

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

In the Matter of the Claim of	}	
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	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-III-005
	}	
	}	Decision No. LIB-III-042
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	

PROPOSED DECISION

Claimant brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based on physical injuries said to have been sustained during a terrorist attack near Harrods Department Store in Knightsbridge, London, England, on December 17, 1983. In that attack, shrapnel from an exploding car bomb caused Claimant serious injuries, including to her eye, face, knee, hip, and pelvis. Her physical injuries required more than three weeks of medical treatment at the Westminster Hospital in London and subsequent treatment over the ensuing years in the United States. In a previous program, the Commission awarded Claimant \$3 million in compensation for these injuries. Because Claimant has demonstrated that the severity of her injuries is a "special circumstance warranting additional compensation," she is entitled to an additional award of \$500,000.

## BACKGROUND AND BASIS OF CLAIM

On December 17, 1983, Claimant was leaving Harrods Department Store in London when a car bomb exploded. The explosion killed six people (including one American) and injured dozens of others, including Claimant. Claimant was taken to the hospital with multiple injuries and, after being treated for more than three weeks, was discharged on January 10, 1984. The hospital records catalog a number of injuries caused by the explosion including, but not limited to, shrapnel injuries (including an injury to her eye), tissue lacerations, entry and exit wounds, and fractures. These injuries appear to have required numerous medical procedures for complications over the following years, including a hysterectomy and procedures to address scars caused by the bombing. Claimant states that she suffers “emotional injuries,” including post-traumatic stress disorder (“PTSD”), and lives “every day of [her] life in fear.” She further states that the psychological trauma of her experience forced her to take early retirement from her job as a flight attendant for Delta Airlines after the events of September 11, 2001.

In 2006, two other victims of the Harrods bombing sued Libya (and others) in federal court. *See McDonald v. Socialist People’s Arab Jamahiriya*, (D.D.C.) 06-cv-729. Claimant was not part of that or any other suit against Libya. 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 act....” *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). Thus, although Claimant had not brought a lawsuit against Libya, the U.S. and Libya

settled any claim against Libya she might have had arising out of that terrorist attack. 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 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 2009, Claimant filed a claim under the January 2009 Referral, alleging that she had suffered physical injuries as a result of the Harrods bombing. By Proposed Decision dated January 12, 2010, the Commission determined that Claimant was eligible for compensation under Category E of that Referral and awarded her a fixed sum of \$3 million for her physical injuries. *See* Claim No. LIB-II-039, Decision No. LIB-II-015 (2010) (“Physical-Injury Decision”). Because Claimant did not file an objection to the Proposed Decision, the Proposed Decision automatically became the Commission’s Final Decision on February 24, 2010. *See* 45 C.F.R. § 509.5 (g) (2014).

The Legal Adviser 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 ICSEA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On April 16, 2014, the Commission received from Claimant a Statement of Claim, as well as supporting exhibits, seeking compensation under Category D of the 2013 Referral. Her submissions 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

The Commission must first 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*

With respect to the first jurisdictional element, 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 Physical-Injury Decision 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. Physical-Injury Decision, *supra*, at 4. She 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. The Commission awarded 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 or receive any compensation under Category D of the January 2009 Referral. Therefore, Claimant meets this element of her 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).

Importantly, in all of its “additional compensation” decisions under the 2009 Referral (and its 2013 Referral “additional compensation” decisions to date), the Commission addressed these three 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 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 emphasized that “the eligible claimants in [the Libya claims] program [had], for the most part, been adequately compensated . . . .” *Id.* at 6. Starting from that

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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. Only the first basis for entitlement is relevant here.

premise, the Commission held that only the most severe injuries would constitute a special circumstance warranting additional compensation under Category D.

As discussed in more detail below, Claimant has shown that her injuries are among the most severe in this program, and she is thus entitled to additional compensation under the November 2013 Referral beyond the \$3 million the Commission has already awarded her.

