

**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)	}	Claim No. LIB-III-021
	}	
	}	Decision No. LIB-III-016
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant: Joshua M. Ambush, Esq.
Joshua M. Ambush, LLC

FINAL DECISION

This is a claim for additional compensation based on physical injuries Claimant suffered during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In a previous program, the Commission awarded Claimant \$3 million for those injuries, and the Proposed Decision on this claim awarded her an additional \$4 million. Claimant objects to the amount awarded and requests \$7 million in additional compensation (for a total of \$10 million), the maximum recommended by the United States Department of State in the referral letter authorizing the Commission to hear claims in this program. *See Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* (“2013 Referral” or “November 2013 Referral”). She contends that the severity of her injuries is greater than any other claimant in these Libyan Claims Programs, including the two earlier claimants who received awards for

\$4 million in additional compensation. Because we agree that Claimant's injuries are more severe than those of the two other claimants to have received \$4 million awards, but conclude that they are not so severe as to warrant an award at the State Department's recommended maximum, we withdraw the portion of the Proposed Decision that awarded Claimant \$4 million and award her Five Million Dollars (\$5,000,000).

BACKGROUND

In May 2010, Claimant filed a claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") under the January 15, 2009 letter from the State Department's Legal Adviser referring several categories of claims against Libya to this Commission ("January 2009 Referral"), based on physical injuries she suffered during the Lod Airport attack. In a Proposed Decision entered on June 3, 2011, the Commission determined that, because Claimant had satisfied the Commission's standard for physical injury claims, she was therefore eligible for compensation under Category E of that Referral and was awarded a fixed sum of \$3 million. *See* Claim No. LIB-II-099, Decision No. LIB-II-053 (2011). The Claimant objected to the Proposed Decision, arguing that she should receive additional compensation due to the severity of her injuries, but the Commission affirmed its Proposed Decision in a Final Decision dated May 17, 2012.

The Legal Adviser referred an additional set of claims to the Commission on November 27, 2013 ("2013 Referral" or "November 2013 Referral"). Category D of the 2013 Referral authorizes the Commission to award additional compensation to claimants who received physical injury awards under the January 2009 Referral, provided the claimant shows that, among other things, the severity of their injury is a "special circumstance warranting additional compensation." On May 13, 2014, Claimant filed a

claim under Category D of the 2013 Referral for additional compensation beyond the \$3 million she had already received from the Commission under the 2009 Referral for her physical injuries. In a Proposed Decision dated March 12, 2015, the Commission concluded that Claimant had met her burden of proving that the severity of her physical injuries was a “special circumstance warranting additional compensation.” *See* Claim No. LIB-III-021, Decision No. LIB-III-016 (2015) (“Proposed Decision”). Accordingly, the Commission awarded Claimant \$4 million in additional compensation.¹

The Commission based its determination of the appropriate level of compensation on a variety of factors, including the State Department’s recommendation of the maximum award for compensable claims under the Referral. Applying these factors, the Commission noted that both of Claimant’s legs had been blown off by grenades, and that her physical injuries were “among the worst in any of the Commission’s Libya claims programs.” Proposed Decision, *supra*, at 16. The Commission also noted that Claimant had “been hospitalized for significant periods of time and ha[d] undergone numerous surgical procedures over the years.” *Id.* These procedures included skin grafts, suturing, surgeries to remove shrapnel from her body, extensive and prolonged rehabilitation, and the fitting of prosthetic limbs (a process that had to be repeated due to the poor fit of the prostheses). *Id.* Finally, the Commission noted that Claimant previously received a 100% disability rating from the Israeli National Insurance Institute, continues to suffer from serious mobility problems that require a cane and/or wheelchair to move about, and has a “conspicuous physical disfigurement[.]” by virtue of having lost both her legs. *Id.* at 16-17. For these reasons, the Commission held that Claimant was entitled to \$4 million

¹ Category D of the 2013 Referral states, in relevant part, “If the Commission decides to award additional compensation for claims that meet these criteria, we recommend that the Commission award up to but no more than an additional \$7 million per claim.” 2013 Referral, *supra*, ¶ 6. .

in additional compensation. This was the Commission's highest level award in the "special circumstance" category of claims; only two other claimants had previously been awarded the same amount under the 2009 Referral.

On April 28, 2015, Claimant filed a notice of objection and requested an oral hearing. On August 27, 2015, Claimant submitted a brief containing further evidence and argument in support of her objection. The additional evidence included a video recording of one of the other Lod Airport victims, under oath, describing the incident and confirming Claimant's injuries; a copy of a contemporaneous newspaper article describing the attack and including a quote from Claimant describing her experience and her physical injuries; a color photograph, said to be from 1972, depicting Claimant in a wheelchair without her legs; and several pages of notes comparing this claim with others under Category D of the 2009 Referral. The Commission held an oral hearing on September 17, 2015; the hearing consisted solely of argument by Claimant's counsel, and Claimant presented no witnesses for examination.

DISCUSSION

I. New Evidence

The newly submitted evidence provides few, if any, new facts relevant to the claim; nevertheless, it further confirms the horrific nature of Claimant's injuries and the devastating impact they have had on her life. One of these pieces of evidence is the videotaped interview with ^{5 U.S.C. §552(b)(6)}, one of Claimant's traveling companions who was present at the time of the attack. In the interview, ^{5 U.S.C. §552(b)(6)} states that, after the attack started, she saw Claimant from behind a desk where she was hiding. She states that Claimant "was without legs and sliding in blood, asking for help[]" and that she

appeared “numb.” Another piece of new evidence is a newspaper article published just 12 days after the incident. The article states that she “had felt something hit her feet[,]” and that she “saw a grenade rolling away as she tried to sink deeper into the tile floor onto which she had thrown herself.” The article also describes how she “buried her face in her arms as the grenade went off.” Claimant is quoted as saying, “I never lost consciousness When I looked, I had no feet.” The article notes that “police applied tourniquets and she was among the first rushed to the hospital.”

Claimant has also submitted a color photograph, said to have been taken in 1972, which shows her sitting in a wheelchair and clearly without the bottom halves of both of her legs. In addition, she has submitted several pages of notes comparing seven claims under Category D of the 2009 Referral with her own claim, broken down by each of the compensation factors set forth in the Commission’s previous decisions on additional compensation under the 2009 and 2013 Referrals.² The comparisons include information on the two other claimants to have been awarded \$4 million in additional compensation, the claimants in Claim Numbers LIB-II-118 and LIB-II-156.

