World Bank Administrative Tribunal

2010

No. 442

Tamara Lansky (No. 3),
Applicant

v.

International Bank for Reconstruction
and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

Tamara Lansky (No. 3),
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v.

International Bank for Reconstruction
and Development,
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1. This judgment is rendered by the Tribunal in plenary session with the participation of Stephen M. Schwebel, President, and Judges Jan Paulsson, Florentino P. Feliciano, Francis M. Ssekandi, Ahmed El-Kosheri and Mónica Pinto.

2. The Application was received on 16 March 2010. The Applicant was not represented by counsel. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. On 16 July 2010 the Government Accountability Project, a non-profit public interest organization, filed an *amicus curiae* brief supporting the Applicant's submissions, which the Tribunal decided to include in the record.

3. The Applicant alleges that the Bank breached a Memorandum of Understanding ("MOU") signed between her and the Bank and continues to deny her due process rights by (1) not complying with the Tribunal's order in *Lansky (No. 1 and No. 2)*, Decision No. 425 [2009], and (2) handling her disability claims inappropriately.

4. The Applicant is contesting the following alleged Bank decisions: (1) the unreasonable choice of a physician lacking the required professional expertise in the treatment of Post Traumatic Stress Disorder ("PTSD") to conduct an independent medical examination ("IME") in Africa; (2) excessive delays in processing her claims; (3) the continued use of a system lacking any consistent or written standards and the continued retroactive application of new

requirements; (4) ongoing errors by the Bank's Disability and Workers' Compensation ("WC") Claims Administrator ("Administrator"); (5) the continued use of, and reliance on, outdated and wrong guidelines in managing PTSD cases; and (6) conflicts of interest between the Administrator and the Administrative Review Panels (which hear appeals from decisions of the Administrator), which would interfere with the fair review of her case. The Applicant also alleges retaliation against her by the Administrator and the Bank.

5. She requests that (1) the request to travel to Senegal for the IME be revoked; (2) the Administrator update its guidelines on PTSD; (3) the Bank comply with the MOU; (4) her Treating Physician or another physician located in Geneva be designated to conduct the IME; (5) pending new rules and procedures, the Administrator comply with generally acceptable claims practices and cease changing requirements and applying them retroactively, or in the alternative, that the Bank retain the services of a U.S. regulated workers' compensation and disability programs administrator; (6) that she no longer be subjected to the Bank's "ongoing discriminatory and retaliatory practices"; (7) that the Bank implement the Tribunal's judgment by the end of 2010; and (8) that the Tribunal retain jurisdiction of the present case until detailed rules of procedures are issued and implemented and the impartiality of the Appeals Review Panels is restored.

6. The Bank challenges the admissibility of the Application on the basis that (1) it is moot, the Bank and Administrator having taken steps to correct the error in the choice of physician to conduct the IME, which had given rise to the Application; and (2) the Applicant did not exhaust internal remedies and, in any case, her claims should be dismissed under the principle of *res judicata* because they have already been addressed by the Tribunal in *Lansky (No. 1 and No. 2)*.

7. On 27 May 2010 the President of the Tribunal decided to join the Bank's preliminary objection to the merits of the case.

FACTUAL BACKGROUND

8. The Applicant joined the International Finance Corporation ("IFC") in 1995 and served until her employment ended on 7 April 2009 pursuant to the MOU. Prior to the termination of her employment and following an incident while on mission in the Democratic Republic of Congo, she was diagnosed with PTSD. She eventually became eligible to receive short-term disability benefits and, prior to the termination of her employment, was approved for long-term disability benefits.

9. The Applicant and the Bank entered into the MOU in March 2009. In the MOU, the Applicant agreed to "settle and release any and all claims or causes of action alleging negligence or breach of contract arising out of the security incident [which resulted in her diagnosis of PTSD] … and all other claims and causes of action relating thereto," excepting only pending or future claims or appeals under the WC and Disability Programs. The Applicant also agreed "to fully and finally settle and release any and all other claims, including employment and benefit claims, against the IFC or the Bank Group arising on or before the date of her acceptance of this MOU."