#### *Factual Allegations*

Claimant, who is appearing *pro se* before the Commission, makes numerous allegations in support of her claim:<sup>2</sup> On the morning of December 17, 1983, Claimant was leaving Harrods Department Store in Knightsbridge, London, England when a car bomb exploded. Shrapnel from the explosion hit Claimant in the left eye, face, knee, hip, and pelvis. The explosion caused Claimant's coat to catch fire and her hands and face to be covered in blood. A first responder assisted Claimant until she was taken by ambulance to St. Stephen's Hospital. Claimant was told that the "chances were about 50% that [she] would die within the first 24 hours" and, if she survived, that she would be "blind in [her] left eye." Later that day, Claimant was admitted to Westminster Hospital. She remained there, undergoing treatment for her many injuries until she was discharged a little more than three weeks later, on January 10, 1984.

Injuries Alleged: Claimant alleges that she suffered numerous injuries as a direct result of the bombing including, but not limited to, shrapnel injuries, tissue lacerations, entry and exit wounds, and fractures. She further alleges that she underwent subsequent medical procedures in the United States that her medical providers linked to her bombing

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<sup>2</sup> Claimant's allegations appear primarily in a one-page letter dated April 2, 2014, which references several documents filed in support of her claim under the January 2009 Referral. Statements in this section of this Proposed Decision are not necessarily proven facts but, rather, represent allegations drawn from Claimant's April 2, 2014 letter and documents submitted with her 2009 Referral Statement of Claim.

injuries, including plastic surgery on her face in 1984; lysis of adhesions<sup>3</sup> in 1985, 1990, 1996 and 1997; a colonoscopy in 1993; a hysterectomy in 1994; and a sigmoidoscope for a twisted colon<sup>4</sup> in 1997. Claimant states that she suffers “emotional injuries” and from PTSD and lives “every day of [her] life in fear.” She further states that the psychological trauma of her experience forced her to take early retirement from her job as a flight attendant for Delta Airlines after the events of September 11, 2001.

### *Supporting Evidence*

Claimant has supported her claim with, among other things, various documents submitted in her 2009 physical-injury claim, including a narrative of events; her own summary of the subsequent medical procedures she has undergone; reports to, and by, the London Metropolitan Police; records of Westminster Hospital; medical records from treatment in the United States; newspaper articles; correspondence between Claimant and the United Kingdom’s Criminal Injuries Compensation Board;<sup>5</sup> correspondence between Claimant and the Knightsbridge Fund charity; and contemporaneous letters to Claimant from the president and a vice president of Delta Air Lines, Claimant’s employer at the time of the bombing.

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<sup>3</sup> Lysis of adhesions is the process of cutting scar tissue within the body. This is done to restore normal function and reduce pain. Adhesions are internal scars that may lead to troubling side effects. They are bands of scar tissue that can occur anywhere in the body but are usually formed within the abdomen or pelvis. When adhesions are formed, they can cause problems in the normal function of the organs. Depending on where the adhesions are, they could cause problems including pain, obstruction of the bowel, and infertility.

<sup>4</sup> Sigmoidoscopy is the minimally invasive medical examination of the large intestine from the rectum through the last part of the colon. The term “twisted colon” can refer to cecal volvulus, which is the twisting of a part of the colon called the cecum and the ascending segment of the colon. Symptoms of cecal volvulus are abdominal pain and swelling, sometimes with nausea and vomiting.

<sup>5</sup> The Criminal Injuries Compensation Board, now replaced by the Criminal Injuries Compensation Authority, was an executive agency of the government of the United Kingdom to administer a compensation system for victims of violent crime in England, Scotland, and Wales.