II. Standard for Determining Compensation in Special Circumstances

As we have noted numerous times, including in the Proposed Decision on this claim, assessing the value of intangible, non-economic damages is particularly difficult and cannot be done using a precise, mathematical formula.³ Assessing the *relative* value of such claims, as Category D of the November 2013 Referral contemplates, is nearly as

² In its Proposed Decision, the Commission held that it would apply the same standard of compensation to Category D claims under the 2013 Referral as was applied in claims for additional compensation under Category D of the 2009 Referral. *See* Proposed Decision, *supra*, at 15-16. Claimant does not object to the use of those factors.

³ Proposed Decision, *supra*, at 15 (citing Claim No. LIB-III-001, Decision No. LIB-III-001, at 10; 2 Dan B. Dobbs, *Dobbs’ Law of Remedies* ¶ 8.3(6) (2nd ed. 1993); I Marjorie M. Whiteman, *Damages in International Law* 777-78 (1937)).

difficult. Nevertheless, in its Proposed Decision, the Commission identified specific factors, in addition to the State Department's recommended maximum of \$7 million, that it would use in determining appropriate compensation—the same factors that had been applied in claims for additional compensation under the 2009 Referral. These factors included 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 disability ratings, if available, and the nature and extent of disfigurement to the claimant's outward appearance. *See* Proposed Decision, *supra*, at 15 (citing Claim No. LIB-II-118, Decision No. LIB-II-152, at 14 (2012)).

III. Application of the Commission's Standard to the Other \$4 Million Awards

The Commission's approach to these factors can be seen in the two other claims in which the Commission awarded \$4 million, Claim No. LIB-II-118 and Claim No. LIB-II-156. The claimant in LIB-II-118 was shot in the head at close range in the doorway of a hijacked airplane, thrown onto the tarmac, and left for dead, remaining on the tarmac for approximately five hours until the hijacking ended in a maelstrom of carnage and violence. The bullet lodged in her skull, pushing skull fragments into her brain. The claimant spent nearly three weeks in various hospitals in the wake of the attack and underwent a craniectomy, leaving a depression in her skull that was only repaired two years later. She suffered permanent vision loss in her left side and epileptic and non-epileptic seizures, although after two years she was prescribed medication that controlled the seizures. The claimant in LIB-II-156 was knocked unconscious by a bomb blast on a

street in London, and suffered numerous traumatic wounds: pieces of shrapnel, glass, and wire were lodged in his body, including one 18-inch piece of shrapnel that was sticking out of his left hip. His left leg muscles were severely damaged, 80% of his hamstring was destroyed, his sciatic nerve was exposed, and he suffered burns and lacerations all over his body. He was hospitalized for 55 days and underwent numerous surgeries to repair his wounds. He also underwent numerous physical therapy sessions over the years and was left with deep, disfiguring scars.

Applying the compensation factors cited above, the Commission awarded the claimants in both of these claims \$4 million—the highest amount of “additional compensation” awarded in a “special circumstances” claim under the 2009 Referral and the same amount it awarded Claimant in the Proposed Decision. In so doing, the Commission emphasized the extremely severe nature of each claimant’s injuries, citing not only the severity of the initial injury, but also the permanent effect it had on their major life activities. The Commission also cited, in both cases, lengthy periods of rehabilitation, repeated surgeries and hospital treatment in the years after the incidents, and permanent or semi-permanent disfigurement to the claimants’ outward appearance.

IV. Claimant’s Argument

On objection, Claimant contends that, for each and every one of the compensation factors, her injuries are as severe as, or more severe than, the injuries of either of the two claimants previously awarded \$4 million. Therefore, she argues, she should receive a higher award than those two claimants.

Severity of the Initial Injury: Claimant argues that her initial injuries involved “other aggravators” not present in those two claims. She notes that the claimant in LIB-

II-156 was unconscious during the London bombing, whereas she was fully conscious during the Lod Airport attack and can “vividly recall[] the horror of being trapped in the middle of a massacre” As for LIB-II-118, she notes that the claimant in that claim was thrown away from the airplane after being shot, whereas she “was dismembered during the ongoing attack.” Although she recognizes the horror of that claimant’s experience, she maintains that she “experienced no less of a sense of impending doom when she was rendered immobile and begging for help during the attack.”

Hospitalization: Claimant also notes that she was hospitalized for a far longer period than either of the claimants in those two claims. She documents periods of hospitalization (all from between 1972 and 1976) totaling 24 months—a full two years of her life. While the claimant in LIB-II-118 underwent many medical procedures, she was hospitalized for only three weeks; the claimant in LIB-II-156 was hospitalized for longer—55 days in a UK hospital—but this too was far less than Claimant. Thus, Claimant maintains, there is simply “no comparison” in the length of hospitalization between her claim and the other claims where \$4 million was awarded.

Permanent Impairment and Disfigurement: Claimant also argues that her permanent impairment and disfigurement are much worse than the LIB-II-118 and LIB-II-156 claimants. She notes that she received permanent disability ratings of 100% and 56%, whereas the claimant in LIB-II-118 was assigned only 15%, and the claimant in LIB-II-156 submitted no disability rating at all. Moreover, she notes that, although the claimant in LIB-II-118 suffers a permanent left visual field deficit, her epilepsy is well-controlled with medication and she is “otherwise fully recovered.” And Claimant notes that while the claimant in LIB-II-156 continues to suffer from chronic nerve pain, he is

nevertheless able to walk and was eventually able to return to work. Claimant maintains that she, on the other hand, “could not finish school, has been unable to work and . . . is housebound many days” These contentions are supported by the fact that Claimant continues to receive disability payments from Israel for her disability rating of 100%. As for disfigurement, Claimant notes that the claimant in LIB-II-118 had no further disfigurement after her cranioplasty, and although the claimant in LIB-II-156 suffered disfigurement—a fact extensively documented in the decision on that claim—she points out that the claimant in that claim, “still has his legs.”