10. The Applicant filed her first case with the Tribunal on 1 April 2009 alleging harassment by the WC and Disability Administrators, which interfered with her PTSD treatment. While the Claims Administrator handling her claims for reimbursement of her PTSD treatment had approved those claims, she alleged that the procedures for processing her claims were inadequate. The Tribunal dismissed the Applicant's claims for relief in *Lansky (No. 1 and No. 2)*, but recommended "that the Bank, with the cooperation of the Staff Association, proceed to

formulate and develop appropriately detailed rules of procedure that claimants and administrators should follow in the processing of claims for payment or reimbursement under the WC and Disability Programs of the Bank." In its judgment, the Tribunal noted

> the consideration received by the Applicant through the execution of the MOU, [and determined that by signing the MOU, the] Applicant undertook to forego the filing of generalized claims arising … from allegations of failure on the part of the Bank, acting through its WC and Disability Administrators, to comply with the standards set out in Principle 2.1 of the Principles of Staff Employment. The Tribunal finds that those claims were waived by the Applicant in the MOU.

11. The Tribunal also rejected the Applicant's allegation that the Bank breached the confidentiality clause of the MOU. By the terms of the MOU, "[i]f the parties file [with the Appeals Committee or WBAT] for a breach of this MOU, the MOU itself may be used as evidence in that proceeding without violating the confidentiality provisions of this MOU."

12. While the Applicant's previous case was ongoing, she filed with the Administrator a request for a change in her treatment plan, asking that she receive treatment for a new condition related to PTSD ("new condition"). On 17 March 2009 the Administrator asked for additional documentation to support the request, which was provided the next day by the Applicant's Treating Physician. The Administrator then immediately approved the new treatment plan for the Applicant. In its e-mail message, it asked that the "new provider … attach a narrative to his invoices," and that, if the Applicant was to attend a treatment facility, an addendum be attached, setting out the number of days needed and the cost of the program.

13. It appears that on 16 September 2009 the Treating Physician sent a progress report to the Administrator explaining that the Applicant's health was deteriorating. As a result, the Treating Physician had decided that the Applicant should undergo further treatment for the new condition before continuing the PTSD treatment. Specifically, the Treating Physician stated in the letter that:

> As long as the legal procedures and the stress are going on with the Tribunal, [treatment for the new condition] is not possible, except two weeks end of October, after her file will be submitted to the World Bank Tribunal. I should suggest that we start with two weeks [treatment]. I will extend this cure either directly after two weeks or later in the year or in 2010. This is not an exact case. The situation will show how to go, but my opinion is that [the Applicant] needs several weeks of [treatment], in the following months or year.
>
> As [the Applicant] … cannot travel easily, I propose treatment in Switzerland, in Seelisberg. The clinic is called Medical Ayurveda Center, in Seelisberg and is recognized by the Swiss insurances. The clinic is run by [Doctor Y]. The cost of the two weeks would be about CHFR 5000. More cure will be needed and [the Applicant's] case and situation will then be evaluated by [Doctor Y], [her psychiatrist] and myself.
>
> [The Administrator] should let me know if it needs more information.

14. The Applicant began a two-week program for the treatment of the new condition in October 2009. Other than informing the Administrator that she was making a reservation at the Medical Ayurveda Center, the Treating Physician did not provide any additional information to the Administrator. In response to the Applicant's letter of 25 September 2009, the Administrator approved the treatment (in an undated e-mail message) saying the approval given in March 2009 "still applies."

15. The Treating Physician sent another progress report to the Administrator dated 13 December 2009 stating that she would send a bill for her services the next day and would send a separate bill for the October 2009 treatment, to be paid directly to the Applicant. The Report explained that the treatment was helpful but that other symptoms remained, which necessitated additional sessions and other treatments.