Evidence of Direct Bombing Injuries: A report from Westminster Hospital dated January 12, 1984,<sup>6</sup> states that Claimant was admitted on December 17, 1983, and discharged on January 10, 1984, more than three weeks later. It describes multiple shrapnel injuries, including a shrapnel injury to the left sclera;<sup>7</sup> a soft tissue laceration to the right zygoma;<sup>8</sup> small shrapnel entry wounds in the neck; a perforating injury to the trachea;<sup>9</sup> shrapnel wounds to the right biceps muscle and right forearm; a penetrating injury on the left side of the perineum;<sup>10</sup> an entry wound to the left labium<sup>11</sup> and exit wound in the left buttock; fracturing of the inferior pubic ramus;<sup>12</sup> a shrapnel wound to the left thigh; hairline fracture of the patella;<sup>13</sup> multiple minor shrapnel wounds in the region of the knee; sympathetic effusion of the left knee joint;<sup>14</sup> shrapnel wounds above both the left and right ankles; and “considerable pelvic trauma” which the report notes “should settle down untreated over a period of some months.”

That same report further describes Claimant’s injuries and the beginnings of her recovery. The report states in relevant part,

At the time of discharge, [Claimant] had made an extremely good recovery from the injuries she had received. The main problem was her

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<sup>6</sup> Claimant has also submitted a January 9, 1984 letter from what appears to be a Westminster Hospital employee that contains much of the same information.

<sup>7</sup> The sclera is the part of the eye commonly known as the “white.” It forms the supporting wall of the eyeball and is continuous with the clear cornea.

<sup>8</sup> The term “zygoma” generally refers to the zygomatic bone, a bone of the human skull commonly referred to as the cheekbone or malar bone.

<sup>9</sup> The trachea, colloquially called the windpipe, is a tube that connects the pharynx and larynx to the lungs, allowing the passage of air.

<sup>10</sup> The perineum is a region of the body that in women is located between the vagina and anus.

<sup>11</sup> The labium is any of the folds of tissue of the female genitals.

<sup>12</sup> The inferior pubic ramus is a part of the pelvis and is thin and flat. It passes laterally and downward from the medial end of the superior ramus.

<sup>13</sup> The patella is the kneecap.

<sup>14</sup> A sympathetic effusion of the left knee joint is the collection of excess fluid around or within the joint of the knee.

perineal<sup>15</sup>] wounds, but these were granulating nicely. The patient was advised to have these wounds kept under regular review by a Consultant Surgeon, so that should any complications develop, they could be dealt with promptly.

The report additionally notes that Claimant had no motor or sensory damage and that the vagina and rectum were intact.

Claimant has also submitted a report from Westminster's Ophthalmic Department dated January 9, 1984—*i.e.*, one day before Claimant was discharged. The report states that Claimant suffered “a laceration to the left upper lid [of her eye] and a full thickness scleral perforation [that] extended from above the medial retina backwards for 4mm”; that “[t]here was vitreous presenting at the wound, but no obvious loss”; and that “[t]here was an extensive hemorrhage into the vitreous,<sup>16</sup> and this reduced Claimant's vision to counting fingers.” The Ophthalmic Department report further states that “the post-operative recovery was good and the vitreous [had] cleared well, although there [was] debris.” It also notes that Claimant's vision at the time was “6/24 unaided improving to 6/12 with a pinhole.”<sup>17</sup>

Claimant has also submitted a senior surgical registrar's January 10, 1984 witness report. This report notes that Claimant's eye was surgically repaired and at the same time the shrapnel wounds were debrided (shrapnel removed, tissue excised and wounds laid open). The report further notes that, following the surgery and debridement, Claimant was admitted to the intensive care unit and was watched carefully in view of the injury to

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<sup>15</sup> The perineal is an area of tissue that marks externally the approximate boundary of the outlet of the pelvis and gives passage to the urinogenital ducts and rectum.

<sup>16</sup> Vitreous hemorrhage is the extravasation, or leakage, of blood into the areas in and around the vitreous humor of the eye. The vitreous humor is the clear gel that fills the space between the lens and the retina of the eye.

<sup>17</sup> 6/6 is considered “normal” vision and 6/12 means that a person with 6/6 vision would discern the same object from 12 meters away. In theory, this is equivalent to saying that with 6/12 vision, the person possesses half the resolution or needs twice the size to discern the object.

her trachea. Claimant's condition improved rapidly and she was moved from the intensive care unit to the general ward on December 18, 1983, the day after she was taken to the hospital. Then, on December 21, 1983, Claimant was taken back to the operating theatre and, under a general anesthetic, doctors further cleaned and sutured her wounds. By the time of the report on January 10, 1984, doctors had removed the sutures from all wounds, Claimant's vision was returning to her left eye, and all wounds with the exception of the wound in the left groin had healed. The left groin wound was "well on the way to healing."

