

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, DC 20579**

In the Matter of the Claim of	}	
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	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-III-011
	}	
	}	Decision No. LIB-III-040
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:

Joshua Ambush, Esq.  
Joshua M. Ambush, LLC

PROPOSED DECISION

Claimant brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") for physical injuries said to have been sustained during a terrorist attack at Lod Airport in Tel Aviv, Israel on May 30, 1972. In that attack, Claimant suffered injuries to his left knee and abdominal area (including his internal organs), and, over the decades since, he has required numerous surgeries and several hospitalizations (including some for months at a time). He has been permanently disabled from work since then and has experienced significant gastro-intestinal and mobility issues that have limited his ability to engage in many life functions and activities. Under a previous program, the Commission awarded him \$3 million in compensation for these injuries. He now seeks additional compensation based on the claim that the severity of his injuries is a "special circumstance warranting additional compensation." Because Claimant has

demonstrated that the severity of his injuries is in fact a “special circumstance warranting additional compensation,” he is entitled to an additional award of \$5 million.

#### BACKGROUND AND BASIS OF CLAIM

Claimant was at Lod Airport in Tel Aviv, Israel, on May 30, 1972, when terrorists attacked with machine guns and hand grenades. He states that, during the attack, he suffered injuries to his left knee and abdominal area (including his internal organs) and that, in the immediate aftermath of the attack, he required numerous surgeries: removal of organs, including his spleen and part of his intestines, as well as shrapnel from his abdomen. Claimant further alleges that, over the next three months, he remained hospitalized in Israel, where he required additional surgeries on his wounds and contracted a severe case of pneumonia. He further claims that, upon his return to Puerto Rico, he was immediately hospitalized for an additional eight months and then was housebound for three more. Claimant asserts that the physical injuries he suffered continue to affect his daily life, including issues of mobility due to his knee and lung conditions, severe dietary restrictions due to his abdominal injuries, and recurrent bacterial infections that are resistant to antibiotics as a result of the “large amount of antibiotics and drugs that [he] received after the attack.”

Although Claimant was not among them, several victims of the Lod Airport attack sued Libya (and others) in federal court in 2006. *See Franqui v. Syrian Arab Republic, et al.* 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* (“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 (“ICSA”), 22 U.S.C. § 1623(a)(1)(C)(2012). The Secretary has delegated that authority to the State Department’s Legal Adviser, who, by letters dated December 11, 2008, January 15, 2009, and November 27, 2013, has referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

The 2008 Referral authorized the Commission to hear claims of physical injury arising out of a variety of terrorist attacks, including the Lod Airport attack, and recommended the Commission award a fixed sum of \$3 million for all compensable claims. Importantly, though, only claimants who had been plaintiffs in one of the lawsuits previously brought against Libya in U.S. courts, known as the “Pending Litigation” cases, were eligible under the 2008 Referral. The 2009 Referral contained two categories of claims relevant to the background of this claim: Category E, which included claims of physical injury for those claimants who had *not* been plaintiffs in any of the Pending Litigation cases, for whom the State Department also recommended a fixed \$3 million award; and Category D, which was for additional compensation for those

whose physical injuries warranted more than \$3 million, but only for those who had “received an award pursuant to [the 2008 Referral].” Thus, only claimants who had been plaintiffs in one of the Pending Litigation cases were eligible under Category D of the 2009 Referral for an award of “additional compensation” beyond the \$3 million fixed-sum recommendation; those who had not been plaintiffs were not eligible.

Claimant was not a plaintiff in one of the Pending Litigation cases and, in 2010, he filed a claim under Category E of the January 2009 Referral, alleging that he had suffered physical injuries as a result of the Lod Airport attack. The Commission determined that Claimant was eligible for compensation under Category E of that Referral and awarded him \$3 million as compensation for his physical injuries, *see* Claim No. LIB-II-119 Decision No. LIB-II-028 (2011) (Proposed Decision). The Claimant objected to the Proposed Decision, arguing that he should have received additional compensation due to the severity of his injuries; the Commission then held an oral hearing on his objection. 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 claimants would effectively remove the distinctions drawn by the Department of State [between claimants who had been plaintiffs in the Pending Litigation cases and those who had not], and would be inconsistent with the Claims Settlement Agreement.” Claim No. LIB-II-119, Decision No. LIB-II-128 (2012) (Final Decision) (footnotes omitted).