16. Several e-mail messages were exchanged between the parties evidencing miscommunication and a clear lack of understanding between them. In an exchange of e-mail messages among staff of the Administrator on 12 January 2010, it appears that the invoice received for the October 2009 treatment raised questions about the nature and legitimacy of the

treatment received by the Applicant, and additional information was requested. For example, in one message, the Administrator asked for the reason for admission, whether the treatment was an in-patient or out-patient treatment, the length of the plan, any post-treatment notes, the results of the treatment, and any aftercare plan. No response appears to have been provided to the Administrator. The Administrator sent another message attaching a questionnaire for Doctor Y (the physician in charge of treating the new condition) to complete. Again, no response appears to have been provided. In further correspondence, the Administrator explained that the reason for not paying the invoice for the treatment was the lack of information - more specifically, the lack of a "narrative" accompanying the invoice. The Treating Physician gave scant information about the actual treatment but provided her evaluation of the results after the conclusion of the first treatment. In numerous e-mail messages, the Treating Physician and the Applicant explain the importance of the treatment, reiterating that it had been pre-approved and arguing that the additional questions constitute further abuse of the Applicant's rights and a continuation of the same bad treatment of which she complained in *Lansky (No. 1 and No. 2).* Nothing in the record, however, indicates that Doctor Y supplied any information to the Administrator or that the questions asked by the Administrator were answered.

17. The Administrator paid the bill submitted by the Treating Physician but did not pay the invoice for the October 2009 treatment at the same time. On 22 January 2010 the Treating Physician requested approval of another two weeks of the same treatment for the Applicant.

18. On 2 March 2010 the Applicant received a note from the Administrator, informing her that she was scheduled to undergo an IME with an independent medical examiner on 17 March and that failure to do so may result in the discontinuation of her benefits. The Applicant was informed that the medical examiner's office was located at "Hospital Psychiatric Thiaroye, KM

18 Road Rufisque, France." The hospital, it turned out, was located in Senegal, not France. She was also given a telephone number to call for directions and another for questions or comments. It appears that on 8 March a doctor in Switzerland, whom the Applicant describes as a "European expert in PTSD," prepared a written note explaining why undergoing an IME in Senegal was detrimental to the Applicant's health. The note appears to be addressed to the Applicant. It is unclear whether it was sent to anyone and, if so, to whom.

19. The Administrator sent a reminder to the Applicant about the IME on Friday, 12 March 2010. While the Applicant argues that the Administrator had planned the IME a year earlier, prior to the time it became aware of the need for treatment for the new condition, the Bank claims that the purpose of the IME was to determine the continued compensability of the Applicant's claims in respect of the treatment of the new condition. In response to the reminder, on Saturday, 13 March 2010, the Applicant complained to the Administrator in an e-mail message that its request that she undergo an IME in Senegal was a violation of the MOU. In her e-mail message, the Applicant asked the Administrator to reconsider its "decision within the next few days or you leave me no alternative than to appeal again to the World Bank Administrative Tribunal which I would frankly wish to avoid." The Administrator alleges that it never received this communication or the letter written by the European expert in PTSD.

20. The Applicant filed her Application with the Tribunal three days later, on Tuesday, 16 March 2010. On 9 April 2010 the Applicant received a letter from the Administrator apologizing for the error and promising to send her a list of three physicians from which she could select one to conduct the IME, but a date was not set. In its letter, the Administrator stated that following an investigation of the matter, it had determined that the "confusion" was a result of a "translation error" and that it was intended that the IME be completed in France.

21. On 12 April 2010 the Treating Physician wrote to the Administrator asking about the status of several requests including the reimbursement for the October 2009 treatment and the request to change the Applicant's psychiatrist. The Treating Physician also mentions that the Administrator would receive a letter from another doctor (Doctor X) explaining the urgency of receiving additional treatments. The letter was submitted to the Tribunal in the Applicant's Reply to the Bank's Answer in this case. It was addressed to the Applicant, and it is not clear whether or when it was mailed to the Bank.