Contemporaneous written reports given by Claimant and another witness to the London police variously note that there was metal in Claimant's left eyeball and that shrapnel had severed the left eyelid; that Claimant needed more than 20 stitches to address the injury to her right cheek; that metal stuck in Claimant's left knee cap caused a vertical break in the knee cap which was wired back together; and that further wounds to Claimant's left leg might require skin-grafting.

Claimant has also provided newspaper articles that are contemporaneous to the time of the bombing and recovery. An article in the Atlanta Constitution from December 19, 1983, states that Claimant was in serious condition and in the intensive care unit, "but . . . is expected to survive." A newspaper article from the next day, December 20, 1983, states that Claimant was able to take off her eye patch and was recovering. An article dated January 15, 1984, shortly after her discharge from the hospital, quotes Claimant as stating that the shrapnel missed "everything vital" but did chip her hipbone. Her vision was slowly improving and she could walk without a cane.

Evidence of Post-Bombing Procedures/Surgeries: Claimant's summary of surgeries and medical procedures indicates that she underwent several procedures

following her return to the United States. These procedures, which are substantiated by other evidence detailed below, include plastic surgery on Claimant's face in 1984; lysis of adhesions in 1985, 1990, 1996, and 1997; a colonoscopy in 1993; a hysterectomy in 1994; and a sigmoidoscopy for a twisted colon in 1997.

Claimant has provided a February 15, 1993 letter from Dr. Stephen J. Ferney to Dr. William Saye, which discusses Claimant's adhesions, constipation, rectal bleeding, hemorrhoids, and uterus problems. It notes that Claimant "tells [Dr. Ferney that Dr. Saye] performed several surgical procedures for both uterine suspension and removal of adhesions" as well as a colonoscopy in 1993. It further notes that Claimant has asked Dr. Ferney whether Claimant's current problems are related to Claimant's bombing injury. Dr. Ferney then states, "[c]ertainly if adhesions or external compression from the uterus was causing constipation, this may have resulted in increased constipation, development of hemorrhoids, and subsequent rectal bleeding."

A September 26, 1997 letter from Dr. Saye states that Claimant "has undergone multiple operations for complications sustained after a bombing accident in London, England many years ago."<sup>18</sup> The record also includes an operative report written on April 11, 1994, by Dr. Alan Johns, who performed the hysterectomy surgery at the Harris Methodist Hospital. This report states, "[t]he adhesions involving the left ovary, rectosigmoid<sup>19</sup>] and pelvic sidewall were so dense that it was very likely these were a result of the anterior abdominal injury ten years ago and not from endometriosis or previous surgery."

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<sup>18</sup> It also discusses the hysterectomy, but we cannot determine from the language Dr. Saye employs whether he attributes the hysterectomy to the bombing injuries.

<sup>19</sup> The rectosigmoid is the lower portion of the sigmoid colon and the upper portion of the rectum.

Further, Claimant has provided a bill from March 23, 1994 that lists the following procedures that Claimant underwent: colposcopy;<sup>20</sup> cryotherapy;<sup>21</sup> laser surgery; laser surgery—cervical;<sup>22</sup> condyloma<sup>23</sup> treatment; hysteroscopy;<sup>24</sup> and biopsy. These procedures appear to have been performed in a doctor's office, not a hospital, on an out-patient basis, as the bill states it is for "office surgery."

