

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of

ESTATE OF JUANITA LOPEZ DE CONDE,
DECEASED; SAMUEL CONDE LOPEZ,
ADMINISTRATOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-121

Decision No. LIB-II-113

Counsel for Claimant:

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the Estate of Juanita Lopez de Conde (the "claimant") based upon physical injuries said to have been sustained by Ms. Lopez de Conde during the terrorist attack at Lod Airport in Israel on May 30, 1972. Ms. Lopez de Conde died in 1999 of causes unrelated to the attack.

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, 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 June 30, 2010, the Commission received from claimant a Statement of Claim in which the claimant asserts a claim under Category E of the January Referral Letter. The submission also included exhibits supporting the elements of the claim, including evidence of the late Ms. Lopez de Conde's U.S. nationality at the time of her injury and subsequent death in 1999 from heart disease, and of the physical injuries she suffered in the Lod Airport attack on May 30, 1972.

According to the Statement of Claim, the claimant's decedent, Juanita Lopez de Conde, was present at the Lod Airport in Israel on May 30, 1972, at the time of the terrorist attack, and was seriously injured from a bullet that pierced her abdomen and fractured her pelvis, and from shrapnel that lacerated her arm. Claimant further alleges that Ms. Lopez de Conde was admitted to the hospital on the day of the shooting, that her treatment included a surgical procedure (an exploratory laparotomy), and that she was not released until June 11, 1972. In support of the claim, the claimant has provided

contemporaneous medical documents and newspaper articles that describe Ms. Lopez de Conde's physical injuries.

The claimant estate has also submitted a Resolution dated May 12, 2010 issued by the Court of First Instance for the Division of Carolina, Puerto Rico ("May 12, 2010 Court Resolution"), which states that Ms. Lopez de Conde died a widow and without a will, and identifies her five children as her heirs. In addition, the claimant estate has provided documents evidencing the U.S. nationality of Ms. Lopez de Conde's heirs from the time of Ms. Lopez de Conde's death in 1999, when they inherited the claim, until August 14, 2008, the date of the Claims Settlement Agreement.

DISCUSSION

As an initial matter, the Commission notes that the May 12, 2010 Court Resolution identifies Ms. Lopez de Conde's heirs as Samuel Conde Lopez, Elba Noemi Morales Lopez, Julio Gerson Morales Lopez, Eliezer Conde Lopez and Luis Felipe Conde Lopez. The Commission also notes that the Court of First Instance for the Division of Carolina, Puerto Rico issued a Resolution on June 23, 2011 ("June 23, 2011 Court of First Instance Resolution") appointing Samuel Conde Lopez as the judicial administrator for Ms. Lopez de Conde's estate. Accordingly, the Commission finds that the ESTATE OF JUANITA LOPEZ DE CONDE, DECEASED; SAMUEL CONDE LOPEZ, ADMINISTRATOR is the proper claimant in this claim.

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction is limited to the category of claims defined in the January Referral Letter; namely the 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 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. In the case of claims brought by estates on behalf of beneficiaries, it is a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors (the War Claims Commission and the International Claims Commission) that, for purposes of determining the nationality of a claim, the nationality of the injured party as well as the beneficiaries of his or her estate must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.¹ Based on this precedent and its review of the documents submitted by claimant, the Commission determines that, during the pertinent time period, an interest in this claim has been held by Juanita Lopez de Conde, Samuel Conde Lopez, Elba Noemi Morales Lopez, Julio Gerson Morales Lopez, Eliezer Conde Lopez and Luis Felipe Conde Lopez.

¹ See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

To meet the nationality requirement, the claimant has provided copies of the birth certificate and death certificate for Juanita Lopez de Conde and copies of birth certificates and U.S. passports for Samuel Conde Lopez, Elba Noemi Morales Lopez, Julio Gerson Morales Lopez, Eliezer Conde Lopez and Luis Felipe Conde Lopez. Based on this and other evidence in the record the Commission determines that the claim was held by a U.S. national at the time of the incident continuously through 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 which resulted from one of the Covered Incidents listed in Attachment 2 to the January Referral letter. January Referral Letter, *supra*, ¶ 7. This list includes the “May 30, 1972 attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734.” *Id.* at Attachment 2, ¶ 1. In the Statement of Claim, the claimant sets forth a claim for physical injury suffered by Ms. Lopez de Conde as a result of this terrorist attack. Accordingly, the Commission finds that the claimant has also satisfied this element of its claim.

Pending Litigation

Finally, the January Referral Letter states that the claimant must 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, is the *Franqui* case. Claimant has averred under oath in the Statement of Claim, and the pleadings in the *Franqui* case confirm, that neither the claimant, nor the claimant’s decedent, was a plaintiff in the

Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has satisfied this element of its 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

The claimant estate has provided contemporaneous medical documentation from the Tel Hashomer hospital in Israel which records that Ms. Lopez de Conde was admitted

to that hospital on May 30, 1972 with a gunshot wound that pierced her abdomen and fractured her pelvis (also referenced in the report as a "penetrating wound"), and with a shrapnel wound that lacerated her arm; that her treatment included a surgical procedure (an exploratory laparotomy); and that she was not released from the hospital until June 11, 1972. In addition, the claimant estate has provided a number of newspaper articles that identify Ms. Lopez de Conde as one of the individuals who was harmed in the attack.

Based on the evidence submitted, and in particular the contemporaneous medical records, the Commission finds that Ms. Lopez de Conde suffered physical injuries on May 30, 1972, at the Lod Airport in Israel, as a result of the terrorist attack and that her injuries meet the standard for physical injury set forth above. Accordingly, claimant ESTATE OF JUANITA LOPEZ DE CONDE, DECEASED; SAMUEL CONDE LOPEZ, ADMINISTRATOR is entitled to compensation as set forth below.

COMPENSATION

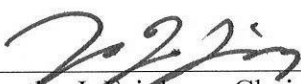
In *Claim of* 5 U.S.C. §552(b)(6) , *supra*, the Commission held that \$3 million is an appropriate amount of compensation for physical injuries that meet the Commission's standard under Category E, and that compensable physical injury claims in this claims program are not entitled to interest as part of the awards granted therein. Accordingly, the Commission determines that the claimant, ESTATE OF JUANITA LOPEZ DE CONDE, DECEASED; SAMUEL CONDE LOPEZ, ADMINISTRATOR, 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 ICSEA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

Claimant ESTATE OF JUANITA LOPEZ DE CONDE, DECEASED; SAMUEL CONDE LOPEZ, ADMINISTRATOR is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

Dated at Washington, DC, December 15, 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**
JAN 18 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).