22. In a follow-up letter on 13 April 2010 from the Bank to the Applicant, the Applicant was asked, as a temporary measure, to notify a Manager in the Bank's Human Resources Vice Presidency and the Operations Manager of the Administrator when submitting any of her claims. The Bank indicated this was designed to "try to assure … efficient and prompt handling of any further claims." In addition, the Bank asked the Applicant the following to "designate someone at your end to be the interface with the Bank and [the Administrator], as you have made it known that you find dealing with these claims stressful."

23. On 20 April 2010, the Applicant received from the Administrator a letter detailing the resolution of a number of matters, including the confusion regarding the location of the IME. In the letter she was granted approval to undergo an additional two weeks of treatment of the new condition and up to four weeks of additional similar treatment if deemed necessary, on the condition that counseling and rehabilitation services be provided and documented prior to the end of the first two weeks of treatment. She was also informed that, while she did not need an IME at that time, one might be requested in the future to determine her response to the treatment and the status of her progress and recovery. Other minor changes were also approved in that letter.

24. The Applicant submitted her Reply to the Bank's Preliminary Objections on 13 May 2010. In her submission she included a note from Doctor X attesting to the continuing need for treatment of the new condition in order to prevent further harm to the Applicant. The note is not addressed to anyone in particular and appears to have been handed directly to the Applicant.

THE PARTIES' PRINCIPAL CONTENTIONS

The Applicant's contentions

25. The Applicant alleges that the Bank breached Article 4(3) of the MOU by asking her to submit to an IME with a physician in Senegal who lacked the requisite qualifications, while she was living in Switzerland. She argues that her claim with regard to the MOU is admissible by the Tribunal pursuant to Article 5(g) of the MOU which provides in relevant part that "in regard to any claim alleging breach of the MOU for which an opportunity to cure has already been provided [the Applicant may file] an application directly with the Administrative Tribunal." She disagrees with the Bank's contention that the claim is now moot; she argues that the issue is not the actual selection of the doctor, but the recurring errors in the process and the resulting "significant delays in receiving needed medical treatment".

26. The remaining claims, according to the Applicant, fall within the Tribunal's jurisdiction due to exceptional circumstances. She contends that the Bank continues to breach her due process rights by preventing her from receiving an uninterrupted course of treatment and from receiving reimbursements within a reasonable period of time. The Applicant also claims that the Bank has not complied with the Tribunal's order in Decision No. 425 and submits as evidence an e-mail message from the Staff Association ("SA") dated 19 February 2010 in which she was informed of the following:

> at this time I cannot tell you anything substantial. The SA Chair has reached out to HR/Policymakers to address the Tribunal's concerns, and aside from some

> meetings having been slated in the coming week to discuss your case there is nothing more to share.

27. She argues that her medical bills would be processed more easily had the Bank "proceed[ed] to formulate and develop appropriately detailed rules of procedure that claimants and administrators should follow in the processing of claims for payment or reimbursement under the WC and Disability Programs of the Bank" as was suggested by the Tribunal in its earlier judgment. This claim is also admissible, the Applicant argues, because enforcement of a Tribunal's judgment does not require exhaustion of internal remedies.

28. Finally, the Applicant claims that the Bank's actions were taken in retaliation against her for having brought this case to the Tribunal.

The Bank's contentions

29. The Bank contends that the errors of the Administrator in the selection of a doctor to conduct the IME were administrative errors that have since been corrected. The Bank adds that other errors and delays have also been corrected rendering the Applicant's complaint moot.

30. The Bank further claims that the Applicant failed to exhaust internal remedies because, in accordance with the MOU, the claim with respect to the IME had to be brought before the Disability Review Panel prior to being filed before the Tribunal.

