

**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-018
	}	
	}	Decision No. LIB-III-039
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joshua Ambush, Esq. Joshua M. Ambush, LLC
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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 these injuries, and the Proposed Decision on this claim awarded him an additional \$3 million. Claimant objects to the amount awarded and argues that he is entitled to a higher award. He contends that the Commission should award him \$4.5 million in additional compensation because his injuries are more severe than other claimants who received awards of additional compensation in these Libyan Claims Programs in the \$3-4 million range. On objection, Claimant has submitted additional evidence and argument in support of his claim. After carefully considering all of Claimant's arguments and evidence, we conclude that Claimant's injuries are more severe than other claimants who have received \$3 million awards of additional compensation, but not so severe as to warrant an award at the full amount Claimant

requested. Accordingly, we withdraw the portion of the Proposed Decision that awarded Claimant \$3 million and award him Four Million Dollars (\$4,000,000).

### 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"); that claim was based on physical injuries he suffered during the Lod Airport attack. In a Proposed Decision entered on June 3, 2011, the Commission determined that Claimant had satisfied the Commission's standard for physical-injury claims and was therefore eligible for compensation under Category E of that Referral. The Commission awarded Claimant a fixed sum of \$3 million, the same amount that was awarded to all successful Category E claimants.<sup>1</sup> Claimant objected to the Proposed Decision, arguing that he should receive additional compensation due to the severity of his 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.<sup>2</sup> 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 his or her injury is a "special circumstance warranting additional compensation." On December 18, 2014, Claimant filed a claim under Category D of the 2013 Referral. In a

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<sup>1</sup> See Claim No. LIB-II-096, Decision No. LIB-II-055 (2011).

<sup>2</sup> 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").

Proposed Decision dated January 12, 2016, the Commission concluded that it had jurisdiction over the claim and that Claimant had met his burden of proving that the severity of his physical injuries was a “special circumstance warranting additional compensation.”<sup>3</sup> Based on the evidence he had presented at that time, the Commission awarded Claimant \$3 million in additional compensation.

On February 2, 2016, Claimant filed a timely notice of objection and requested a hearing. On September 12, 2016, Claimant submitted a brief containing further argument and evidence in support of his objection. The new evidence included the declaration of Dr. James W. Karesh, M.D., a board-certified physician in ophthalmology, surgery (plastic and reconstructive), and medical examination, and the declaration of Dr. Mark (Marcel) Reischer, M.D., a board-certified physician in physical and rehabilitation medicine and internal medicine. The Commission held an objection hearing on September 27, 2016; Claimant, Dr. Karesh, and Dr. Reischer testified at the hearing, and Claimant’s counsel argued on Claimant’s behalf.

#### DISCUSSION

The sole issue on objection is the appropriate amount of compensation to which Claimant is entitled. As noted above, the Proposed Decision concluded that Claimant had met his burden of proving that the severity of his physical injuries was a “special circumstance warranting additional compensation” and awarded Claimant \$3 million in additional compensation. Claimant argues that, when all relevant factors are considered, he is entitled to a higher amount—\$4.5 million—due to the severity of his injuries.

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<sup>3</sup> See Claim No. LIB-III-018, Decision No. LIB-III-039 (2016) (“Proposed Decision”).

Claimant points to numerous factors to argue that his injuries warrant a higher award. For one, he asserts that his eye was blown away by gunfire in the Lod Airport attack and that he subsequently endured multiple surgeries that were unsuccessful in repairing the damage to his eye, jaw, and facial nerves. He also argues that his injuries led to severe permanent impairment: he is blind in his right eye; and he has difficulty eating, uncontrolled drooling, facial pain, paresis and paralysis, permanent sinus damage, and permanent damage to his mobility. Claimant further alleges extensive disfigurement: his face was severely maimed, causing permanent structural damage and severe scarring; and his leg, shoulder, chest, and abdomen were severely mutilated. Claimant states that the testimony of Dr. Karesh and Dr. Reischer substantiate the severity of his injuries.