V. *Comparison with Other Claimants Who Received \$4 Million in “Additional Compensation”*

Having considered Claimant’s additional evidence and argument, we conclude that Claimant is entitled to greater compensation than the claimants in Claim Nos. LIB-II-118 and LIB-II-156 and thus to more than the \$4 million we awarded her in the Proposed Decision: As we explain in more detail below, taking all of our factors into account and balancing them appropriately, we find that Claimant’s injuries are more severe than those of the claimants in LIB-II-118 and LIB-II-156.

Initial Injuries: The loss of Claimant’s legs at issue in this claim was horrific. No other claimant in our Libyan claims programs was made a double-amputee by his or her physical injuries. Even when viewed in terms of the catastrophic injuries suffered by the claimants in LIB-II-118 and LIB-II-156, this Claimant’s initial injuries were clearly among the most severe in our Libyan claims programs.

Hospitalization/Subsequent Surgeries: Claimant has spent more time in the hospital than the Claimants in LIB-II-118 and LIB-II-156—or, for that matter, any other claimant seeking “additional compensation” in these Libyan Claims Programs. The

evidence suggests that she has spent no less than two years as an in-patient at various medical facilities (although the evidence is not conclusive on the precise nature of one lengthy portion of that period). Moreover, she has undergone countless operations to repair her leg stumps and remove shrapnel embedded in her body, and has endured years of only marginally successful physical rehabilitation, which has included the fitting and re-fitting of prostheses that have often left her in pain due to the poor condition of her amputation stumps. In addition to her in-patient hospitalizations in the first few years after the attack, she has had numerous outpatient appointments over the decades since then. Moreover, the sheer number of subsequent surgeries Claimant has undergone reflects a degree of ongoing treatment greater than any other claim thus far encountered in these Libyan Claims Programs, including the claimants in LIB-II-118 or LIB-II-156.

Claimant's initial hospitalization in Israel was two months long. During this time she underwent extensive treatment that included the "completion" of the amputation of her legs below the knee, the suturing of the stumps, and one or two skin grafts.⁴ Immediately after being discharged, she returned to Puerto Rico and was admitted to a Puerto Rico Department of Social Services Rehabilitation Center, where it appears she remained for about a year and a half.⁵ Counsel noted that Claimant's treatment during this time included attempts to fit prostheses, but that the stumps were "useless," that the

⁴ The evidence was not entirely clear as to whether Claimant underwent one or two skin grafts while in Israel. *See* Proposed Decision, *supra*, at 10 n.3.

⁵ During this time, she was also hospitalized for three days at San Carlos Hospital to remove grenade fragments from her right stump. At some point in this period, Claimant appears to have begun going home during the weekends to be with her parents. At the oral hearing, the Commission asked counsel to clarify the nature of this hospitalization in light of these facts. Counsel argued that Claimant did indeed stay at the rehabilitation center as an in-patient for that entire period, but that, during this time, she appeared to have received treatment at other facilities. For support, counsel cited two documents from the initial submission—the 1977 medical report of Juan Llompert, M.D., and a May 1973 newspaper article from Puerto Rico about Claimant's experience—as evidence. While those documents do not conclusively establish the in-patient nature of the entire year-and-a-half period, they are supportive.

left leg was missing a femur,⁶ and that Claimant's prosthetics "have never been able to take" Indeed, the records reflect numerous attempts to fit Claimant with prosthetic limbs in Puerto Rico, but these attempts met with limited success because, as Dr. Llompart puts it, "the skin of the left stump broke down very frequently[.]"

In 1974, after her discharge from the Puerto Rico Social Services Rehabilitation Center, Claimant then spent three and a half months at another rehabilitation center, this one in New York, where she was fitted with new prostheses, and continued with additional rehabilitation and medical care. However, when Claimant returned to Puerto Rico, she continued to suffer pain in her amputation stumps, and the left stump in particular caused considerable difficulty for her. Further, she spent nine days in 1976 in another hospital, where she had seven shrapnel fragments removed from her leg stumps.

The skin on Claimant's left stump has often broken down, and, as we noted in the Proposed Decision, she still must use either a cane or a wheelchair to move around.⁷ Claimant notes that she still experiences pain when walking and standing, in large part because of the shrapnel remaining in her amputation stumps; the pain even extends to her hips and back. Indeed, Claimant states in her affidavit that the pain from the prosthetics is so bad that when she cleans the house, she does so on her knees with knee pads rather than standing with the prosthetics. Medical records, both from the 1970s and from 1989 to 1993, also evidence swelling and discomfort, particularly in her left stump.

In sum, the number of days (in this case, months or years) Claimant was hospitalized, the number and type of surgeries she has endured, the persistent failure to

⁶ We assume she meant a fibula, as the femur is not mentioned in the medical record, but a missing fibula is. Given that the fibula is the calf bone and is thus *below* the knee, while the femur is the thighbone and thus *above* the knee, all of the other evidence also suggests that counsel meant the fibula, not the femur.

⁷ Proposed Decision, *supra*, at 14.

find a perfect fit for her prosthetics, and the attendant chronic pain all counsel for greater compensation than in Claim Nos. LIB-II-118 and LIB-II-156.

Permanent Impairment: Claimant's permanent impairment is also significantly greater than any other "special circumstance" claim in these Libyan Claims Programs, including the two claimants in Claim Nos. LIB-II-118 and LIB-II-156. In weighing this factor in our compensation determination, we look not only at the *fact* of permanent impairment, but also at the *level* of that impairment as well.⁸ First and foremost, Claimant has lost the bottom halves of both of her legs. For more than forty years, she has not been able to go anywhere without either a wheelchair or a cane and prosthetics, prosthetics that cause regular pain in her amputation stumps. Nor can she even stand for long periods of time. This is a significant impairment of two of life's major activities—standing and walking—and it makes numerous other activities more difficult.

Second, Claimant has submitted evidence of disability ratings indicating a greater level of permanent impairment than any other claimant in these Libyan Claims Programs, including claimants in Claim Nos. LIB-II-118 and LIB-II-156. In 1977, the Israeli National Insurance Institute concluded that Claimant had a 100% permanent disability due to the "[a]mputation of both legs below the knee[,]" effective January 1, 1975. Claimant stated in her 2014 affidavit—and counsel confirmed during the oral hearing—that she receives disability payments from Israel to the present day. In addition, in 1977, Dr. Juan Llompart found her to have a 56% permanent impairment "in regards to the whole person" (90% and 70% permanently disabled in her right and left legs,

⁸ See, e.g., Claim No. LIB-II-116, Decision No. LIB-II-166 (2012) (denying claim for additional compensation even though claimant was determined to have a "partial permanent disability" of 55% and 40% in his right and left legs, respectively); Claim No. LIB-II-154, Decision No. LIB-II-170 (2013) (awarding \$1 million in additional compensation where, *inter alia*, claimant was unable to continue working due to fractures in her lower limb).

respectively). As Claimant points out, the only disability rating the claimant in LIB-II-118 presented was for 15%, and the claimant in LIB-II-156 submitted no disability rating at all.