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 this portion of the Libya Claims Program pursuant to the ICSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On April 30, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category D of the 2013 Referral. His submission incorporated by reference the evidence he had previously submitted in connection with the physical-injury claim he made under the January 2009 Referral. By letter dated June 17, 2014, Claimant submitted additional exhibits in support of his claim, including current and contemporaneous medical records, photographs, his own sworn statement, sworn statements of his wife and the physician who treated Claimant in Israel, and news clippings.

## 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 he was a U.S. national from the time of the attack continuously through the effective date of the Claims Settlement Agreement. Claim No. LIB-II-119, Decision No. LIB-II-128, at 4-5 (2011) (Proposed Decision). Claimant therefore satisfies the nationality requirement here.

### *Prior Award*

To fall within the category of claims referred to the Commission, a claimant must have received a physical-injury award under either the January 2009 or November 2013 Referrals. As noted above, the Commission awarded Claimant \$3 million based on his physical-injury claim under the January 2009 Referral. Claimant has thus satisfied this

element too.

*No Claim Under Category D of the January 2009 Referral*

With respect to the final jurisdictional requirement, Claimant did not pursue a claim under Category D of the January 2009 Referral. While, as noted above, Claimant did request that he be compensated for the special circumstances associated with his injuries (the basis for claims under Category D of the January 2009 Referral), such request was made in conjunction with his Category E physical-injury claim rather than under Category D. Therefore, Claimant meets this element of his claim as well.

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.<sup>1</sup> The Commission has previously held that, in making this determination, it would consider three factors: “[ (1) ] the nature and extent of the injury itself, [ (2) ] 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 [ (3) ] the degree to which the claimant’s injury has disfigured his or her outward appearance.” *Claim of ESTATE OF ELIZABETH ROOT*, Claim No. LIB-III-033, Decision No. LIB-III-020, at 6 (2015).

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

Importantly, in all of its “additional compensation” decisions under both the 2009 Referral and the 2013 Referral to date, the Commission has addressed these factors in light of the unique context of the Commission’s Libyan claims programs, under which every successful physical-injury claimant received an initial award of \$3 million. While noting that no amount of money can adequately compensate some victims for their injuries, the Commission has recognized that \$3 million is “exceptionally high when compared to other claims programs . . . .” *See* Claim No. LIB-II-110, Decision No. LIB-II-111, at 5 (2011). For that reason, the Commission has emphasized that “the eligible claimants in [the Libya claims] program [had], for the most part, been adequately compensated . . . .” *Id.* at 6. Starting from that premise, the Commission held that “only the most severe injuries will constitute a special circumstance warranting additional compensation under Category D.” *Id.* Even with this stringent standard, Claimant has shown that his injuries are among the most severe in this program, and he is thus entitled to additional compensation beyond the \$3 million the Commission has already awarded him.

#### *Factual Allegations*

Claimant makes numerous allegations in support of his claim:<sup>2</sup> On May 30, 1972, he was traveling from Puerto Rico to Israel as part of an organized tour group. He was waiting for his luggage in the baggage claim area when the terrorist attack began. He was directly hit by machine gun fire (in his left knee), and his abdomen and several internal organs were struck by grenades. At first, he “felt a burst of detonations from machine guns.” One of the bullets “cross[ed] through [his] knee and [left him] unable to move.” Then, a grenade exploded, with grenade shrapnel tearing into his abdomen. He

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<sup>2</sup> Statements in this section of this Proposed Decision are simply allegations, not necessarily proven facts.



was taken by ambulance to the Tel Hashomer hospital, and he remained conscious throughout the ordeal. Within seconds of arriving at the hospital, doctors “removed [his] clothes and began to give [him] anesthesia and prepared to operate.” During the operation, the surgeons removed Claimant’s spleen and part of his large intestine (colon), and performed a colostomy, a surgical procedure in which the colon is shortened to remove a damaged part and the cut end diverted to an opening. The doctors also excised the injury to his knee.