After carefully considering all of Claimant's arguments and evidence, we conclude that Claimant's injuries are more severe than those of the other claimants who have received awards of \$3 million in additional compensation in these Libyan claims programs and are sufficiently severe to warrant a \$4 million award of additional compensation.

#### *I. Proposed Decision*

In its Proposed Decision, the Commission based the \$3 million award amount on a variety of factors. We noted that his initial injuries were "extremely severe" and that he suffered "multiple gunshot wounds to his face, chest, and leg, including one to his right eye."<sup>4</sup> We also noted that Claimant had "spent a significant amount of time in various hospitals."<sup>5</sup> These hospitalizations included "about five weeks at Tel Hashomer Hospital in Israel immediately after the May 1972 terrorist attack" and "at least outpatient treatment several times at the Centro Medico de Puerto Rico in 1972 and 1973, and five stays at the Manhattan Eye, Ear and Throat

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<sup>4</sup> Proposed Decision, *supra*, at 17.

<sup>5</sup> *Id.*

Hospital in 1973 and 1974, ranging from four to six days each.”<sup>6</sup> The Proposed Decision also observed that Claimant required “five or six orbital reconstruction surgeries to his right eye, as well as at least one operation for the disfigurement to his face”; that he was “permanently impaired to a significant degree” and, in particular, lost the use of his right eye;<sup>7</sup> and that he “has serious disfigurement to his outward appearance,” including “a red gash where his right eye used to be and significant scars on his face, right shoulder, back, left side of his chest, right side of his chest, abdomen, and left leg.”<sup>8</sup>

The Proposed Decision concluded that Claimant was entitled to \$3 million in additional compensation. In its analysis, the Commission referred to a prior decision, Claim No. LIB-II-155, Decision No. LIB-II-171 (2012), in which the Commission awarded an additional \$3 million to a claimant whom it viewed as having suffered injuries comparable to Claimant here: The claimant in that decision had shrapnel injuries that required him to undergo several surgeries (including a craniectomy and a corneal transplant), permanently impaired his vision, deformed his face, and had other substantial long-term effects on his major life functions and activities.<sup>9</sup>

## *II. Claimant’s New Evidence*

On objection, Claimant has provided his testimony and the testimony and declarations of Dr. Karesh and Dr. Reischer. The exhibits to Dr. Karesh’s declaration include his *curriculum vitae*; a report dated June 30, 2016, documenting his examination of Claimant’s ocular and facial injuries; “computed tomography” (CT) scans of Claimant’s face

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 17-18.

<sup>9</sup> *Id.* at 18.

prepared by Arecibo Radiology on April 11, 2016; and an Electrodiagnostic Examination report by Dr. William F. Micheo Martinez dated April 30, 2016, addressing the CT scans and a facial nerve conduction study. The exhibits to Dr. Reischer's declaration include his *curriculum vitae* and color photographs of Claimant's legs taken during Dr. Reischer's examination of Claimant on June 30, 2016. Dr. Reischer also attached another copy of Dr. Karesh's declaration and all of the supporting exhibits Dr. Karesh provided.

In his testimony, Claimant describes in depth the injuries he suffered and the nature and impact of those injuries, including the severe toll they have taken on him physically, as well as emotionally, professionally and socially, particularly given that he was at the formative age of seventeen when the attack occurred.

In his declaration and testimony, Dr. Karesh draws several conclusions about Claimant's ocular and facial injuries. He attests, *inter alia*, that (i) Claimant's right eye was enucleated in the Lod Airport attack; (ii) Claimant's left eye has also had problems since he had cataract surgery three years ago; (iii) Claimant has sinus issues and headaches; (iv) Claimant at times has uncontrolled drooling; (v) Claimant takes a number of medications; and (vi) Claimant has scarring on his eyelid and face. Based on his review of the Electrodiagnostic Report and CT scans, Dr. Karesh also states that prior doctors had used glass beads in an attempt to increase Claimant's orbital volume. In addition, Dr. Karesh concludes that Claimant's physical situation cannot be improved and is not anticipated to improve.