Third, unlike the other claimants to whom we awarded \$4 million, Claimant appears not to have been able to work after her injury.. Claimant states that, as a result of her disability, she “has never been able to work since the attack” While her own statements to this effect are the only explicit evidence for that claim, the disability determination from the Israeli Institute would appear to support this. The claimants in Claim Nos. LIB-II-118 and LIB-II-156, on the other hand, were both able to return to work in some capacity and did not have such a clear determination of permanent impairment.

Disfigurement: While the claimants in LIB-II-118 and LIB-II-156 certainly suffered some degree of disfigurement, it was far less than the instantly obvious and life-changing deformity that Claimant was left with. Doctors in Claim No. LIB-II-118 were able to perform a cranioplasty and repair the indentation in that claimant’s head; although the claimant in Claim No. LIB-II-156 had extensive scarring and loss of tissue on the left side of his body, he did not lose any limbs. Claimant, by contrast, lost the bottom halves of both of her legs. Her stumps and upper portions of her legs are covered in large, jagged scars, and she must use either a cane with prosthetics or a wheelchair to move around. The extent of her injury is there for anyone to see, and it is clear that this disfigurement will never be repaired in a way that restores Claimant’s appearance to what it was before the Lod Airport attack.

*VI. Claimant's Request for the State Department's
Recommended Maximum of \$7 Million*

Although we conclude that Claimant should be awarded more than the claimants in Claim Nos. LIB-II-118 and LIB-II-156 (and thus more than the \$4 million we awarded in the Proposed Decision), we decline to grant her request for an award of \$7 million, the State Department's recommended maximum. The State Department based that recommendation on two factors: (1) the fact that all successful physical-injury claimants had received a fixed \$3 million award, and (2) the fact that the State Department itself had awarded \$10 million for wrongful-death claims. The language of the 2009 Referral makes this crystal clear: "If the Commission decides to award additional compensation for claims that meet these criteria, we recommend that the Commission award up to but no more than an additional \$7 million per claim (*offering the possibility that some injury cases will be compensated at the \$10 million level of the wrongful death claims processed by the Department of State*)." 2009 Referral at 2 (emphasis added). The \$7 million recommended maximum for "additional compensation" in the 2013 Referral, which is applicable in this claim, in turn came directly from the 2009 Referral. In other words, because all claimants eligible for "additional compensation" would already have received a \$3 million award, a hypothetical claimant who received a \$7 million award for "additional compensation" in this category of claims would receive awards totaling precisely the same amount as the estate of a victim who had been killed.

We view this as an indication that a \$7 million award should be reserved only for claimants whose injuries were so severe that they either (1) ultimately resulted in the claimant's death, or (2) warrant compensation equal to a victim who had been killed.

The compensation factors we apply are not a simple formula but rather are

designed to help us understand where on the continuum from zero to the State Department's recommended maximum of \$7 million (or, more precisely, where on the continuum from \$3 million to \$10 million in total) Claimant's injuries warrant compensation. That continuum requires us, at the top end of the scale, to compare Claimant's injuries with hypothetical injuries that are so severe that they warrant compensation equal to a victim who had been killed. We therefore hold that, to warrant a full \$7 million award, a claimant must show a total (or near total) deprivation of all major life activities and functions.

Seen through this lens, Claimant's injuries were not so severe that they warrant compensation equal to a victim who had been killed. While Claimant is of course permanently impaired, she remains capable of many of life's major activities and functions. She can care for herself, perform manual tasks, see, hear, eat, sleep, speak, breathe, learn, read, concentrate, think, and communicate.⁹ Indeed, even her legs are not completely unusable, and she is not permanently confined to a wheelchair.¹⁰

Moreover, there is no evidence that Claimant's major bodily functions are impaired. By major bodily functions, we mean at least the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.¹¹ It is not difficult to imagine physical injuries that affect bodily functions of this sort. Indeed, others in these Libyan

⁹ Cf. 42 U.S.C. 12102(2)(A) (in definition of "major life activities" in Americans with Disabilities Act, providing non-exhaustive list of such activities).

¹⁰ Some victims of accidents or attacks are. *See, e.g., Griffiths v. Workers' Compensation Appeal Board (Seven Stars Farm, Inc.)*, 943 A.2d 242 (Pa. 2008) (plaintiff rendered quadriplegic by work-related injury and was confined to a wheelchair); *Ex parte City of Guntersville*, 728 So. 2d 611 (Ala. 1998) (petitioner police officer shot in the line of duty was rendered paraplegic and permanently confined to a wheelchair).

¹¹ Cf. 42 U.S.C. 12102(2)(B) (in definition of "major life activities" in Americans with Disabilities Act, providing non-exhaustive list of major bodily functions and noting that the operation of each of these functions falls under the Americans with Disabilities Act definition of a "major life activity").

Claims Programs have suffered such injuries.¹²

In short, despite her serious disability, Claimant can do and experience much of what human life offers. Her injuries were very severe, but not so severe as to merit the same compensation as a victim who had been killed.

We thus conclude that Claimant is entitled to \$5 million in “additional compensation.” While we in no way imply any mathematical precision with this number, we note that this is both the highest “additional compensation” award in these Libyan Claims Programs and (with the \$3 million Claimant received initially for her physical injuries) means that her awards total \$8 million, or 80% of both the State Department’s recommended maximum and the compensation provided for victims who were killed.

Accordingly, in light of the discussion above, and based on the evidence and information submitted in this claim, the Commission withdraws the portion of its Proposed Decision that awarded Claimant \$4 million and issues the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of Title I of the International Claims Settlement Act, 22 U.S.C. §§ 1626-1627 (2012). This constitutes the Commission’s final determination in this claim.