Four days later, the doctors needed to operate again because his injuries were getting worse. He also continued to have a high fever, and three weeks after the attack, doctors drained an abscess<sup>3</sup> in his “Douglas pouch,” a cavity extension between the urinary bladder and rectum. They also excised an abscess in his knee. His high fever continued, and on July 14, 1972 (more than six weeks after the attack), he developed severe abdominal pain, which turned out to be necrosis<sup>4</sup> of his small bowel caused by a twisting of the bowel, known as a volvulus. Again, doctors operated. Claimant remained at the hospital in Israel for about three months, and the whole time, he “never received food by mouth because of [his] condition.”

At some point while in the hospital, Claimant developed several lung ailments, including pneumothorax,<sup>5</sup> hemothorax,<sup>6</sup> pneumonia, and emphysema. As a result, Claimant required surgery to create an opening in the left side of his back where a tube was introduced to extract secretions. This surgery left him with a hole on the left side of his back that is still prominent in recent pictures submitted in support of this claim. At

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<sup>3</sup> An abscess is a swollen area within body tissue that contains an accumulation of pus.

<sup>4</sup> Necrosis is the death of most or all the cells in an organ.

<sup>5</sup> Pneumothorax is the presence of air or gas in the pleural cavity, the space between the lungs and chest wall, causing collapse of the lung.

<sup>6</sup> Hemothorax is an accumulation of blood in the pleural cavity.

one point, doctors performed a tracheotomy, which involves cutting open a patient's windpipe to relieve an obstruction to breathing.

Upon his release from Tel Hashomer hospital, Claimant returned to Puerto Rico where he was immediately admitted to the Hospital Metropolitano in Guaynabo, Puerto Rico. The doctors in Puerto Rico told him that he weighed 65 pounds and had at best a "5% chance of surviving" when he arrived; he further claims to have had a "a 95% addiction to . . . morphine." He remained in the hospital in Puerto Rico for approximately eight months, after which he was "housebound in convalescence" for approximately three more.

Injuries Alleged: While Claimant's injuries began at the moment of the explosions, he alleges that they have persisted throughout his life. Since his initial treatment was completed, he has been hospitalized at the Hospital Metropolitano eight more times for severe complications resulting from the injuries he suffered during the attack. According to Claimant's wife, in the early to mid-1980s, he required hospitalization for "recurrent cellulitis in his left leg."<sup>7</sup> After one hospitalization in 2004, Claimant's wife recalls, he "had to sleep on the sofa for six months because his leg needed to be straight up. [He] could barely stand up." Further, she notes that "stiches have popped out from the hernias, which are inoperable."

In addition to the numerous hospitalizations over the years, Claimant states that he experiences the effects of his injuries on a daily basis: (1) his mobility is limited due to his knee and lung conditions; (2) his diet is severely restricted due to the damage to his abdomen; and (3) he suffers recurrent bacterial infections that are resistant to antibiotics because he received a "large amount of antibiotics and drugs ... after the attack." With

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<sup>7</sup> Cellulitis is inflammation of the connective tissue under the skin.

regard to his left knee, he asserts that the “bullet destroyed the bones giving me immobility and my left leg has been locked in a straight position since then and will be for the rest of my life.” Furthermore, with respect to his lung condition he asserts,

I can barely walk. If I bend quickly, I run out of air very easily. I cannot drive by myself; my wife needs to do it for me .... . Most of the time I am a prisoner in my home because the doctor has forbade me to be exposed to places where dust or ash or Sahara, Montserrat powders are.<sup>8</sup>

With regard to Claimant’s dietary restrictions he asserts,

I currently have an eating regimen that does not allow me to eat fat (due to a block in one of my abdominal vessels that cannot be operated on because of my poor lung function and because I have developed internal adhesions from scars that cover my abdominal organs from the attack), or sugar (due to the lung treatments I've need[ed], which include prednisone which raises blood sugar levels, and because of that I currently suffer of Diabetes type II), or salt (high blood pressure, hypertension), the skins and seeds of fruits and vegetables (which lodge in my diverticula) so meals are bland and generally soft. I no longer enjoy meals.

*Supporting Evidence*

Claimant has supported his claim with, among other things, his own affidavits (dated April 21, 2010 and June 10, 2014), affidavits from his wife (dated June 10, 2014) and his treating physician at Tel Hashomer hospital, Raphael Walden, M.D. (dated March 18, 2010), a contemporaneous newspaper article, contemporaneous and recent photographs, and extensive medical records. These medical records include the discharge summary from Claimant’s initial treatment at Tel Hashomer Hospital in Israel, and extensive medical reports, notes, and letters regarding his treatment in Puerto Rico since 2000.