Dr. Karesh also provides disability ratings based on his assessment of the degree of permanent impairment to Claimant's visual system, face, nose, throat, and related structures. With respect to Claimant's visual-system impairment, Dr. Karesh states that the loss of

Claimant's right eye amounts to a 25% impairment of the visual system, a determination he bases on the *American Medical Association's Guides to Evaluation of Permanent Impairment* (4<sup>th</sup> Ed.) (hereinafter "AMA Guide").<sup>10</sup> He further states that the impairment to Claimant's left eye equals a 5% to 8% impairment of the visual system, and that "the lower number is more likely the correct estimate." Combining the two eye impairments, Dr. Karesh attests that the injuries to Claimant's eyes amount to a 29% visual-system impairment under the AMA Guide. According to the AMA Guide, this is equivalent to a 27% impairment of the whole person.

With respect to Claimant's facial impairment, Dr. Karesh assigns Claimant a 35% impairment of the whole person, which is the maximum rating available under "class 4," the highest category for facial impairment under the AMA Guide. Regarding Claimant's nose, throat, and related structures, Dr. Karesh opines that Claimant has significant damage to the paranasal sinuses and that, pursuant to the AMA Guide, the degree of impairment belongs in "class 1," the lowest category, at a 5% disability rating of the whole person. This latter assessment, however, does not include a rating for impairment to mastication and deglutition: According to Dr. Karesh, only individuals who are limited to eating food in soft form can get an impairment rating under the AMA Guide; therefore, Dr. Karesh says, despite the significant effect on Claimant's eating, he is not viewed as impaired under the AMA Guide because he is able to eat food that has been cut into small pieces.

Dr. Karesh concludes by opining that when Claimant's combined whole person impairment assessments of a 29% whole person impairment from visual impairment,<sup>11</sup> 35%

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<sup>10</sup> This is equivalent to a 24% impairment of the whole person. See AMA Guide at page 218, Table 6.

<sup>11</sup> As noted above, and as will be discussed below, this should have been 27% not 29%.

whole person impairment from facial impairment, and 5% whole person impairment from sinus/respiration impairment, are taken together under the AMA Guide's Combined Values Chart, Claimant is 56% disabled as to the whole person.

Claimant's other medical expert, Dr. Reischer, focuses on Claimant's sciatic nerve injuries.<sup>12</sup> He states that the sciatic nerve is a combination of two nerves—the common peroneal nerve and the tibial nerve. Based on his review of the medical record and his examination of Claimant, Dr. Reischer states that Claimant suffered a severe lesion to his sciatic nerve on the left thigh; that Claimant's common peroneal nerve is completely non-functioning; and that Claimant's tibial nerve has lost approximately 50% of its motor function.

Dr. Reischer also makes a disability determination based on these injuries. As for Claimant's common peroneal nerve, Dr. Reischer states that the nerve "is completely gone" and that this results in a 17% disability rating of the whole person, which he bases on Table 68 of the AMA Guide. As for Claimant's tibial nerve, however, Dr. Reischer explains that the AMA Guide does not have explicit ratings. Thus, to assess the degree of impairment associated with Claimant's tibial nerve injury, Dr. Reischer uses the fact that the tibial nerve and common peroneal nerve connect to become the sciatic nerve. He takes the sciatic nerve entry on Table 68 and subtracts the common peroneal nerve values to arrive at a value for the tibial nerve. Taking this approach, he says, produces a whole person impairment rating of 15% for loss of motor function of the tibial nerve. Based on his assessment of a 50%

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<sup>12</sup> In his declaration, Dr. Reischer states that his practice does not focus on trauma to the face/eye and that, pursuant to commonly accepted medical practice, he therefore defers to Dr. Karesh's opinions regarding the injuries to Claimant's face and eye.



motor function loss, Dr. Reischer assigns a 7% whole person disability rating for the tibial nerve.