Claimant has also submitted a health insurance form for her April 11, 1994 vaginal hysterectomy at Harris Hospital, in Fort Worth, Texas.<sup>25</sup> It indicates that at the same time as the hysterectomy, Claimant also had a procedure involving her pelvic peritonea;<sup>26</sup> as well as laser lysis of adhesions. An itemized statement form Claimant has submitted indicates she was admitted to the hospital on April 11, 1994, and was discharged one day later on April 12, 1994.<sup>27</sup> Similarly, a post-operation instruction form submitted by Claimant indicates that she spent one day in the hospital on March 12, 1996, for cystoscopy<sup>28</sup> with stent insertion; Hasson laparoscopy;<sup>29</sup> enterolysis;<sup>30</sup> and a Salpingo Oophrectomy.<sup>31</sup>

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<sup>20</sup> Colposcopy is a procedure to examine closely a woman's cervix, vagina, and vulva for signs of disease.

<sup>21</sup> Cryotherapy is the local or general use of low temperatures in medical therapy. Cryotherapy is used to treat a variety of benign and malignant tissue damage, medically called lesions.

<sup>22</sup> Cervical laser surgery is generally done to burn away abnormal cells.

<sup>23</sup> Condyloma is a raised growth on the skin resembling a wart, typically in the genital region, caused by viral infection or syphilis and transmissible by contact.

<sup>24</sup> Hysteroscopy is a procedure that allows the doctor to look inside the uterus in order to diagnose and treat causes of abnormal bleeding.

<sup>25</sup> Vaginal hysterectomy is a surgical procedure to remove the uterus through the vagina. During a vaginal hysterectomy, the surgeon detaches the uterus from the ovaries, fallopian tubes and upper vagina, as well as from the blood vessels and connective tissue that support it. The uterus is then removed through the vagina.

<sup>26</sup> The pelvic peritonea are the membranes that line the cavity of the abdomen and are folded inward over the abdominal and pelvic viscera.

<sup>27</sup> While a hysterectomy can lead to infertility, the Commission notes that in the medical record for the hysterectomy the doctor wrote that Claimant, who was then 43 years old and had a child, "is not particularly interested in pregnancy in the future . . ."

<sup>28</sup> A cystoscopy is a procedure that allows a doctor to examine the lining of the bladder and the tube that carries urine out of the body.

With respect to her scarring injuries, Claimant has submitted a copy of her application dated April 1, 1984, to the Criminal Injuries Compensation Board, in which she states that she had scars on her right facial cheek, arms, legs, and groin area. Claimant has also provided an April 22, 1995 article from the Fort Worth Star Telegram which states Claimant “has had plastic surgery to restore her face,” as well as a newspaper article dated April 25, 1986, which states Claimant has no visible scars from the bombing.

Finally, to substantiate her alleged emotional injuries, Claimant has submitted a September 29, 1997 letter by Dr. Elizabeth Lee Vliet which states that Claimant “has been under my care for Post Traumatic Stress Disorder, as well as, Menopausal Syndrome[ ] related to her full hysterectomy, since July 16, 1996.”

*Application of Special Circumstances Factors to Evidence*

In light of the evidence detailed above and taking into account all three of the factors (the nature of a claimant’s initial physical injuries, the impact those injuries have had on a claimant’s major life functions and activities, and the degree of disfigurement), Claimant has proven that the severity of her physical injuries is a special circumstance warranting additional compensation under this claims program. In particular, Claimant’s evidence establishes that (1) she suffered serious initial injuries from the car bombing, and (2) those injuries led to at least five, and perhaps as many as eleven, surgeries over the years that followed, including a hysterectomy and several others that were significant

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<sup>29</sup> A Hasson laparoscopy is a minimally invasive surgery to access the abdomen by creating a tiny incision, directly incising the layers of the abdominal wall, and directly cutting the peritoneum and entering the abdomen.

<sup>30</sup> Enterolysis is the division of intestinal adhesions.

<sup>31</sup> Salpingo Oophrectomy is the removal of an ovary together with the Fallopian tube.

enough to require some kind of hospitalization.<sup>32</sup> Although none of her physical injuries seem to have incapacitated her or led to any other significant effects on her major life functions or activities and she appears to have no outwardly visible permanent scarring or disfigurement, Claimant's injuries are nonetheless severe enough to warrant additional compensation beyond the \$3 million she has already been awarded if we consider all three factors together.