¹² See e.g., Claim No. LIB-II-118, *supra* (awarding additional compensation for injuries that included neurological damage that caused seizures and loss of peripheral vision on claimant’s left side); Claim No. LIB-III-011, Decision No. LIB-III-040 (2016) (awarding additional compensation for injuries that included damage to internal organs, which left claimant with severe dietary restrictions); Claim No. LIB-II-155, Decision No. LIB-II-171 (2012) (awarding additional compensation for, *inter alia*, shrapnel injuries to the brain causing permanent visual impairment).

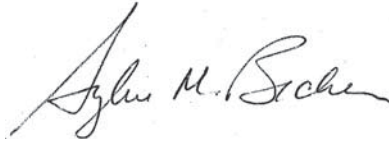
AWARD

Claimant is entitled to an award in the amount of Five Million Dollars
(\$5,000,000.00).

Dated at Washington, DC, February 11, 2016
and entered as the Final Decision
of the Commission.

A handwritten signature in black ink, appearing to read "Anuj C. Desai". The signature is fluid and cursive, with the first name being the most prominent.

Anuj C. Desai, Commissioner

A handwritten signature in black ink, appearing to read "Sylvia M. Becker". The signature is cursive and somewhat stylized, with the first name being the most prominent.

Sylvia M. Becker, Commissioner

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Counsel for Claimant:	Joshua M. Ambush, Esq. Joshua M. Ambush, LLC
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PROPOSED DECISION

Claimant brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based on physical injuries she suffered during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In that attack, both of Claimant's legs were blown off (below the knee), and, over the decades since, she has required numerous surgeries and several hospitalizations (including some for months at a time). She has been permanently disabled since then and has had to wear painful, ill-fitting prostheses, with significant restrictions on her mobility and thus her ability to engage in innumerable life functions and activities. Under a previous program, the Commission awarded her \$3 million in compensation for these injuries. She now seeks additional compensation based on the claim that the severity of her injuries is a "special circumstance warranting additional compensation." Because Claimant has demonstrated that the severity of her

injuries is in fact a “special circumstance warranting additional compensation,” she is entitled to an additional award of \$4 million.

BACKGROUND AND BASIS OF CLAIM

Claimant was in the terminal at Lod Airport in Tel Aviv, Israel, on May 30, 1972, when three armed terrorists began shooting automatic rifles and throwing hand grenades at passengers gathered in the baggage claim area. She states that, when the attack began, an explosion threw her to the ground, where she saw that both of her legs had been blown off. After the attack, Claimant was taken to a local hospital, where she underwent numerous surgeries to treat her wounds. Claimant remained at the hospital for approximately two months; she was then discharged and returned home for further treatment. Over the years that followed, she has been hospitalized and had surgery numerous times, and she continues to wear prostheses.

Although Claimant was not among them, a number of the Lod Airport victims sued Libya (and others) in federal court in 2006. *See Franqui v. Syrian Arab Republic*, No. 06-cv-734 (D.D.C.). In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya, including claims “aris[ing] from personal injury ... caused by ... [a] terrorist attack.” *See Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* Art. I (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008; *see also* Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). Two months later, in October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling

within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission. *See* International Claims Settlement Act of 1949 (“ISCA”), 22 U.S.C. § 1623(a)(1)(C) (2012). The Secretary delegated that authority to the State Department’s Legal Adviser, who, by letters dated December 11, 2008, and January 15, 2009, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

In 2010, the Claimant filed a claim under the January 2009 Referral, alleging that she had suffered physical injuries as a result of the Lod Airport attack. By Proposed Decision entered June 3, 2011, the Commission determined that Claimant was eligible for compensation under Category E of that Referral and awarded her a fixed sum of \$3 million. *See* Claim No. LIB-II-099, Decision No. LIB-II-053 (2011) (Proposed Decision). The Claimant objected to the Proposed Decision, arguing that she should receive additional compensation due to the severity of her injuries, and the Commission held an oral hearing on November 17, 2011. By Final Decision dated May 17, 2012, the Commission affirmed its Proposed Decision, concluding that “to award compensation under Category E over and above the \$3 million awarded to eligible claimants¹ would effectively remove the distinctions drawn by the Department of State [between different categories under the Referral] [and] would be contrary to the overall structure of the January Referral” Claim No. LIB-II-099, Decision No. LIB-II-053 (2012) (Final Decision).

The Legal Adviser then referred an additional set of claims to the Commission on November 27, 2013. *Letter dated November 27, 2013, from the Honorable Mary E.*

McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission (“2013 Referral” or “November 2013 Referral”). One category of claims from the 2013 Referral is applicable here. That category, known as 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 January 15, 2009 referral or by this referral, provided that (1) the claimant has received an award for physical injury pursuant to our January 15, 2009 referral or this 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 claimant did not make a claim or receive any compensation under Category D of our January 15, 2009 referral.

2013 Referral at ¶ 6.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of the third Libya Claims Program pursuant to the ICSCA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On May 13, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category D of the 2013 Referral, together with exhibits supporting the elements of her claim. Her submission also incorporated by reference the evidence she had previously submitted in connection with the physical-injury claim she made under the January 2009 Referral.

DISCUSSION

Jurisdiction

As an initial matter, the Commission must consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the “Category D” paragraph of the 2013 Referral is limited to claims of

(1) “U.S. nationals”; who (2) have received an award for physical injury pursuant to the January 15, 2009 referral or this referral and (3) did not make a claim or receive any compensation under Category D of the January 15, 2009 referral. 2013 Referral ¶ 6.

Nationality

This claims program is limited to “claims of U.S. nationals.” Here, that means that a claimant must have been a national of the United States continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-001, Decision No. LIB-III-001, at 5-6 (2014).

In its Proposed Decision on Claimant’s physical-injury claim under the January 2009 Referral, the Commission found that Claimant was a U.S. national from the time of the attack continuously through the effective date of the Claims Settlement Agreement. Proposed Decision, *supra*, at 4-5. She therefore satisfies the nationality requirement here.

Prior Award

To fall within the category of claims referred to the Commission, the claimant must have received an award under either the January 2009 or November 2013 Referrals. The Commission awarded the Claimant \$3 million based on her physical-injury claim under the January 2009 Referral. Claimant has thus satisfied this element of her Category D claim.