Dr. Reischer then opines that when these disability values (17% common peroneal nerve, 7% tibial nerve, and Dr. Karesh's combined 56% rating) are taken together under the AMA Guide's Combined Values Chart, Claimant is 66% disabled as to the whole person.

### *III. Analysis*

In claims for additional compensation in these Libyan claims programs, the Commission considers several factors to determine the appropriate level of compensation. These factors include the severity of the initial injury, the number of days claimant was hospitalized as a result of his or her physical injuries (including all relevant periods of hospitalization in the years since the incident), the number and type of any subsequent surgical procedures, the degree of permanent impairment, taking into account any available disability ratings, and the nature and extent of disfigurement to the claimant's outward appearance.<sup>13</sup> Therefore, to address Claimant's objection, the Commission must consider these factors in light of Claimant's evidence, including his new evidence.

Having considered Claimant's additional evidence and argument, we conclude that Claimant is entitled to more than the \$3 million we awarded him in the Proposed Decision. The new evidence—specifically that provided by Dr. Karesh and Dr. Reischer—demonstrates that Claimant's injuries and impairment are more severe than it appeared based on the evidence Claimant presented prior to the Proposed Decision. Through the new evidence, Claimant has further substantiated that he suffered multiple gunshot wounds to his face, chest, and leg, including one to his right eye; spent a significant amount of time in

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<sup>13</sup> Proposed Decision at 16-17.

various hospitals, including five weeks of in-patient treatment at Tel Hashomer Hospital in Israel immediately after the May 1972 terrorist attack; and that he endured an additional five eye surgeries and other eye-related treatment at the Manhattan Eye, Ear and Throat Hospital in 1973 and 1974.

More importantly, Claimant's new evidence on objection demonstrates that he suffered a greater degree of long-term impact and permanent impairment than what he had shown prior to the Proposed Decision. Claimant has now further shown the severity of his injuries and substantiated that those injuries, including in particular the loss of his eye, his disfigurement, and his leg problems, have permanently impaired him to a significant degree in a manner that has had a substantial negative impact on his major life activities ever since. This new evidence, including the opinions of Dr. Karesh and Dr. Reischer, indicates a level of permanent impairment that is greater than the claimant in Claim No. LIB-II-155, the claimant whose injuries we viewed as comparable to Claimant's when determining compensation in the Proposed Decision.

At the same time, however, the new medical evidence does not fully substantiate Claimant's contention that he has a 66% whole person impairment as a result of the injuries he suffered in the Lod Airport attack. In particular, the opinions of Dr. Karesh and Dr. Reischer have several problems that undermine the extent of their reliability to some degree. Though we need not describe all of our concerns, we will identify a few.

Left eye, facial, and sinus impairments: First, Claimant's impairment calculation includes impairment of both eyes, but there is insufficient evidence to support the alleged causal connection between the Lod Airport attack and Claimant's *left* eye impairment (as opposed to his right eye). When questioned at the objection hearing, Dr. Karesh

acknowledged that Claimant's left eye impairment could not be traced to the Lod Airport attack. This is consistent with his written declaration, which stated, "The underlying etiology and time of occurrence for this slight reduction in visual acuity [in the left eye] is not clear and cannot be determined from either [Claimant's] medical history or the current examination findings[,] as there is no immediate obvious abnormality demonstrable on examination." It is also consistent with the fact that Claimant had cataract surgery on his left eye three years ago.<sup>14</sup>

Second, Dr. Karesh's conclusion that Claimant's facial impairment results in a "class 4" disfigurement is likewise unsupported by the evidence in the record. The facial disfigurement metric under the AMA Guide employs different classes of disfigurement. Class 3 states, "A patient belongs in class 3 when there is an absence of a normal anatomic part or area of the face. Loss of an eye, which should be evaluated as indicated in chapter 8, or loss of a part of the nose with the resulting cosmetic deformity, constitutes a class 3 impairment." The whole person disability rating for class 3 ranges from 10% to 15%. In contrast, the AMA Guide states that a class 4 impairment from facial disfigurement, which

