

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579

In the Matter of the Claim of

5 U.S.C. § 552(b)(6)

Against the Great Socialist People's
Libya Arab Jamahiriya

Claim No. LIB-II-154

Decision No. LIB-II-170

Counsel for Claimant:

Majed M. Dakak, Esq.
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FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on the alleged severity of physical injuries suffered by 5 U.S.C. § 552(b)(6) as a result of the hijacking of Pan Am Flight 73 at Karachi International Airport in Karachi, Pakistan, on September 5, 1986. The claim was submitted under Category D of the January 15, 2009 *Letter 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").

On June 5, 2012, the Commission entered a Proposed Decision denying this claim on the ground that claimant failed to establish that the severity of her injuries rose to the level of a special circumstance warranting compensation beyond the \$3 million already awarded in this program for those injuries.

On August 2, 2012, the Commission received claimant's objection to the Commission's Proposed Decision and her request for an oral hearing. On October 18, 2012, claimant submitted an objection brief along with evidence in support of her claim. The new evidence included an August 6, 2012 letter from St. Jude Medical Center in Fullerton, California, an April 30, 1987 report by Dr. Alvin Davis, annual Social Security Benefit Statements dated 1993 through 2011¹ from the Social Security Administration (SSA), an October 7, 2012 Medical Evaluation by Dr. Richard Vanis, a Consultation Report by Dr. Rose Diane Gilman Kline of a consultation conducted on October 9, 2012, the October 17, 2012 declaration of Dr. Sanjay Chabra, documents described as medical records from Dr. Carl Chen, and medical billing records of Hughes Aircraft Company Medical Plan for claimant. The hearing on the objection was held on November 9, 2012. On November 26, 2012, the Commission received additional evidence from claimant in further support of the claim, which included a November 14, 2012 letter from the SSA and a Residual Claim Inquiry form from the State of California Disability Office.

DISCUSSION

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 [the Department of State's] December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to [the Department of State's] 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.

¹ For 2012, claimant included a statement from the SSA that lists the amount of the monthly payment claimant would receive as of March 2012.

January Referral, ¶ 6.

At the oral hearing, claimant appeared before the Commission and provided additional information about the extent and impact of her injuries. Claimant described the hostage ordeal aboard Pan Am Flight 73, and testified that when she jumped from the wing of the plane and landed on the ground she felt as if her “two ankles scattered.” She further testified that she dragged her body along the tarmac until she passed out. She discussed the medical treatment she received, initially at a hospital in Pakistan and later at the U.S. military hospital in Landstuhl, West Germany, and also described the medical treatment and rehabilitation she underwent upon returning to the United States. Claimant stated that as a result of her injuries she was unable to return to work and was placed on disability through SSA and the State of California Disability Office. The evidence claimant submitted from the SSA indicates that she was placed on disability as a result of “fractures of lower limbs (musculoskeletal)” She also testified that, as a result of the injuries to her ankles, she has trouble walking, cannot stand on bare feet, and is unable to do certain things, giving as an example an inability to sit on the floor. In addition, she testified that she experiences constant pain, which she described as “throbbing pain all the time in [my] ankles. . . it’s burning and throbbing and continuous pain.”

Analysis

Category D of the January Referral requires the Commission to determine whether the “severity of the injury is a special circumstance warranting additional compensation.” January Referral, ¶6. In assessing whether compensation is warranted in this claim, the Commission considers the factors articulated in its decision in *Claim of* 5 U.S.C. § 552(b)(6), Claim No. LIB-II-109, Decision No. LIB-II-112 (2011). These

factors, which the Commission assesses in light of the totality of the evidence, include “the nature and extent of the injury itself, the impact that the injury has had on claimant’s ability to perform major life functions and activities - both on a temporary and permanent basis - and the degree to which claimant’s injury has disfigured his or her outward appearance.” *Id.* at pg. 6.