No Claim Under Category D of the January 2009 Referral

With respect to the final jurisdictional requirement, Claimant did not make a claim under Category D of the January 2009 Referral. While, as noted above, Claimant did request that she receive additional compensation for the special circumstances of her injuries (the same substantive basis for claims under Category D of the January 2009

Referral), this request was made in conjunction with her Category E physical injury claim rather than under Category D. Therefore, Claimant meets this element of her claim.

In summary, this claim is within the Commission's jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

Merits

Standard for Special Circumstances Claims

To make out a substantive claim under Category D, a claimant must establish that the severity of his or her injury is a "special circumstance warranting additional compensation." 2013 Referral ¶ 6.¹ The January 2009 Referral contained a category of claims that was substantively identical to the present category. Category D of the 2009 Referral provided claimants "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 . . . the Commission determines that the severity of the injury is a special circumstance warranting additional compensation" This language is nearly identical to Category D of the 2013 Referral,² the Category under which Claimant brings this claim.

In its decisions under the January 2009 Referral, the Commission held that only the most severe injuries would constitute a special circumstance warranting additional compensation under Category D. *See, e.g.*, Claim No. LIB-II-109, Decision No. LIB-II-112, at 6 (2011). The Commission further held that,

¹ Strictly speaking, Category D provides *two* ways for a claimant to make out a substantive claim: (1) show that "the severity of the injury is a special circumstance warranting additional compensation"; or (2) show that "additional compensation is warranted because the injury resulted in the victim's death." *See* 2013 Referral ¶ 6. Since the Claimant survived the Lod Airport attack, only the first is relevant here.

² The only differences in the language involve aspects of the Commission's jurisdiction not relevant for the merits.

[i]n determining which injuries are among the most severe, the Commission considers 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.

Claim No. LIB-II-109, Decision No. LIB-II-112 (2011) at 6.

Since the language of the two referrals is in all relevant respects identical and since the claims brought under Category D of the 2013 Referral derive from the same Claims Settlement Agreement—and arose from the very same incidents—as those brought under the 2009 Referral, the same standard for compensability should apply. Therefore, in determining whether the severity of the physical injuries in claims brought under Category D of the 2013 Referral is a “special circumstance warranting additional compensation,” the Commission will consider the nature and extent of the injury itself, the impact that the injury has had on a claimant's ability to perform major life functions and activities—both on a temporary and on a permanent basis—and the degree to which the claimant's injury has disfigured his or her outward appearance.

Factual Allegations

Claimant makes numerous allegations in support of her claim. In a recently sworn affidavit describing the terrorist attack, Claimant states that, on May 30, 1972, she was traveling from Puerto Rico to Israel as part of an organized tour group. The plane landed at Lod Airport near Tel Aviv at approximately 10:00 p.m. Claimant and her traveling companions then gathered near the baggage claim area to collect their luggage. Claimant states that, at that point, she “heard an explosion, and suddenly, [she] was on the floor, and [she] saw that both of [her] legs were gone.” She “remember[s] feeling cold on the inside[,]” and that, “[a]lthough [she] was apparently covered with blood, [she] . . . couldn't see the blood.” In statements to her doctor five years after the

incident, Claimant explained that, after the explosion, she “dragged herself to an adjoining room and stayed there for a while until she was taken to [Tel Hashomer Hospital].” She states that, for nearly two months (from May 30, 1972 to July 28, 1972), she remained hospitalized at Tel Hashomer, where she underwent “many surgeries and skin grafts”

Injuries Alleged: Claimant’s injuries began at the moment of the explosions. Both of her legs were severed from the rest of her body, and she had to spend two months in the hospital just to recover enough to return home from Israel.

The explosion and her two months in the Tel Hashomer Hospital were, however, only the beginning. Claimant states that she has had to have numerous related surgeries, hospitalizations, and lengthy stays at rehabilitation centers in the years since the terrorist attack. Much of this treatment has involved the fitting and re-fitting of prosthetic limbs and the removal of shrapnel from her body. Claimant alleges that she “has had extreme difficulty walking since the attack[,]” and “can only walk short distances with the aid of a cane.” In addition, she “still need[s] a wheelchair when [she goes] to places where [she has] to walk a lot” She attributes her walking difficulties to the fact that her “amputation stumps are uneven and have shrapnel in them[,]” and because “it was very hard to fit [her] stumps with prosthetics due to the poor way they healed.”

Claimant further alleges that her physical injuries have profoundly affected her personal and professional life. She states that she attempted to enroll in university after her release from rehabilitation in Puerto Rico, but that “the facilities weren’t up-to-date[,]” and she therefore “couldn’t get up the stairs to [her] classes.” As a result, she “discontinued her studies.” Moreover, she has “never been able to work since the attack, and [receives] monthly disability payments from Israel.” In addition, she asserts that

“[b]eing pregnant was very difficult for [her] with the prosthetics, and [she] had to have two C-sections.” Although her house is only one story, it is painful for her to stand for extended periods, so when she is at home, “it’s easier for [her] to walk on [her] knees with knee pads so that [she] can get the household work done. . . . This causes [her] knee pain, but the pain from the prosthetics is much worse.” Although Claimant has “a special car with a hand brake,” she prefers to stay at home because she is “afraid people will take advantage of her[.]” or that “something will happen to [her] car.”

Supporting Evidence

Claimant has supported her claim with, among other things, her own affidavit (dated May 13, 2014), numerous contemporaneous newspaper articles, and extensive medical records, ranging from the time of the attack until recently. These medical records include those from Claimant’s initial treatment at Tel Hashomer Hospital in Israel, various medical reports from Claimant’s treatment in Puerto Rico following her return home, and extensive medical reports, notes, and letters contained in records of the Israeli National Insurance Institute (“Insurance Institute”) covering the first few years after the incident.

The discharge summary from Tel Hashomer Hospital indicates that Claimant was admitted on May 30, 1972, and was discharged on July 28, 1972. When she arrived, she had “sustained traumatic amputation to both limbs which were subsequently completed at operation.” The summary also states that the “amputation stumps were left open and partially sutured 5 days later.” In addition, it indicates that “X-rays reveal[ed] the presence of shrapnel in both limbs.” There appears also to be evidence that the doctors at

Tel Hashomer performed skin grafts to both of her leg stumps.³ The discharge summary indicates that, when Claimant was eventually discharged, it was with instructions for “further rehabilitation and the fitting of prostheses in . . . Puerto Rico.”