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<sup>14</sup> In the Proposed Decision, we noted that while Claimant had not provided evidence that definitively linked a left eye problem to the 1972 attack, the problem could reasonably be attributed to the loss of Claimant's right eye. Proposed Decision at 15. Claimant's counsel appears to argue that since the Commission made this inference on behalf of the Claimant in the Proposed Decision, it is precluded from revisiting this issue on objection. We disagree. A Proposed Decision is always just that, a *proposed* decision. The Commission may change anything in the Proposed Decision at the stage of the Final Decision. As one of our mandating statutes makes clear, on objection "the Commission may affirm, modify or revise its former action with respect to such claim, *including a denial or reduction* in the amount theretofore allowed with respect to such claim." 22 U.S.C. § 1623(h) (emphasis added). Because the statute states that the Commission can deny or reduce an award it previously made, the Commission may on objection revisit any issue in the claim. *See also* 45 C.F.R. § 509.6(d) (stating that even on objection, claimant continues to retain burden of proof); *cf.* Claim No. PO-4720, Decision No. PO-1358, (Amended Final Decision 1966) (*sua sponte* reducing award after a *final* decision, where new facts demonstrated that percentage of ownership was less than originally calculated); Claim No. PO-2738, Decision No. 5018 (same); Claim No. G-2201, Decision No. G-2052 (Amended Proposed Decision which became final in 1981) (reopening claim on Commission's "own motion and in the interest of justice and consistent treatment of all claimants" and reducing award "based upon the information contained in the report from the Commission's field office").

can be awarded a 15% to 35% impairment of the whole person, occurs when the facial disfigurement is so severe that it “precludes social acceptance.” The AMA Guide further states that in order to constitute a class 4 impairment, there must be “massive distortion of normal facial anatomy.”

While Dr. Karesh has assigned Claimant a 35% whole person disability rating based on the facial disfigurement, the maximum under “class 4” (itself the highest class), the new evidence provided on objection substantiates only a class 3 rating, or, at most, the lower end of the class 4 rating. Class 3 specifically states that it addresses situations where there is a “loss of an eye,” which is the primary deformity that is visible here. Further, while Claimant also has visible facial scarring and deformity, the AMA Guide’s facial disfigurement section states, “Facial disfigurement may be considered total if it is severe and grossly deforming of the face and features. Such disfigurement must involve at least the entire area between the brow line and the upper lip on both sides.” During Claimant’s appearance before us, we did not observe disfigurement involving the “entire area between the brow line and the upper lip on both sides” of his face, and no other evidence suggests that it was that significant in the past either.

Moreover, the AMA Guide states that a class 4 impairment from facial disfigurement occurs when the facial disfigurement is so severe that it “precludes social acceptance.” Yet, the evidence in the record fails to show that Claimant’s disfigurement rises to the level of “preclud[ing] social acceptance.” Although we recognize that more than four decades has passed, we did not observe a deformity that entirely “precludes social acceptance” when Claimant appeared before the Commission to testify. While he did testify as to the social difficulties he has had because of his facial deformity, particularly in the workplace, he was

able to work and to engage in other social activities. Additionally, Claimant got married and had children and grandchildren after the Lod Airport attack.<sup>15</sup> Finally, nothing in the record—whether in Claimant’s testimony before the Commission or the pictures he has submitted into evidence—demonstrates a visible “*massive* distortion of normal facial anatomy,” as required to constitute a class 4 impairment from facial disfigurement.<sup>16</sup>