Looking at “the nature and extent of the injury itself,” the Commission finds that the claimant suffered severe injuries in escaping from the hijacked airplane. The evidence establishes that claimant suffered bilateral calcaneal fractures of both of her feet when she jumped from the plane. The military hospital records note “a moderate amount of comminution [crushed or broken bone fragments] and it was apparent that the anatomy could not be perfectly restored” These medical records further reveal that the doctors at the military hospital considered numerous options to treat claimant’s injuries, but due to the severity of the fractures chose a procedure that required the surgical insertion of plates into both feet and screws to hold the plates in place. During her stay at the military hospital, doctors spoke with claimant about the possibility of post-traumatic arthritis as a result of her injuries. Hospital records also describe the continuous pain that claimant felt during her stay at the military hospital. After her initial surgeries at the military hospital, both of her feet were placed in splints and then in short leg casts, and she was instructed to remain on non-weight bearing status for eight weeks.

Upon returning to the United States, claimant testified that she was immediately admitted to St. Jude Hospital where she underwent treatment including casting of her feet, physical therapy, and training on the use of a wheelchair. She also stated that after her initial hospitalization she required the use of an automated bed and assistance from

family and friends to care for her. She testified that she underwent regular, often weekly physical therapy sessions, and that she regularly visited Dr. Chen. In a psychiatric evaluation, dated April 30, 1987 (about seven months after the hijacking), Dr. Alvin Davis references claimant's physical condition by noting,

[s]he was in a wheelchair for 4 months, used a walker two months, and a cane for a month, and has tried to walk unaided only in the last month – pain continues in both ankles and screws in them may require removal to relieve pain, full recovery remains in question.

In her objection brief and in a sworn declaration, claimant states that on August 31, 1987 Dr. Chen removed the plates and screws from her feet.² A May 2000 x-ray report notes the damage to her heel bone stating, “[o]n the lateral view the calcaneus with respect to the mid foot has a flattened appearance. This could be due to old traumatic change, since there is some sclerosis associated with the body of the calcaneus.” Both claimant and her daughter described in their testimony that since the time of her injuries the soles of claimant's feet have been flat. In addition, claimant testified that after she suffered her injuries she attempted to resume her employment as a pharmacy technician, but was unable to continue due to the pain from her injuries. Claimant testified that she received disability from the SSA and the State of California. In support of this testimony, claimant submitted a letter from the SSA recording that claimant “was found disabled on 11/05/1992 due to [fractures] of lower limb (musculoskeletal) and anxiety related disorders.” Moreover, x-ray records from 1998, 2000, 2004, and a report from an arthroscopic procedure in 2004, all refer to a history of ankle pain.

² Claimant submitted records from Hughes Aircraft Company Medical Plan that include an invoice for an unidentified surgery conducted on claimant on August 31, 1987. In addition, claimant submitted notes from her prior counsel that are described as notes taken from his review of claimant's now destroyed medical records. The notes reference that on August 31, 1987, claimant underwent surgery to remove the “hardware and screws.”

Considering all of this evidence in light of the factors identified above, the Commission concludes that the severity of claimant's injury warrants an award of additional compensation under Category D.

COMPENSATION

In *Claim of*, 5 U.S.C. § 552(b)(6) , Claim No. LIB-II-118, Decision No. LIB-II-152 (2012), the Commission held that it will consider several factors to determine the appropriate level of compensation for claimants who satisfy the threshold requirements for Category D claims. In addition to the recommendation contained in the January Referral for Category D, the factors include the severity of the initial injury, the number of days claimant was hospitalized as a result of his or her physical injuries (including all relevant periods of hospitalization in the years since the incident), the number and type of any subsequent surgical procedures, the degree of permanent impairment, taking into account any available disability ratings, and the nature and extent of disfigurement to the claimant's outward appearance.

Based on all these factors, and considering other awards in this program based on the Commission's assessment of "special circumstances" under Category D, the Commission concludes that \$1 million is an appropriate amount of further compensation for claimant. The Commission further holds that, as with awards for physical injury made under the December Referral, compensable claims under Category D are not entitled to interest as part of the awards granted therein. *See, e.g., Claim of* 5 U.S.C. § 552(b)(6) Claim No. LIB-II-118, Decision No. LIB-II-152 (2012). Accordingly, the Commission determines that the claimant, 5 U.S.C. § 552(b)(6) , is entitled to an

award of \$1 million and that this amount constitutes the entirety of the compensation that claimant is entitled to in the present claim.

Therefore, the Commission withdraws its denial of claimant's claim as set forth in the Proposed Decision, and issues an award as set forth below, 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). This constitutes the Commission's final determination in this claim.