According to the medical records, Claimant underwent numerous procedures and received extensive rehabilitative services in the years that followed. Records indicate that Claimant was admitted to a Puerto Rico Department of Social Services Rehabilitation Center on July 30, 1972 (a mere two days after being discharged from Tel Hashomer), and remained there for about a year and a half.⁴ The records note that, at the time of her admission, Claimant’s “wounds were not healed complet[e]ly[,]” and there was “some suppuration” They also contain the first indications of Claimant’s difficulty with prostheses. For instance, the records state that Claimant’s physicians “were having problems in fitting the left stump with a prosthesis[,] . . . [t]he main problem [being] that the left stump [was] conical in shape, [and] the skin graft . . . [was] thin and adhered to the bone.” They further note that “[p]ressure causes lacerations very easily when [the physicians] attempt to fit the left stump with the . . . prosthesis.” The doctors recommended that Claimant “be sent for evaluation and management to one of the best prosthetic clinics in the United States.”

³ The evidence is equivocal on this point: the discharge summary mentions only that “a skin graft was performed to the right stump,” making no reference to a skin graft on the left stump. Moreover, this is the only indication in the record of a skin graft on the right stump. Claimant’s treatment at Tel Hashomer is, however, also included in the “History” portion of a medical report, dated September 20, 1977 (more than five years after the attack), from Juan Llompert, M.D., who examined Claimant in Puerto Rico. The information in the Llompert report is largely consistent with the discharge summary, although its only reference to a skin-graft operation indicates that Claimant had a “skin graft to the *left* leg stump with skin taken from the right lateral thigh” (emphasis added). Records from Claimant’s time at a Rehabilitation Center operated by the Puerto Rico Department of Social Service’s Vocational Rehabilitation Program also state that “[a] skin graft was applied to the left stump,” but make no mention of a skin graft on the right stump.

⁴ This document is on the Rehabilitation Center’s letterhead, although it was the Israeli National Insurance Institute that provided the document. Because the Insurance Institute provided disability payments to Claimant, its records include copies of documents from the various facilities where Claimant was treated, including the Rehabilitation Center at the Puerto Rico Department of Social Services.

At some point in 1973, apparently while she was still at the Rehabilitation Center, Claimant was admitted to San Carlos Hospital in Puerto Rico, where she remained for three days while “grenade fragments were removed from [her] right stump.” Although Claimant used her prostheses more frequently, they continued to cause her trouble: “the skin of the left stump still broke down frequently,” and Claimant was often confined to a wheelchair, a fact confirmed by both the medical records and a newspaper article from May 30, 1973.

On April 17, 1974, the Insurance Institute determined that Claimant was eligible for 100% temporary disability from January 1, 1974, to December 1, 1974. During that same year, Claimant was taken to the Institute of Physical Medicine and Rehabilitation in New York City, where she stayed for about three and a half months. Doctors fitted her with new prostheses on both legs; however, the left stump did not heal well with the new prosthesis, and it had to be removed frequently. Thereafter, Claimant continued her medical care in Puerto Rico, receiving periodic outpatient treatment at the Rehabilitation Center.

In 1975, the Insurance Institute determined that Claimant had an 80% permanent disability as of October 1, 1975. In 1976, Claimant was hospitalized for about nine days at Matilde Brenes hospital in Puerto Rico, where she underwent another surgery, this one to remove seven metal fragments from her leg stumps; after her release, she received further treatment at San Pablo Hospital.

On June 15, 1977, the Insurance Institute revised its previous disability rating for Claimant, raising it to 100% permanent disability as of January 1, 1975. About three months later, on September 9, 1977, Claimant had x-rays taken of her leg stumps at San Pablo Hospital. The images revealed that there was “no fibula present [in her left leg

stump] and there [were] multiple metal fragments at the level of the stump and knee.” The images showed that the “fibula [was] present [in her right leg stump] and there [were] multiple metal fragments around the stump.”

Claimant met with Dr. Llompart on September 14, 1977, at the Ashford Medical Center in Puerto Rico. Although Claimant was able to walk, she did so with a limp and with the aid of a cane. Dr. Llompart noted that, “[a]t the present time the wound of the left stump is again open.” He further noted “[r]ecurrent breaking down of the skin [on the] left stump[,]” indicating that Claimant suffered from “[p]ain in both . . . stumps.” Dr. Llompart indicated that there was “a superficial healed scar in the [right thigh] measur[ing] approximately 6” by 3” and represent[ing] the donor site for the skin grafting.” He further observed that there was a “large irregular Z shaped scar” at the end of the stump measuring “approximately 10” in length.”

Claimant’s left stump appeared to be in considerably worse condition. Dr. Llompart noted that the stump had a “dark color” and was “covered with a dressing that was removed for the purpose of the examination[,]” and that “[t]he entire anterior and distal thirds of the stump are covered with extensive and wide scars.” He also noted that there was “an open wound in the distal end lateral aspect of the stump that measures 5 millimeters and where she has drainage.” On her left hip, Claimant had a “confluent irregular wide scar . . . that measure[d] approximately 5” by 2”.” On her left knee, Claimant had a “[w]ell healed transverse scar that measure[d] approximately 2” in length in the anterior aspect.”

As part of his examination, Dr. Llompart determined that Claimant had a “permanent degree of residual disability in regards to the right lower extremity of 70% that represents 20% in regards to the whole person.” With regard to the left lower

extremity, Dr. Llompart determined that there was a 90% residual permanent disability that represents 36% in regards to the whole person.”⁵

Claimant has also submitted clinical notes (as well as certified translations of these notes from Spanish to English) from office visits with Rufino Montañez Falcón, M.D., an orthopedic surgeon in Bayamón, Puerto Rico, from July 1989 to August 1993. These records largely confirm the nature and extent of Claimant’s injuries. A note from October 16, 1989, indicates that there was swelling in one of Claimant’s stumps (although it is unclear which), and x-rays revealed “[m]ultiple fragments.” A similar note from July 11, 1990 indicates that Claimant was suffering from “stump discomfort,” and another one from March 16, 1992 states that x-rays revealed “multiple metallic fragments.” The Falcón notes further indicate “stump discomfort” as late as August 18, 1993.