Third, Dr. Karesh’s assessment that the damage to Claimant’s paranasal sinuses results in a 5% impairment of the whole person, a class 1 impairment under the AMA Guide, is also unsupported by the record evidence. AMA Guide class 1 Table 5 specifically requires (i) that a “recognized air passage defect exist[];” and (ii) that “[e]xamination reveal[] one or more of the following: partial obstruction of oropharynx, laryngopharynx, larynx, upper trachea (to fourth ring), lower trachea, bronchi, or complete obstruction of the nose (bilateral) or nasopharynx.” Yet, Dr. Karesh himself attested in his written declaration that Claimant’s breathing is not obstructed. At the objection hearing, Dr. Karesh specifically acknowledged that while Claimant has some breathing problems, he does not meet the criteria required for a class 1 impairment to the paranasal sinuses. Claimant has thus failed to show that he has any impairment based on his paranasal sinuses.<sup>17</sup>

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<sup>15</sup> Dr. Karesh attests that without Claimant’s eye-patch there would be consequences to Claimant’s social acceptance. But the AMA Guide indicates that the assessment of facial disfigurement impairment should be made *with* an eye-patch. It specifically states the disfigurement is to be assessed “after treatment” which we infer, based on our understanding of Dr. Karesh’s testimony, to include prosthetics and other means of addressing disfigurement such as wearing an eye-patch.

<sup>16</sup> AMA Guide at page 229 (emphasis added).

<sup>17</sup> Dr. Karesh’s impairment assessment also erroneously conflated a visual impairment rating with a whole person impairment rating. He determined that Claimant had a visual system impairment of 29%, and on that basis attributed to Claimant a whole person impairment of 29%. The AMA Guide makes clear, however, that a 29% visual system impairment is the equivalent to a 27% (not 29%) impairment of the whole person. *See* AMA Guide at 218, Table 6.

In sum, the impairments described by Dr. Karesh do not substantiate the 56% whole person impairment claimed in his declaration.

Sciatic nerve impairments: We also question Dr. Reischer's assessment of Claimant's tibial nerve injury. To assess the degree of impairment associated with Claimant's tibial nerve injury, Dr. Reischer starts with the sciatic nerve entry on Table 68 and subtracts the common peroneal nerve values to conclude that lost motor function of the tibial nerve amounts to a whole person impairment rating of 15%. Based on his assessment that Claimant suffered a 50% motor function loss of his tibial nerve, Dr. Reischer assigns a 7% whole person disability rating for the tibial nerve. Dr. Reischer thus opines that when these disability values (17% common peroneal nerve, 7% tibial nerve, and Dr. Karesh's combined 56% rating) are taken together under the AMA Guide's Combined Values Chart, Claimant is 66% disabled as to the whole person. While Dr. Reischer's method of assessing an AMA Guide rating for a tibial nerve injury does not seem illogical, he was not able to identify any source or guidance that corroborates this method of calculation.

Furthermore, there may also be a problem with the rating Dr. Reischer gave for Claimant's common peroneal nerve injury. He states that Claimant's common peroneal nerve "is completely gone" and that this results in a 17% disability rating of the whole person, because "there was a total absence of peroneal motor activity and sensory function upon physical examination [of Claimant]." He bases this 17% whole person disability rating on Table 68 of the AMA Guide, which assigns two whole person disability ratings for the common peroneal nerve: 15% for "motor" and 2% for "sensory." We note, however, that page 88 of the AMA Guide, under 3.2k Peripheral Nerve Injuries, states, "Sensory deficits and dysesthesias are subjective and must be carefully evaluated. Ideally, two examiners

should agree.” Contrary to this admonition, Dr. Reischer testified that he was the only one to examine Claimant and that a second examination was not made. These two concerns, taken together, undercut Dr. Reischer’s impairment assessment for Claimant’s nerve injuries.

Notwithstanding our concerns about Dr. Karesh’s and Dr. Reischer’s AMA Guide calculations, however, the evidence does demonstrate that, when evaluated holistically, Claimant did indeed suffer injuries that were among the most severe in the Libyan claims programs.

Claimant argues that his injuries—in particular the loss of his right eye—are comparable to the injuries suffered by other claimants who also “lost body parts” as a result of the Lod Airport attack. Claimant cites the decisions in Claim No. LIB-III-021, Decision No. LIB-II-016 (2016), and Claim No. LIB-III-016, Decision No. LIB-III-041 (2016), which awarded, respectively, \$5 million and \$4.5 million of additional compensation under Category D of the 2013 Referral. According to Claimant, “[n]o other claimant in this claims program who has lost a body part has been awarded anything less than 4.5 million dollars . . . .”

