)(6)</sup> , 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 <sup>5 U.S.C. §552(b)(6)</sup> is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

Dated at Washington, DC, January 25, 2012  
and entered as the Proposed Decision  
of the Commission.

  
Timothy J. Feighery, Chairman

**This decision was entered as the  
Commission's Final Decision on**  
MAR 06 2012

  
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).