Application of Special Circumstances Factors to Evidence

In light of the evidence detailed above, Claimant has proven that the severity of her physical injuries is a special circumstance warranting additional compensation under this claims program.

Nature and Extent of Injury: The Claimant’s injuries are horrific and were life-altering. She lost both of her legs and has been unable to walk normally since the attack, more than 40 years ago. More than just the losing of her legs, she also had to experience the terror of the moment. As a news account put it shortly after the attack, she “felt something hit her feet[,] . . . saw a grenade rolling away[,] . . . and buried her face in her arms as the grenade went off.” She further stated, “‘I never lost consciousness.’ . . . ‘When I looked, I had no feet.’” She also had to witness the carnage and violence of the

⁵ It is not clear exactly how Dr. Llompart made this determination, nor is it clear what if any relationship Dr. Llompart’s disability finding has with the disability findings by the Israeli National Insurance Institute.

attack around her, as friends and fellow passengers suffered gruesome injuries right in front of her eyes, some dying on the spot.

Impact on Claimant's Major Life Functioning and Activities: Claimant's physical injuries have also had a substantial impact on her ability to perform major life functions. For one, her mobility is severely impaired. She lost both of her legs and has had to use a cane or a wheelchair to move about for the last four decades. At times, the pain of wearing the prostheses becomes so much that she simply hobbles around on her knees while at home. Moreover, she has never been able to find employment⁶ and had to drop out of university because it lacked facilities to accommodate her disability. In short, the terrorist attack has permanently disabled Claimant, severely limiting her freedom of movement and preventing her from undertaking numerous major life functions and activities.

Disfigurement: Claimant's injuries have left her terribly disfigured. She lost both legs below the knees. Moreover, she has extensive scarring. These injuries can never be completely hidden: she wears prostheses on both legs, walks with a limp, and requires a cane or wheelchair.

Considering all these factors together, the Commission concludes that the severity of Claimant's injuries rises to the level of a special circumstance warranting additional compensation under Category D. Accordingly, she is entitled to compensation as set forth below.

⁶ This is not surprising: as far back as the late 1970s, the Insurance Institute gave her a 100% permanent disability rating, and Dr. Llompart found her to have a 56% permanent disability rating as to the whole person.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation. As the Commission has previously stated in this program, assessing the value of intangible, non-economic damages is particularly difficult and cannot be done using a precise, mathematical formula.⁷ Assessing the *relative* value of such claims, as Category D of the November 2013 Referral contemplates, is almost as difficult. Moreover, neither Claimant nor the Commission's independent research has uncovered any relevant international-law precedent, except for the Commission's own decisions under Category D of the 2009 Referral program.

Those 2009 Referral decisions do, however, apply with equal force here: For one, the relevant language from Category D of the November 2013 Referral (at issue in this claim) is identical to that of Category D of the January 2009 Referral; moreover, both programs arise out of the same Claims Settlement Agreement. It thus makes sense to treat claims for additional compensation for especially severe physical injuries the same way in both programs.

Under Category D of the 2009 Referral, the Commission held that,

in determining the appropriate level of compensation . . . , it will consider, in addition to the recommendation contained in the January Referral for Category D, such factors as 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 disability ratings, if available, and the nature and extent of disfigurement to the claimant's outward appearance.

⁷ Claim No. LIB-III-001, Decision No. LIB-III-001, at 10. See also 2 Dan B. Dobbs, *Dobbs' Law of Remedies* ¶ 8.3(6) (2nd ed. 1993); I Marjorie M. Whiteman, *Damages in International Law* 777-78 (1937)).

See Claim No. LIB-II-118, Decision No. LIB-II-152, at 14. The Commission adopts this same standard of compensation for claims under Category D of the November 2013 Referral.

Severity of Initial Injury: Claimant's physical injuries are among the worst in any of the Commission's Libya claims programs. Her legs were blown off by exploding grenades in the midst of horrific violence and bloodshed. This alone would suffice for a significant award in this program.

Hospitalizations/Subsequent Surgeries: The attack and her initial injuries were of course only the beginning of Claimant's ordeal. She spent two months in the hospital in Israel, where she underwent numerous surgeries, including skin grafts and suturing, and then spent more than six months at the Rehabilitation Center in Puerto Rico, where she struggled to find comfortable prostheses. In the years that followed, she continued her treatment, at one point spending three and a half months at a rehabilitation center in New York and on at least two other occasions undergoing surgery to remove shrapnel remaining in her legs. As late as 1992, x-rays revealed that she still had shrapnel in her lower body. In sum, she has been hospitalized for significant periods of time and has undergone numerous surgical procedures over the years.

Permanent Impairment/Disfigurement: Claimant has been seriously and permanently impaired, and her outward appearance retains conspicuous physical disfigurements to this day. Her physical injuries have resulted in the Israeli National Insurance Institute giving her a permanent disability finding of 100%, and Dr. Llompart giving her at least 56% (20% whole person with regard to the right leg; 36% with regard to the left leg). While we have no details about how these percentages were determined, there is no question that she is permanently disabled to a substantial extent. She has

serious mobility problems that affect all aspects of her life, and she has been unable to work for the past four decades. She has also been severely disfigured: both of her legs were lost in the terrorist attack, and she now has to wear prostheses, requiring her to use a cane and/or wheelchair to get around.

In light of these facts, and in consideration of the factors listed above, the Commission holds that \$4,000,000.00 is an appropriate amount of compensation in this claim. Moreover, she is not entitled to interest: the Commission has previously held in all of its physical-injury awards under the Libya Claims Settlement Act programs (including those in the nearly identical 2009 Referral Category D claims), that compensable claims are not entitled to interest as part of the awards. That principle applies equally here. Accordingly, the Commission determines that the Claimant is entitled to an award of \$4,000,000.00 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 the Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-1627 (2012).

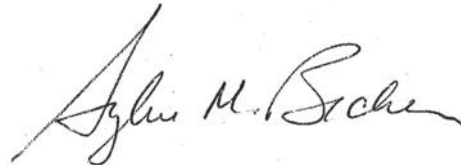
AWARD

Claimant is entitled to an award in the amount of Four Million Dollars (\$4,000,000.00).

Dated at Washington, DC, March 12, 2015
and entered as the Proposed Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery 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 delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2014).