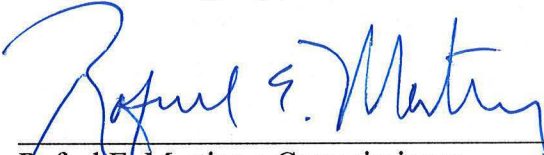
AWARD

Claimant 5 U.S.C. § 552(b)(6) is entitled to an award in the amount of One Million Dollars (\$1,000,000.00).

Dated at Washington, DC, January 25, 2013
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, Commissioner

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In the Matter of the Claim of

5 U.S.C. §552(b)(6)

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Claim No. LIB-II-154

Decision No. LIB-II-170

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on the alleged severity of physical injuries suffered by 5 U.S.C. §552(b)(6) as a result of the hijacking of Pan Am Flight 73 at Karachi International Airport in Karachi, Pakistan, on September 5, 1986.

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”).

The present claim is made under Category D. According to the January Referral, Category D 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 lists the suits comprising the Pending Litigation.

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

On May 13, 2011, the Commission adjudicated claimant's physical injury claim under the December Referral. The Commission determined that claimant sustained bilateral calcaneal (heel bones) fractures when she jumped from the wing of the plane of Pan Am Flight 73 while escaping from the hijackers. The Commission concluded that these injuries, which required immediate and significant medical treatment, met the Commission's standard for physical injury and, consequently, that claimant was entitled to compensation in the amount of \$3 million. *Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-I-030, Decision No. LIB-I-041 (2011).

BASIS OF THE PRESENT CLAIM

On July 2, 2010, the Commission received from claimant a completed Statement of Claim in which she asserts a claim under Category D of the January Referral, along with exhibits, including additional medical records. Claimant also directed the Commission to the documentation submitted with her claim under the December Referral (Claim No. LIB-I-030). This material included contemporaneous medical records of her injuries and treatment, both abroad and in the United States upon her

return, as well as a declaration from claimant describing her experience during the hijacking, the injuries she sustained as a result of the incident, and her medical treatment.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICOSA, the Commission's jurisdiction under Category D of the January Referral is limited to claims of individuals who: (1) are U.S. nationals; (2) received an award under the December Referral; and (3) have dismissed their respective Pending Litigation cases against Libya. January Referral, *supra*, ¶ 6.

Nationality

The Commission determined in its decision on claimant's physical injury claim under the December Referral that claimant was a U.S. national from the time of the incident continuously through the effective date of the Claims Settlement Agreement. That determination applies equally to satisfy the nationality requirement here.

Award Under the December Referral

To fall within Category D of the claims referred to the Commission, the claimant must have received an award under the December Referral. As noted above, the Commission awarded claimant \$3 million based on her physical injury claim under the December Referral. Accordingly, the Commission finds that claimant has satisfied this element of her claim.

Dismissal of the Pending Litigation

The January Referral also requires that the claimant provide evidence that the Pending Litigation against Libya has been dismissed. January Referral, *supra*, ¶ 6. The

Commission determined in its decision on claimant's physical injury claim under the December Referral that *Patel v. Socialist People's Libyan Arab Jamahiriya, et al.*, Case No. 06-cv-626, filed in the United States District Court for the District of Columbia, was dismissed by a Stipulation of Dismissal dated December 16, 2008. That determination applies here.

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

Category D of the January Referral requests, in pertinent part, that the Commission determine whether "the severity of the injury is a special circumstance warranting additional compensation." In *Claim of* ^{5 U.S.C. §552(b)(6)} Claim No. LIB-II-109, Decision No. LIB-II-112 (2011), the Commission held that only the most severe injuries would constitute a special circumstance warranting additional compensation under Category D. The Commission further held that in determining which injuries are among the most severe, it would consider the nature and extent of the injury itself, the impact that the injury has had on claimant's ability to perform major life functions and activities—both on a temporary and on a permanent basis—and the degree to which claimant's injury has disfigured his or her outward appearance.

For each Category D claim that is before the Commission, the present claim included, claimants have been requested to provide "any and all" medical and other evidence sufficient to establish "the extent to which there is permanent scarring or disfigurement that resulted from the physical injuries suffered; and/or the extent to

which the severity of the injury substantially limits one or more of the claimant's major life activities?"