31. The Bank finally argues that the Applicant's other claims (i.e. the decisions listed as (2) – (6) in paragraph 4 above) should be dismissed under the principle of *res judicata* because they were addressed by the Tribunal in *Lansky (No. 1 and No. 2).*

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

I. BREACH OF THE MOU

Is the Application admissible?

32. Whether the Applicant could bring her grievance about the breach of the MOU directly to the Tribunal depends on the language of the MOU itself. Pursuant to Article 5(g) of the MOU the Applicant "may pursue a claim for breach of this MOU, after providing the WBG/IFC with an opportunity to cure the breach within a reasonable period of time, by filing claims with the Appeals Committee or directly with the World Bank Administrative Tribunal." She contends that the Bank breached Article 4(3) of the MOU, which provides that:

> For all Independent Medical Examinations (IMEs) conducted pursuant to the standard procedures for the assessment of continuing eligibility for LTD [long term disability] benefits, the WBG will make all reasonable and good faith efforts to ensure that the medical practitioner assigned to evaluate [the Applicant] is a certified member in good standing with the World Psychiatric Association (WPA) with at least five years as an adult psychiatrist with specified expertise in Post Traumatic Stress Disorder.

33. The Applicant relies on Article 5(g) to argue that her case is admissible before the Tribunal.

34. However, Article 4(13) of the MOU provides in relevant part that the Applicant "may pursue any claims or disputes that may arise under this Article 4 arising after her acceptance of this MOU through the applicable grievance procedures." Although those terms are not defined in the MOU, the Bank interprets this provision to mean that the Applicant is required to exhaust internal remedies under the Disability Program prior to bringing her case before the Tribunal. The Bank stresses that Article 4(13) of the MOU specifically provides that claims under Article 4 must be pursued "through the applicable grievance procedures," and that Article 2 of the MOU provides that the Applicant

> shall not pursue any … [pending or future] claim or appeal as a breach of this MOU, but she retains full rights with regard to all such claims, which shall be separate from this MOU, and she may pursue such claims in accordance with the Staff Rules, the Staff Retirement Plan, or other rules, policies or procedures generally applicable to staff, former staff, or retirees of the Bank Group.

35. Specifically, the Bank argues that the MOU was not intended to enable the Applicant "to forever bypass the established grievance procedures applicable to the host of matters addressed in Article 4." The Bank explains that Article 4 concerns existing and general obligations of the Bank Group to all current and former staff.

36. The Applicant disagrees and argues that the applicable grievance procedures would include recourse to the Tribunal. She further argues that Article 4(13) is not applicable because it is a "severability clause" and that its only purpose is to ensure that if any part of the MOU is found to be invalid then the rest of the MOU will continue to be enforceable. She argues that "the applicable grievance procedures" would comprise those described in Article 5(g), including recourse to the Appeals Committee and the Tribunal.

37. Articles 4(13) and 5(g) of the MOU may thus be viewed as providing conflicting procedures for contesting a breach of the MOU. However, the Tribunal finds that, in the circumstances of the case, the result of applying either provision is the same. The Tribunal finds that the Applicant has not satisfied the requirements of Article 5(g) on which she relies.

38. Article 5(g) provides that the Applicant may pursue her claim "after providing the IFC/WBG with an opportunity to cure the breach within a reasonable period of time." The Administrator sent a notice to the Applicant on Tuesday, 2 March 2010, informing her of the scheduled IME. Ten days later the Administrator sent her a reminder. Only on Saturday, 13 March, did the Applicant send the Bank a notice of breach informing it of the error and that she viewed the requirement to submit to an IME in Senegal as a violation of the MOU; on Tuesday, 16 March, three calendar days (one business day) later, she filed the present Application. Her

appointment for the IME was scheduled for 17 March. The Bank in effect was allowed one business day to cure the alleged breach. The Tribunal cannot find under the circumstances that one business day constitutes a "reasonable period of time" after which the Applicant could pursue her claim.