Claimant’s injuries are not as severe as those claimants who received \$4.5 million or more. We regard the injuries suffered by the claimants in Claim Nos. LIB-III-021 and LIB-III-016 to be of a fundamentally different character. In Claim No. LIB-III-021, both of Claimant’s legs were blown off by the explosive force of grenades during the Lod Airport attack. Similarly, in Claim No. LIB-III-016, a grenade blew the claimant’s left foot off and required an emergency amputation of her leg a few inches below the knee. Both claimants have lived with the long-term effects of losing their legs, and the permanent disability that

entails, for more than four decades. We view those injuries as more severe than Claimant's. Although Claimant's loss of his right eye was clearly an extremely severe injury, he retained his vision and remains capable of many of life's major activities and functions.<sup>18</sup>

In light of the new evidence presented by Claimant on objection, including, but not limited to, the degree of his impairment and the far-reaching negative consequences his injuries have had on his major life activities, Claimant is entitled to more than the \$3 million we awarded him in the Proposed Decision. Considering the full range of awards the Commission has made in these Libyan claims program, we conclude that Claimant is entitled to \$4 million in "additional compensation." While awards for additional compensation in these Libyan claims programs are not subject to mathematical precision, we note that, with this additional award, Claimant's awards for his physical injuries total \$7 million, or 70% of the \$10 million awarded to victims who had been killed.<sup>19</sup>

Accordingly, for all the reasons discussed above, and based on the new evidence and information submitted on objection, the Commission withdraws the portion of its Proposed Decision that awarded Claimant \$3 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

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<sup>18</sup> Claimant also argues that his injuries are worse than the injuries suffered by the claimants in Claim No. LIB-II-118, Decision No. LIB-II-156 (2012), and Claim No. LIB-II-156, Decision No. LIB-II-159 (2012), who each received \$4 million in additional compensation. Those claims, however, are not directly relevant here. In Claim No. LIB-II-118, the Commission specifically noted that the claimant had suffered a "unique" injury when the hijackers of a plane picked her out from among the passengers on the plane, and then shot her directly in the head, blowing a hole in her skull five inches wide, before then throwing her body out of the plane on to the tarmac where she was left for dead; and the injuries she suffered required brain surgery and nearly two months of hospitalization, and caused her permanent neurological damage. Proposed Decision at 7, 14-15. Likewise, in Claim No. LIB-II-156, the claimant had injuries that are of a sufficiently different nature from the injuries here and are not a useful comparator. *See* Proposed Decision at 13-14.

<sup>19</sup> *See* Claim No. LIB-III-021, Decision No. LIB-III-016 at 15-16 (2016).



Commission's final determination in this claim.

AWARD

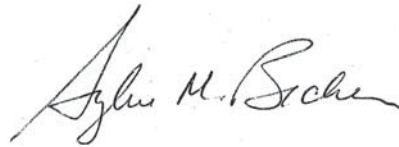
Claimant is entitled to an award in the amount of Four Million Dollars (\$4,000,000.00).

Dated at Washington, DC, February 23, 2017  
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.

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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.

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Sylvia M. Becker, Commissioner



## 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 multiple gunshot wounds to his face, chest, and leg. These injuries required numerous medical procedures over the ensuing decades and resulted in the loss of the use of his right eye, permanent disfigurement of several parts of his body, loss of muscle mass, and nerve damage. Claimant asserts that these injuries have had a substantial negative impact on his personal and professional life, and continue to do so.

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). Thus, although Claimant had not brought a lawsuit against Libya, the U.S. and Libya settled any claim against Libya he 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 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-096, Decision No. LIB-II-055 (2011) (Proposed Decision). 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-096, Decision No. LIB-II-055 at 6-7 (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 ICOSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On December 18, 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. This submission also included contemporaneous medical records and medical records created thereafter, photographs, Claimant's own sworn statements, and the sworn statement of a physician who visited Claimant in Israel.