According to her declaration, dated June 22, 2009, claimant was a passenger aboard Pan Am Flight 73 when it was hijacked in Karachi, Pakistan. She states that she sustained injuries to both of her ankles when she jumped off the wing of the aircraft and landed on the tarmac. According to claimant, she received medical treatment at an area hospital after the attack and then was transferred to a U.S. military hospital in West Germany.

According to the medical records from the military hospital in Landstuhl, West Germany, claimant was admitted on September 7, 1986 and treated at the hospital for seventeen days. According to the military Medical Air Evacuation Summary, claimant "was not wearing shoes at the time of the jump and sustained bilateral calcaneal fractures," and she was "initially treated there [Pakistan] in short-leg casts and was air evacuated here [U.S. military hospital] for definitive treatment." According to the Evacuation Summary, x-rays revealed that the "anatomy could not be perfectly restored, but it was felt that open reduction internal fixation afforded the greatest chance to restore the overall configuration of the calcaneous [*sic*]." Military records reflect that claimant had an ankle surgery that entailed plates being inserted into her feet followed by screws then being put in to hold the plates in place. After this surgery, medical records describe claimant as being placed in posterior splints and then short leg casts and note that doctors planned to keep her in non-weight bearing status for eight weeks. Records from the military hospital further indicate that claimant described continuous pain around her legs and feet throughout her stay at the hospital. Claimant was

discharged from the military hospital in West Germany on September 24, 1986, and returned to the United States where she sought treatment at St. Jude Medical Center¹ in Fullerton, California.

In her declaration, claimant states that at St. Jude Medical Center she “received treatment for [her] crushed ankles for seven or eight more days.” According to claimant, a Dr. Carl Chen performed another surgery on her ankles. Claimant’s declaration further asserts that approximately a year after returning home she “experienced a tremendous amount of pain in [her] ankles because one of the bones grew on top of the metal pin in [her] ankle.” This, she asserts, required another surgery, this one to have the pin in her ankle removed. However, claimant does not provide any medical records to substantiate either of these two surgeries.² Besides her declaration, claimant’s only evidence for either of these two surgeries are “notes” created by her counsel in prior litigation. These notes claim that she was admitted to St. Jude Medical Center on September 25, 1986, but they do not discuss the first surgery and only state “Admitted to St. Jude . . . 9/25/86. Dr. Carl Chen – Orthopedic Surgeon. Evaluation of Parvati included x-rays of both lower extremities which revealed that she sustained bilateral calcaneal fractures with joint disruption. Hardware and screws in place; reapplied short leg casts with cast time of 2-3 months.” The notes only make a brief reference to the second surgery, stating “8/31/87 ... Underwent surgical removal of hardware and screws from both calcanei on this date by surgeon, Dr. Carl Chen.” There is no other evidence of any surgery performed on claimant at St. Jude Medical Center in

¹ Also known as St. Jude Hospital and Rehabilitation Center.

² Claimant provides a January 4, 2010, affidavit from St. Jude Medical Center that notes that the hospital staff cannot locate claimant’s 1986-1987 medical records.

1986. Claimant also states that she received physical therapy for her knees and had her ankles x-rayed on multiple occasions because of her complaint of ankle pain. For example, on May 1, 2000, claimant was examined for pain in her left ankle. The report of the x-ray results state that her "calcaneus with respect to the mid foot has a flattened appearance. This could be due to the old traumatic change, since there is some sclerosis associated with the body of the calcaneus." On December 13, 2004, claimant underwent a surgical procedure which began with a diagnostic arthroscopy of her left knee followed by a partial meniscectomy, chondroplasty, and partial synovectomy of her left knee. Under "history of illness," the surgeon's report notes, "[s]he was involved in an airline hijacking incident in 1986 and jumped from an airplane . . . and she sustained bilateral calcaneal fractures. . . . Later on she developed pain to both knees, worse on the left side with stiffness." The report of the procedure reveals that claimant suffered from a partially torn meniscus (which was repaired during the arthroscopy), cartilage wear and attendant loss, and some swelling.

Following her arthroscopic surgery, medical records state that claimant attended twelve physical therapy sessions between January 10, 2005 and March 3, 2005. The April 5, 2005 Physical Therapy Discharge notes that claimant felt that she did not require further therapy.