Nature and Extent of Injury: Claimant's initial injuries were clearly serious, putting her in the intensive care unit, impairing her vision, scarring her face, damaging her trachea, and wounding her pelvic area. Her physical injuries required more than three weeks of medical treatment at the Westminster Hospital and subsequent treatment over the ensuing years in the United States. The Commission has, however, previously denied additional compensation (i.e., beyond the initial \$3 million) to other claimants whose initial physical injuries were just as severe as Claimant's, if not more so. *See, e.g.*, Claim No. LIB-II-148, Decision No. LIB-II-185 (2012) (denying claim for additional compensation where claimant had bullet wounds to his chest, buttocks and leg; had spent eight days in the hospital after the terrorist attack; had to fly back home while lying on his abdomen and then spent another four weeks in a hospital near his home; and had medical records showing continued pain in his lower leg, thigh and back for the first few years after the attack); Claim No. LIB-II-109, Decision No. LIB-II-112 (2011) (denying claim for additional compensation where the claimant suffered bullet wounds to her right foot with entry and exit wounds, requiring ten days in the hospital and immediate surgery); Claim No. LIB-II-110, Decision No. LIB-II-111, *supra* (denying claim for

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<sup>32</sup> Claimant's evidence is inconclusive on the number of surgeries she had. We have medical evidence to substantiate surgery related to her bombing injuries on five occasions since her return to the United States after the bombing; however, she alleges that that number should be ten or eleven, and we have no evidence contradicting her assertion.

additional compensation where the claimant suffered a through and through gunshot wound to the chest, requiring four days of hospitalization and a course of antibiotics, and which left a 3-inch scar on his chest). Moreover, her initial injuries were not as severe as the only two claims for which we have awarded additional compensation based on the “nature and extent of injury” factor alone. *See Claim of ESTATE OF ELIZABETH ROOT*, Claim No. LIB-III-033, Decision No. LIB-III-020, at 6 (2015) (award of additional compensation to estate of victim where bullet passed through the victim’s right lung, a vital organ, which led to “circulatory collapse,” with blood filling her lung cavity; and after emergency surgery, the victim’s heart temporarily stopped and she fell into a coma until the next day; and much of her three-week stay in the hospital was spent in intensive care); Claim No. LIB-II-159, Decision No. LIB-II-167, at 10 (2013) (award of additional compensation to claimant who suffered a traumatic brain injury (TBI) and was in a coma for approximately 30 hours). Nevertheless, when assessed together with the other two factors—in particular, the numerous subsequent surgeries Claimant endured—Claimant’s injuries rise to the level of a special circumstance warranting additional compensation under Category D.

Impact on Claimant’s Major Life Functions and Activities: The second factor the Commission considers for Category D is the impact of the injuries on a claimant’s ability to perform major life functions and activities. *See* Claim No. LIB-III-021, Decision No. LIB-III-016, at 7 (2015). In this claim, Claimant’s injuries caused complications requiring at least five, and perhaps as many as eleven, additional surgeries, including a hysterectomy and some others that were significant enough to require hospitalization. Claimant has provided evidence to substantiate that most of these procedures were necessitated by the injuries she sustained in the Harrods bombing, including plastic



surgery on her face, lysis of adhesions, a colonoscopy, a hysterectomy, and procedures for a twisted colon.<sup>33</sup>

At the same time, however, Claimant does not appear to allege that her physical injuries have had a significant impact on her ability to perform major life functions and activities, certainly when compared to most other Category D awardees. As regards Claimant's vision impairment in her left eye, the medical evidence Claimant has submitted does not indicate how long this problem persisted—or, even assuming it has persisted, the *degree* of impairment—but Claimant does assert in her Statement of Claim that she currently has “the use of [her] left eye.” Additionally, despite her injuries, other evidence suggests that she continues to perform many of life's major functions and activities. For one, she eventually returned to her job as a flight attendant, continuing to work for nearly 20 more years until 2003. She was thus not only able to pursue her chosen line of work, but, given what we assume to be the physical demands of being a flight attendant, was also most likely able to engage in most of life's functions and activities that depend on basic physical health, such as walking, eating, etc. She also had a child in 1991. Moreover, Claimant's medical problems for the most part appear to have ended by 1997, and the evidence indicates that the medical procedures Claimant underwent before that time were generally done on an out-patient basis in a doctor's office, except for the 1994 hysterectomy and the 1996 medical procedures, which required one day each in the hospital.