The discharge summary from Tel Hashomer Hospital indicates that Claimant was admitted on May 31, 1972. When he arrived, he had a “[p]enetrating wound in the left

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<sup>8</sup> Apparently such irritants are common in Puerto Rico due to the fact that it is an island.

upper abdomen and an open wound of the Lt. knee.” Further analysis revealed that Claimant suffered “[l]aceration of the spleen, laceration of the transverse and descending colon, laceration of the stomach and penetrating wound of the left kidney.” The records reveal that Claimant’s “stomach was contained”, and he received treatment including a splenectomy, a partial colectomy, a double loop colostomy, and an excision of the wound to his left knee. He experienced post-operative complications, including a high fever and several abscesses. Further, on July 14, 1972, Claimant developed an “acute abdomen” caused by “necrosis o[f] small bowel due to volvulus” requiring a resection of 150cm (nearly five feet) of his bowel. Following this procedure, Claimant suffered an “infection of the wound and disruption of the wound.” In a list of surgeries, the discharge summary also indicates that doctors performed a tracheotomy, although no date is given and there is no other mention of lung-related or respiratory problems, such as the pneumothorax, hemothorax, pneumonia or emphysema that Claimant alleges he had. Moreover, the discharge summary, which appears to have been produced (as its name suggests) on the date Claimant left the hospital, says, “Antibiotic treatment was stopped six days ago,” possibly implying that he had been on antibiotics for around two months. The discharge summary indicates that, despite his doctors’ “opposition and reluctance to discharge” him, Claimant decided to go back to Puerto Rico to continue treatment there. Although the discharge summary does not give the date of his discharge, the newspaper article Claimant submitted indicates that Claimant was back in Puerto Rico no later than August 26, 1972.

While there are no medical records of Claimant’s treatment once he returned to Puerto Rico, Claimant has submitted an affidavit from Dr. Walden who accompanied him

to Puerto Rico after his release from the Tel Hashomer hospital. According to Dr. Walden, Claimant was “the last Puerto Rican victim to leave the hospital.” Further, Dr. Walden states that he stayed with Claimant for two weeks at the Hospital Metropolitano in Guaynabo, Puerto Rico, to oversee his treatment and to provide Claimant’s new doctors with information and instructions for his care.

More recent hospital records indicate that, since the year 2000, Claimant has been hospitalized on six separate occasions for a total of 30 days for treatment of conditions, including cellulitis in his left leg, gastrointestinal bleeding, colonic diverticulitis, non-gallstone acute pancreatitis, a renal cyst, abdominal pain, bowel obstruction, and hypertension.

According to other medical records, Claimant has suffered numerous complications and undergone extensive procedures due to injuries suffered in the initial attack. For example, in a letter dated November 2, 2009, Dr. Ruben Rodriguez Perez, a pneumologist<sup>9</sup> who treated Claimant from 1999 through 2009, claims that around the time of the attack, Claimant suffered several lung complications “that needed chest tube drainage for a long time and mechanical ventilation [for] four months.” He further states that, “[a]fter [the] above events” (most probably referring to the terrorist attack and its initial effects), Claimant “has developed progressive respiratory problems, chronic anxiety, sleep disorders and chronic back pain ... [as well as] [c]hronic [a]irways [o]bstruction.” Dr. Mario A. Haddad, who was Claimant’s general practitioner from 2001 through 2009, states in his letter dated October 29, 2009, that Claimant had recently been admitted to the Centro de Medicina Interna, where Dr. Haddad worked, “due to

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<sup>9</sup> A pneumologist is a doctor who specializes in treatment of the lungs.

