



*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 April 26, 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.

Specifically, the claimant states that she was present in the terminal at Lod Airport in Tel Aviv, Israel on May 30, 1972, when three terrorists armed with automatic rifles began shooting and throwing hand grenades at passengers gathered in the baggage claim area. According to the Statement of Claim and accompanying exhibits, claimant suffered a "gunshot fracture" to her right leg, resulting in extensive tissue damage, and shrapnel wounds to both sides of her body. She was hospitalized in Israel for forty-five days, during which time she underwent surgery that included a skin graft and the nailing of her fractured leg bones. Following her return to Puerto Rico, claimant was hospitalized for several additional months for further treatment.

## 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 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 copies of her Puerto Rico birth certificate and 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.

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### *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 “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.*, Attachment 2, ¶ 1. In her Statement of Claim, the claimant sets forth a claim for physical injury suffered as a result of the May 30, 1972 Lod Airport terrorist attack. The Commission therefore finds that the claimant has 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, is the *Franqui* case. Claimant has provided a copy of the First Amended Complaint in *Franqui*, which establishes that she was not a party to that litigation. In addition, claimant has averred under oath in her Statement of Claim that she was not a plaintiff in the Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has also satisfied this element of her claim.

In summary, 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* <sup>5 U.S.C. §552(b)(6)</sup>

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* <sup>5 U.S.C. §552(b)(6)</sup> *supra*, 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 suffered physical injuries on May 30, 1972 when, as discussed above, three gunmen attacked passengers waiting in the baggage claim area at Lod Airport in Tel Aviv, Israel. In an affidavit filed in support of this claim, one of claimant's fellow passengers describes how the attackers began firing machine guns and throwing hand grenades at the waiting passengers, and notes that claimant was among those injured in the attack.

In support of her claim, claimant has provided, *inter alia*, extensive contemporaneous medical records; newspaper clippings describing the incident and noting her presence at the scene of the attack; photographs of claimant's injured right foot and the metal brace attached to her leg; an affidavit from one of the other Puerto Rican passengers who was injured in the incident, and noting claimant's presence and injury at

the scene of the attack; and various records from the Department for Hostile Action Casualties of the Israeli National Insurance Institute.

The medical records provided with this claim establish that, following the attack, claimant was admitted to the Haim Sheba Medical Center at Tel Hashomer, where it was determined she had suffered a “[g]unshot fracture” of her right tibia and fibula. Claimant received treatment that included “Excision – Debridement of [her] wound” and the “nailing of the tibia.” Five days later, “nailing of the fibula and skin grafting was performed.” The discharge summary notes that, following this surgery, “the graft broke down with necrosis of the fibula.” Claimant was discharged from Sheba Medical Center on July 14, 1972 and returned home to Puerto Rico, where, on July 18, 1972, she was admitted to University District Hospital for further treatment of her wounds.

As further evidence of her injuries, claimant has provided documentation from the Department for Hostile Action Casualties of the Israeli National Insurance Institute, which determined on April 1, 1973 that claimant had suffered “a permanent 37% disability” as a result of the Lod Airport attack, and awarded her disability benefits accordingly.

More recently, a 2009 letter addressed to claimant’s counsel from a physician who has treated claimant since 1995 notes, *inter alia*, that “she lost a lot of soft tissue in the lower part of her right leg,” is not able to flex her ankle, and “use[s] an especial [sic] shoes since 1972 with bilateral metal bars from ankle to knee to give support . . . .” In addition, claimant has provided recent photographs depicting claimant’s injured leg and foot, clearly indicating the deformity resulting from the loss of tissue and her use of metal

bars on her leg for support. Finally, the Commission notes that contemporaneous newspaper reports confirm that claimant was among the injured.

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 *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> <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.

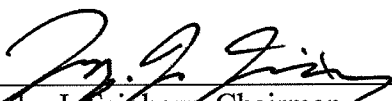
The Commission therefore enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICOSA. 22 U.S.C. §§ 1626-1627 (2006).

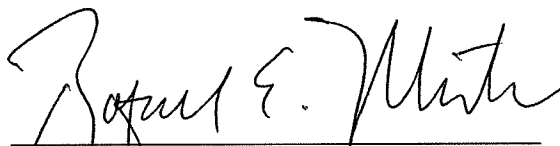


AWARD

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, May 10, 2011  
and entered as the Proposed Decision  
of the Commission.

  
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Timothy J. Feighery, Chairman

  
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Rafael E. Martinez, Commissioner

**This Decision was entered as the  
Commissioner's Final Decision on  
JUN 20 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).