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<sup>33</sup> Claimant also states that she had a cataract removal in 2005. She has not provided evidence to substantiate that this was necessitated by the bombing injuries. Likewise, Claimant indicates that she gave birth to her son in 1991, but provides no evidence to substantiate that she had a more difficult birth as the result of the bombing. While Claimant has also not substantiated her assertions that she had lysis of adhesions in 1985 and 1990, and that those procedures were necessitated by the bombing, given the other medical records and statements discussed in the text of our decision above, particularly the letters of Dr. Saye and Dr. Ferney, we conclude it is a reasonable inference that they occurred and were the consequence of the bombing.

Additionally, to the extent that Claimant's alleged emotional injuries may have had any impact on Claimant's ability to perform major life functions and activities, the Commission cannot award compensation based on those effects in the context of this program. As noted above, Claimant states that she suffers "emotional injuries" and from PTSD, and lives "every day of [her] life in fear." She further states that the psychological trauma of her experience forced her to take early retirement in 2003 from her job as a flight attendant for Delta Airlines after the events of September 11, 2001. However, psychological harm is outside the purview of this Commission's Libya claims programs. *See* Claim No. LIB-II-128, Decision No. LIB-II-031 (2012). *See also* Claim No. LIB-II-088, Decision No. LIB-II-108, at 5 (2012). Thus, even assuming all of her emotional injuries and their alleged effects, the Commission is not authorized to award Claimant compensation for her emotional injuries, PTSD, fear, early retirement, or any other effects not caused by her physical injuries.

In sum, after reviewing the above evidence, Claimant has not demonstrated that her physical injuries, in and of themselves, had a severe life-changing impact on her personal or professional life comparable to those we have previously deemed sufficient to warrant additional compensation beyond the \$3 million she has already been awarded. *See* Claim No. LIB-II-116, Decision No. LIB-II-166 (2012) (denying claim for additional compensation where claimant had nerve damage to his right leg requiring him to wear a foot brace for 18 months to mitigate "foot drop," had shrapnel remaining in both legs, was assessed as having a partial permanent disability in both legs, and although unable to continue in his prior profession after his injuries, was eventually able to find work in a lower paying job). Nonetheless, the numerous surgeries Claimant has had to endure over the years have impaired her life to some extent, and when assessed together with the first

and third factors, Claimant's injuries rise to the level of a special circumstance warranting additional compensation under Category D.

Disfigurement: The third factor we assess for Category D is the degree of disfigurement resulting from the injury. This factor has been important to the outcome of the Commission's decision to award additional compensation only when the disfigurement has been significant. *See, e.g.*, Claim No. LIB-III-021, Decision No. LIB-III-016, *supra*, at 17 (finding severe disfigurement to claimant who lost both of her legs and has to wear prostheses); Claim No. LIB-II-116, Decision No. LIB-II-166, *supra*, at 5 (denying claim where disfigurement was not a prominent feature of claimant's overall outward appearance).

Here, this factor plays a very small role: Claimant's evidence suggests that while she had some scarring for a few years, she never had any (generally visible) significant disfigurement. Moreover, although there is evidence that she had plastic surgery, that appears to have been in July 1984, less than a year after the Harrods' bombing, and there is evidence that what scarring she did have was gone by 1986. Claimant's April 1, 1984 application to the Criminal Injuries Compensation Board does state that she had scars on her right facial cheek, arms, legs, and groin area; and an April 22, 1995 newspaper article from the Fort Worth Star Telegram provides further evidence that she had plastic surgery on her face in July 1984.<sup>34</sup> However, another newspaper article Claimant has submitted, dated April 25, 1986, states that, as of then, Claimant had no visible scars from the bombing. Therefore, this third factor does not provide much support for the claim that the severity of Claimant's injuries warrants additional compensation under Category D. Nonetheless, when assessed together with the first and second factors, Claimant's injuries

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<sup>34</sup> The article states that Claimant "has had plastic surgery to restore her face."

rise to the level of a special circumstance warranting additional compensation under Category D.