39. Although the Bank claims that it had not seen the e-mail message sent on 13 April, the fact remains that it would not have had sufficient time to respond appropriately. Nothing in the record indicates that the Administrator sent the Applicant a letter of termination of coverage due to her failure to submit to the IME. The language of the MOU (as set out in paragraphs 32 and 38 above) is clear - a claimed violation of the MOU can be challenged before the Tribunal after the Bank is provided with "an opportunity to cure the breach within a reasonable period of time."

Is the claim regarding the breach of the MOU moot?

40. The Applicant alleges that the Bank did not make reasonable efforts to select an appropriate doctor to conduct the IME, as required in the MOU, who has "specified expertise on Post Traumatic Stress Disorder" and is a member of the World Psychiatric Association. She adds that the Bank's "administrative error" resulted in a five-month delay in receiving prescribed treatment, and that the remedial action offered by the Bank "merely postpones into the future the very IME on which further treatments are made to depend." She states that the Bank's letter in which the Administrator suggests that "to resolve this matter most appropriately" it would "proceed to identify doctors in Paris or Lyon," was not an appropriate remedial action, and, because remedial action was not taken in good faith, the issue cannot be moot.

41. The Bank argues that the Applicant's claim about the breach of the MOU is moot because it has taken steps to correct the error. In fact, the Bank explains, not only did it correct the error, but in recognition of the urgency of the Applicant's treatments, and while maintaining

the continued justification for requesting an IME in the future, the Administrator "opted to approve a further two weeks of treatment … without the need for a further IME."

42. The Tribunal acknowledges that the Administrator committed an administrative error in arranging the IME and providing incorrect information about the location of the IME. The Applicant learned of this erroneous information on 2 March 2010; on Saturday, 13 March, she responded that the selection violated the MOU; on Tuesday, 16 March, she filed her Application with the Tribunal. The Administrator recognized the error in an e-mail message dated 9 April 2010 and promised to correct it. On 20 April 2010, the Administrator sent the Applicant a final resolution of a number of matters. The requirement of an IME was waived on this occasion, and the Applicant was granted an additional two weeks of treatment of the new condition and up to four weeks of further similar treatment if deemed necessary, on the condition that counseling and rehabilitation services be provided and documented prior to the end of the first two weeks of treatment. She was informed, however, that she might be requested in the future to submit to an IME in order to determine her response to the treatment and the status of her progress and recovery. Other minor changes were also approved in that letter. Under the circumstances, the Tribunal finds that these actions by the Administrator adequately responded to several of the Applicant's related complaints, not only the question of the IME.

43. In addition, the disability benefits were not discontinued, and the Applicant has not shown any specific injury or prejudice as a result of the error or delay. In fact, the record shows that any delay in treatment may have resulted from the Applicant's failure to provide the Administrator with all the necessary information to process the initial claim for reimbursement of the cost of the October 2009 treatment. Further, the Applicant received the Bank's

communication of 20 April 2010, which provided her with a resolution of the matter before she filed her Reply, and she failed in that Reply to acknowledge that any issues had been resolved.

44. Under the circumstances, the Tribunal cannot find that the Bank acted unreasonably with respect to this claim, and finds that the Applicant's claims on that point are moot, as the matter was resolved on 20 April 2010. As the Tribunal held in *BE*, Decision No. 407 [2009], para. 25,

> like other judicial bodies, [it] will not review a claim if the claim has become moot. Generally a claim is considered moot when, due to an event or happening, it no longer presents a justiciable controversy and judicial intervention is no longer necessary to grant effective remedy. International courts and tribunals follow a similar practice and refrain from reviewing a claim if the claim no longer has any object.

II. THE APPLICANT'S OTHER CLAIMS

45. The Applicant's remaining claims relate to (1) whether, due to the Bank's inappropriate system for handling WC and Disability claims, the Bank breached the Applicant's due process rights, which resulted in continuing administrative errors, reliance on "outdated guidelines" for dealing with PTSD, and conflicts of interests in the administrative review process; and (2) whether the Bank had retaliated against the Applicant.