chole[l]ithiasis<sup>10</sup> but the surgery [to treat it] was postponed due to deteriorated abdominal wall tissues and extensive incisional hernia.” Dr. Haddad also confirms that Claimant “had partial intestinal obstruction in 2006 and at least three episodes of phlebitis<sup>11</sup> of the lower extremities, specifically over areas of trauma.” In 2010, Claimant sought an evaluation of his overall present condition from Boyd H. Collazo, M.D., FACS.<sup>12</sup> In his report, Dr. Collazo notes that Claimant’s abdomen is “[d]istended, out of proportion to [the] rest of [his] body,” with “[s]evere, irregular queloid scarring<sup>13</sup> covering all four (4) abdominal quadrants, with scars running down the urinary bladder” and “[m]ultiple projectile wounds extend[ing] to [the] lateral sides of [Claimant’s] abdomen.” He concludes that “the present medical conditions with gross external presentation, internal permanent damage to vital organs and subsequently gravely affected metabolism and functioning of normal [r]espiratory, [d]igestive, [e]xcretory, [n]eurologic, and [m]ental functions, from which he has been suffering, is currently suffering and will continue to experience are a [d]irect result of the injuries he suffered on May 30th of 1972.” Pedro Tort Saade, M.D. states in a treatment note dated January 17, 2014 that Claimant is a “poor candidate and high risk for surgery (total knee replacement) due to recurrent osteomyelitis<sup>14</sup> problem + actual med condition.” Dr. Saade further states that Claimant has a “permanent left knee disability with poor outcome for improvement.” Dr. Saade also explicitly connects Claimant’s current knee problems with the 1972 terrorist attack.

As evidence of his incapacity to work, the Claimant has submitted a “Benefits

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<sup>10</sup> Cholelithiasis is the formation of gallstones, hard crystalline masses formed abnormally in the gall bladder or bile ducts from bile pigments, cholesterol, and calcium salts.

<sup>11</sup> Phlebitis is inflammation of the veins.

<sup>12</sup> FACS is an abbreviation for a Fellow of the American College of Surgeons.

<sup>13</sup> Queloid (or keloid) scarring is scarring from collagen, the main structural protein found in connective tissue.

<sup>14</sup> Osteomyelitis is inflammation of bone or bone marrow.

Planning Query” form from the Social Security Administration. That document, which appears to date back to before June 2003 but was “produced” on January 27, 2014, states that Claimant’s “Date of Disability Onset” is “5/15/1972.”<sup>15</sup>

*Application of Special Circumstances Factors to Evidence*

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

Nature and Extent of Injury: Claimant’s injuries are horrific and were life-altering. He suffered from lacerating and penetrating wounds to his abdomen, causing significant damage to several vital organs (e.g., spleen, kidneys, and intestines). He also suffered a bullet wound to his left knee. His injuries were so bad that he initially remained in the hospital for between two and three months and was released even then only over the objections of his doctors. He appears to have suffered significant lung problems as well.

Impact on Claimant’s Major Life Functioning and Activities: Claimant’s physical injuries have had a substantial impact on his ability to perform major life functions. While we are somewhat troubled by the 28-year gap in medical records (from 1972 to 2000), we believe the extraordinary nature of Claimant’s initial injuries permits an inference about some level of continuing effects on Claimant’s left knee and his abdomen/digestive system: For one, his mobility is significantly impaired; the injury to his left knee makes it difficult for him to walk, and he has suffered bouts of cellulitis in his knee which have immobilized him. In addition, his ability to eat has been impaired,

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<sup>15</sup> Although the document says May 15<sup>th</sup>, we have no reason to think this is not simply a mistake and that the date should be May 30<sup>th</sup>, the date of the Lod Airport attack.

and some of those dietary restrictions can be reasonably traced to his attack-related injuries.

There is also evidence that the attack led to significant lung problems, although the medical records are not absolutely conclusive in establishing a causal link between those problems and the terrorist attack. His pneumologist Dr. Perez does reference the attack in connection with his lung problems, and Dr. Collazo even states explicitly that many of Claimant's current problems, including those involving his "[r]espiratory ... functions," are a "[d]irect result of the injuries he suffered on May 30<sup>th</sup> of 1972." But neither doctor explains *how* they determined the connection between the attack and the lung problems. Furthermore, both of their letters were written after the 2008 Claims Settlement Agreement and the establishment of the Libyan claims programs, and neither doctor claims to have any direct knowledge of Claimant prior to 1999. Indeed, Dr. Collazo appears to have examined Claimant only once, in 2010. Standing alone, these statements would thus be insufficient to meet Claimant's burden to show a causal link between the attack and his later lung problems. Nonetheless, looking at these statements in light of the fact that Claimant had a tracheotomy at the Tel Hashomer hospital in Israel supports Claimant's allegations that the terrorist attack was responsible for at least some of his lung problems. Moreover, the current photographic evidence of a deep visible hole (of at least an inch in diameter) in Claimant's back supports an inference that Claimant did in fact at some point have a tube for draining lung secretions as he alleges. All this together suffices to meet Claimant's burden to demonstrate a causal link between the terrorist attack and his lung ailments.