#### 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, *supra*, *citing* Claim No. LIB-II-118, Decision No. LIB-II-152, at 14).

Although we conclude that Claimant is entitled to additional compensation beyond the \$3 million she has already been awarded for her injuries, applying these factors leads us to conclude that Claimant’s award should be on the lower end of compensable claims in this category of claims. Compared with other claimants who have been awarded additional compensation, Claimant’s injuries were not as severe. To start, while Claimant spent three weeks in the hospital for her injuries, others claimants spent months in the hospital, some even more than a year. *See* Claim No. LIB-II-156, Decision No. LIB-II-159 (2012) (claimant hospitalized for 55 days); and Claim No. LIB-III-021,

Decision No. LIB-III-016, *supra* (claimant hospitalized for substantial number of months). Similarly, while Claimant did undergo numerous subsequent surgical procedures, many other claimants had to endure far more invasive and significant surgeries in the years after their initial injuries. *Id.* Moreover, other than Claimant’s surgeries and the conditions associated with them, she does not allege permanent impairment of any major life functions or activities—such as ability to work,<sup>35</sup> Claim No. LIB-II-154, Decision No. LIB-II-170, at 5 (2013), to engage in other physical activities such as walking, *id.*; Claim No. LIB-II-174, Decision No. LIB-II-180, at 5 (2013); Claim No. LIB-III-021, Decision No. LIB-III-016, *supra*; Claim No. LIB-III-016, Decision No. LIB-III-041 at 9-10 (2016), or to eat, Claim No. LIB-III-011, Decision No. LIB-III-040 at 10-11 (2016) —based on her physical injuries.<sup>36</sup> Finally, she did not suffer any permanent disfigurement; though she did have plastic surgery to her face, the evidence suggests that she no longer had any visible scarring a few years after the bombing. In establishing this category of claims, the State Department recommended that “the Commission award up to but no more than an additional \$7 million” for compensable claims. In light of that recommendation, and in consideration of the factors listed above as applied to Claimant’s evidence, we conclude that \$500,000 is an appropriate amount of compensation.<sup>37</sup>

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<sup>35</sup> She does claim that she had to leave her job as a flight attendant about two decades after the bombing, a decision proximately caused by the September 11, 2001 attacks on the United States, but that allegation is based on the psychological, not the physical, injuries she claims to be due to the Harrods’ bombing.

<sup>36</sup> Given that she does not appear to allege any permanent physical impairments, she has not provided any disability rating either.

<sup>37</sup> *Cf.* Claim No. LIB-II-154, Decision No. LIB-II-170, *supra*, (award of \$1 million in “additional compensation” to claimant who was hospitalized for 17 days for injuries to her heels; had continuing physical therapy more than two decades after the injuries, as well as other permanent effects; and had received a disability determination from the state of California).

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>38</sup> That principle applies equally here. Accordingly, Claimant is entitled to an award of \$500,000.00 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).

AWARD

Claimant is entitled to an award in the amount of Five Hundred Thousand Dollars (\$500,000.00).

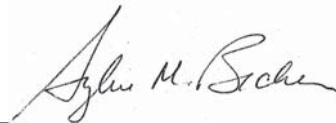
Dated at Washington, DC, March 15, 2016  
and entered as the Proposed Decision  
of the Commission.

**This decision was entered as the  
Commission's Final Decision on**

**April 20, 2016**



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) (2015).

<sup>38</sup> See Claim No. LIB-III-021, Decision No. LIB-III-016, *supra*, at 17.