46. The Applicant argues that these claims are admissible under the same exceptional circumstances that were applied in her first case, *Lansky (No. 1 and No. 2)*, but does not provide any additional detail. She also complains that the Administrator's behavior was unchanged despite the Tribunal's directive for the Bank to re-examine its rules and procedures, and in effect the Bank did not comply with the Tribunal's order.

47. The Bank argues that these claims do not come under the MOU and the Applicant has not exhausted internal remedies; furthermore, they have already been determined by the Tribunal in *Lansky (No. 1 and No. 2)* and the principle of *res judicata* prevents the Applicant from bringing

them again before the Tribunal. The Bank also argues that changing its rules and procedures is a substantive and lengthy process and requires more than three months to carry out and complete.

48. Article II of the Tribunal's Statute provides that except under exceptional circumstances, an application shall not be admissible unless "the applicant has exhausted all other remedies available within the Bank Group." Article 2 of the MOU provides that the Applicant shall not pursue pending or future claims or appeals as a breach of the MOU but shall pursue those claims in accordance with rules, policies and procedures generally applicable to staff.

49. The Applicant brought her claims directly to the Tribunal. It is indisputable that these claims fall outside the provisions of the MOU. Accordingly, they must be pursued in accordance with rules, policies and procedures applicable to any other staff. This means that the Applicant must exhaust internal remedies before bringing her grievances to the Tribunal; she has not done so.

50. She invokes the exceptional circumstances provision of the Statute but does not make any argument and simply relies on her previous case, *Lansky (No. 1 and No. 2)*, without providing any additional explanations. In *Lansky (No. 1 and No. 2)*, the Tribunal found that "the circumstances of this case are sufficiently exceptional to make it appropriate *for the Tribunal to address the core claims of the Applicant insofar as they relate to the whole process* of administration of the WC and Disability Programs." (Emphasis added.) The Tribunal's decision was clearly limited to the "whole process of administration of the WC and Disability Programs."

51. In view of its decision in *Lansky (No. 1 and No. 2)*, the Tribunal concludes that she has not shown exceptional circumstances to justify bringing the case directly to the Tribunal.

52. Furthermore, the claims related to the violation of her due process rights have already been addressed in *Lansky (No. 1 and No. 2)* and, as argued by the Bank, the principle of *res*

judicata applies. Specifically, the Applicant alleges that the Bank's system for handling WC and Disability claims is deficient, resulting in ongoing administrative errors, reliance on outdated guidelines for dealing with PTSD, and conflicts of interest in the administrative review process. In *Lansky (No. 1 and No. 2)*, the Tribunal at para. 46 noted that:

> The Bank has recognized that rules of procedure in place within the Bank and its affiliates are sometimes less than perfect and has suggested that appropriate operating procedures should be developed and implemented. The Tribunal agrees with the Bank that the Staff Association may, in collaboration with HR, play a particularly helpful role in formulating and developing appropriate procedures, including a right to be represented by a relative or friend, and a modified application form.

53. The Applicant also claims that the Bank failed to comply with the Tribunal's recommendation in *Lansky (No. 1 and No. 2)* that the Bank review its WC and Disability mechanisms. The Tribunal notes that the Applicant submitted her Application less than three months after the judgment was issued in *Lansky (No. 1 and No. 2)*, and it is to be expected that such an endeavor will take more than three months to complete. Recalling its recommendation in *Lansky (No. 1 and No. 2)*, the Tribunal re-emphasizes the need to improve and upgrade the procedures of the Bank for addressing and resolving claims under the WC and Disability programs, and looks forward to the completion of this process and the publication of the outcome.

DECISION

For the foregoing reasons, the Tribunal dismisses the Application.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Paris, France, 29 October 2010