Moreover, given the sheer number of surgeries he had in Israel and the fact that the Tel Hashomer discharge summary states that antibiotic treatment was only stopped six days before his discharge, we conclude that Claimant has met his burden to prove his allegation that he was treated extensively with antibiotics for the injuries he suffered in the attack. He has not, however, provided any medical evidence that demonstrates a causal link between those antibiotics and the recurrent bacterial infections from which he currently suffers, four decades later. The connection is not implausible, but he has failed to provide sufficient evidence to establish it.

Finally, the Social Security Administration has determined that he has been disabled from work since the terrorist attack. In short, the attack permanently disabled Claimant, severely limiting his undertaking of numerous major life functions and activities.

Disfigurement: Claimant's injuries have left him terribly disfigured. The recent photos submitted by Claimant reveal significant disfiguration: about a dozen large scars on Claimant's abdomen along with a hole in his back, all of which remain clearly visible some forty years after the attack.

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 of the 2013 Referral. Accordingly, he is entitled to compensation as set forth below.

#### COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation. The Commission has

previously held that, “in determining the appropriate level of compensation [for successful Category D claimants under the 2013 Referral], it will consider, in addition to the [State Department’s] recommendation[,] . . . 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.” *Claim of ESTATE OF ELIZABETH ROOT*, Claim No. LIB-III-033, Decision No. LIB-III-020, at 6 (2015) (*quoting* Claim No. LIB-III-021, Decision No. LIB-III-016, at 15 (2015) (Proposed Decision) (*citing* Claim No. LIB-II-118, Decision No. LIB-II-152, at 14)).

Severity of Initial Injury: Claimant’s physical injuries are among the worst in any of the Commission’s Libya claims programs. He suffered massive internal and external injuries as a result of machine gun fire and exploding grenades.

Hospitalizations/Subsequent Surgeries: The attack and Claimant’s initial injuries were only the beginning of his ordeal. He spent more than two months in the hospital in Israel, where he underwent numerous surgeries, including a splenectomy, partial colectomy, double-loop colostomy, tracheotomy, abscess excisions, and multiple bowel resections. He then spent several more months in a hospital in Puerto Rico (although we do not have conclusive evidence on exactly how many more). In the years that followed, he was hospitalized on several occasions for complications resulting from his injuries, such as cellulitis of his knee and bowel obstructions. In sum, he 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 his outward appearance retains conspicuous physical disfigurements to this day, more than forty-three years after the attack. His abdomen is distended with numerous deep, long, and wide scars and visible hernias, and he has a significant hole in his back. His physical injuries have resulted in the Social Security Administration determining that he has been a “disabled worker” since the attack. He has serious mobility problems that affect all aspects of his life, and he has been unable to work for more than four decades.

In light of these facts, and in consideration of the factors listed above, the Commission holds that \$5 million is an appropriate amount of compensation in this claim. Claimant 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 2013 Referral Category D claims) that compensable claims are not entitled to interest as part of the awards.<sup>16</sup> That principle applies equally here. Accordingly, the Commission determines that the Claimant is entitled to an award of \$5,000,000.00 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 ICSEA. 22 U.S.C. §§ 1626-1627 (2012).

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<sup>16</sup> Claim No. LIB-III-021, Decision No. LIB-III-016, at 17

AWARD

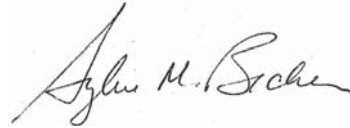
Claimant is entitled to an award in the amount of Five Million Dollars (\$5,000,000.00).

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

**This decision was entered as the  
Commission's Final Decision on**  
March 15, 2016



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Anuj C. Desai, Commissioner



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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).