

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-145

Decision No. LIB-II-101

Counsel for Claimant:

Stuart Newberger, Esq.
Crowell & Moring LLP

PROPOSED DECISION AND ORDER

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on the hostage-taking or unlawful detention of 5 U.S.C. §552(b)(6) by armed hijackers on Pan Am Flight 73 at Karachi International Airport in Karachi, Pakistan, on September 5, 1986. In claimant's initial submission, he also made a claim seeking additional compensation due to the special circumstances of the physical injuries he suffered as a result of the hijacking incident. On October 20, 2011, claimant submitted a "Notice of Withdrawal of Further Claim" with respect to this claim.

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 Categories A and D. According to the January Referral Letter, Category A consists of

claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, provided that (1) the claimant meets the standard for such claims adopted by the Commission; (2) the claim was set forth as a claim for injury other than emotional distress alone by the claimant named in the Pending Litigation; (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission; and (4) the claimant did not receive an award pursuant to [the Secretary of State's] referral of December 11, 2008.

Id. at ¶ 3. Category D of the January Referral consists of

claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by our December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to our December 11, 2008 referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim's death; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 6. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation.

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).

By Proposed Decision entered on October 16, 2009, the Commission denied the claimant’s physical injury claim submitted pursuant to the December 2008 Referral Letter. The claimant objected to the Commission’s decision and requested an oral hearing which was held on July 21, 2011. Subsequently, the Commission issued its Final Decision in the claim on September 6, 2011, awarding \$3 million to claimant as compensation for the physical injury he suffered as a result of the terrorist attack. *Claim*

of 5 U.S.C. §552(b)(6) , Claim No. LIB-I-007, Decision No. LIB-I-024 (2011) (Final Decision).

BASIS OF THE PRESENT CLAIM

On July 1, 2010, the Commission received from claimant a completed Statement of Claim in which he asserted claims under Categories A and D of the January Referral Letter, along with exhibits supporting the elements of his claims including evidence of his U.S. nationality, presence at the scene of the terrorist incident, and the extent of his injuries.

DISCUSSION

Category A Claim

As noted above, claimant's December Referral claim for physical injury was approved in the amount of \$3 million by the Commission in its Final Decision dated September 6, 2011. The language of the January Referral Letter quoted above provides that in order for a claim to be included under Category A the claimant must establish that he or she "did not receive an award pursuant to [the Secretary of State's] referral of December 11, 2008." Given the Commission's Final Decision awarding claimant's claim under the December Referral Letter, claimant is unable to meet this critical element of Category A. Accordingly, the Commission finds that this claim for compensation under Category A of the January Referral must be, and hereby is, denied.

Category D Claim

The Commission has received from claimant's counsel a "NOTICE OF WITHDRAWAL OF FURTHER CLAIM" dated October 20, 2011, informing the Commission of the claimant's intention to withdraw his claim under Category D of the

January Referral Letter from further consideration. On the basis of this submission, the Commission considers the claimant's category D claim as withdrawn, and that claim will not be the subject of any further action by the Commission.

Accordingly, it is ORDERED that the present Category D claim be and it is hereby dismissed, with prejudice.

Dated at Washington, DC, October 28, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

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

NOV 30 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).