In her declaration, claimant states that she was unable to "walk for a year after the hijacking and had to use a wheelchair." Claimant further states that even after physical therapy she continues to experience "aching and throbbing pain"; that she can no longer walk fast, and has difficulty standing up for longer than a couple of minutes, sitting on the floor, or bending her ankles. Medical records from the military hospital

in West Germany also state that doctors discussed the likelihood of later post-traumatic arthritis and “later subtalar or trip[l]e arthrodesis”—a procedure that would require fusing joints in her foot.

In further support of her claim, claimant includes a letter dated November 23, 2009 from Dr. Jacob Tauber summarizing his findings after conducting a “Comprehensive Orthopedic Consultation.” Dr. Tauber describes the claimant as someone “in significant discomfort” and states that “she ambulated with difficulty.” Dr. Tauber states in his letter that claimant “had healed scars over both heels. She had pain on cervical and lumbar motion. She had tenderness at her knees with crepitus on motion. Her ligaments appeared to be intact.” Dr. Tauber also notes

With respect to the patient’s bilateral calcaneus fractures, she has posttraumatic arthritis and is a candidate for fusion surgery of the subtalar joints, if she is unable to tolerate her continuing pain. . . . Given the fact that this patient had a trauma sufficient to shatter both heels, it is evident that this would contribute to the arthritis in her knees and her spine. This patient has multiple abnormalities, as diagnosed on MRI, and it is medically probable that the trauma she sustained in 1986 was a significant contributing factor.

Moreover, claimant also describes in her declaration certain permanent effects resulting from her injuries. She states that she was a pharmacy technician before the hijacking event but that “several years” afterwards when she tried to go back to work she couldn’t because her injuries made standing for more than a few minutes too difficult. Therefore, according to her declaration, her doctor placed her on disability, and she has been unable to work since then. However, claimant has provided no evidence of a disability determination or rating to support her claim of disability. She further states that “prior to the hijacking, my husband and I enjoyed dancing and having

friends over for parties,” but that because of her physical injuries, she “can no longer participate in those activities.”

In assessing the evidence concerning that portion of the claim for additional compensation based on the physical injury suffered by the claimant, the Commission considers the factors articulated in its decision in ^{5 U.S.C.} §552(b)(6) which include the nature and extent of the injury, the extent (if any) of physical disfigurement, and the effect on the claimant’s major life functions.³

In the present claim, while the physical injury suffered by claimant—fracture of both heel bones—is in and of itself a serious injury, it is not among the most severe injuries in this program for which compensation has been awarded. Claimant’s fractures did require her to stay in a military hospital in Germany for seventeen days that included surgery to put plates and screws in her feet to help heal the fractures. Claimant also sought medical treatment for her injuries when she returned to the United States. Yet, claimant has not provided sufficient evidence to support her assertions as to the impact of her injuries on major life functions. Claimant describes in her declaration that her mobility was limited to the use of a wheelchair for the first year after the hijacking. Claimant also states in her declaration that she could not stand for more than a few minutes and that she therefore was unable to continue her career as a pharmacy technician. Yet, claimant has not provided any information as to the level of her disability, such as a disability determination or rating, to corroborate her claim. Further, claimant provided evidence that she underwent an arthroscopic knee surgery in

³ It is the claimant’s burden to provide evidence to establish the validity of its claim. *See* 45 C.F.R. 509.5(b) (2011) (“The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.”).

December 2004, attended twelve sessions of physical therapy in 2005, and still experiences pain in her back and knees. Yet, except for the arthroscopic procedure and the dozen physical therapy sessions, claimant fails to provide evidence that demonstrates any additional procedures or treatment to address the continuous pain and lack of mobility that claimant describes in her declaration. Finally, claimant failed to include any evidence that demonstrates permanent scarring or disfigurement from the injuries she suffered during the hijacking.

Therefore, while the Commission in no way wishes to minimize the fact of claimant's injuries, it finds that claimant has not met her burden of proof to establish that the severity of her injuries in this claim rises to the level of a special circumstance warranting additional compensation under Category D, beyond its award of \$3 million under the December Referral.

Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, June 5, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, 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) (2011).