## 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-096, Decision No. LIB-II-055, at 4 (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).

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

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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.



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 under 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 Lod Airport baggage claim area when the terrorist attack began. In the attack, machine gun fire hit Claimant’s face, chest, abdomen, and leg.

Immediately after the attack, Claimant was taken to the Tel Hashomer Hospital “in shock, with multiple wounds primarily in the face and chest, abdomen and left thigh.” A “serious wound [was] also found in [his] right eye, of which only remnants remain[ed].” The gunshots fractured Claimant’s chest and jaw, and his right shoulder was “torn.” He had bullets lodged in his left chest wall and in his right abdomen. Because of the different serious injuries, the doctors at Tel Hashomer had to perform multiple surgeries on Claimant simultaneously. Because Claimant’s right lung had collapsed, the doctors performed a tracheotomy<sup>3</sup> to prevent permanent brain damage. The doctors also enucleated his right eye<sup>4</sup> and removed the fragments of eye remaining in his eye socket. A plastic surgeon sutured the wounds in his face. Surgeons operated on Claimant’s jaw and

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

<sup>3</sup> The trachea is the medical term for the windpipe. A tracheotomy is an incision in the windpipe.

<sup>4</sup> To enucleate an eye is to surgically remove the eyeball from its surrounding capsule.

repaired his mandible. The doctors also removed the bullets from his body and repaired the wounds in his shoulder and thigh. During the laparotomy<sup>5</sup> to remove the bullet lodged in his abdomen, surgeons discovered a tear in Claimant's liver and diaphragm, which they sutured. The doctors also noticed a partial injury on the left side of the sciatic nerve, which they treated with a "stock to the foot." Claimant also suffered a hematoma in his right lung while recovering from the surgeries. Claimant spent approximately five weeks at Tel Hashomer Hospital before being discharged on July 4, 1972.

On July 7, 1972, Claimant was transferred to the Centro Medico de Puerto Rico for further treatment to the wounds to his eye, face, and jaw. His "shoulder wound was not healed completely and required local treatment"; his "mandible was still fixed," and his "right orbital required preparation for a prosthesis." In 1973, Claimant began outpatient treatment at the hospital's oral surgery and ophthalmology departments.

Over the ensuing years, Claimant underwent numerous medical treatments and reconstructive surgeries. Prior to 1978, he underwent five to six procedures for orbital reconstruction of his right eye. From 1973 to 1974, Claimant underwent a series of reconstructive surgeries in an attempt to repair the disfigurement to his face. After the surgeries, his appearance was diagnosed as "fair but not good."

Injuries Alleged: As of the time of the filing of his Claim (in 2014, forty-two years after the attack), Claimant remains blind in his right eye. He has continuing blurred vision in his other eye, and he experiences headaches, which he attributes to the loss of his right eye. Claimant still has scars on, and disfigurement to, his face and body. Claimant further states that the bullet wounds also caused nerve damage to his cheekbones, sinuses, and the

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<sup>5</sup> A laparotomy is a surgical incision into the abdomen.

right side of his mouth, and that he no longer has feeling in half of his face. Claimant also states he suffers from permanent pain in his left leg, left lower extremity paresthesia,<sup>6</sup> and a dropped foot. He also states he has lost muscle mass in the superior part of his right shoulder because of the bullet wounds, and that he constantly suffers pain, a burning sensation, and contractions in his right shoulder. Finally, he attributes numerous other medical ailments he has experienced over the years to injuries he suffered in the attack, including “acute sinusitis (rhinitis), throat infections, facial cellulitis, abscesses, intense migraines, and jaw infections”; he also states that he continues to suffer anxiety, depression, and insomnia. Claimant alleges that, as a result of the injuries he suffered in the attack, he lives an isolated life, was unable to complete college, and is only able to do clerical work.

#### *Supporting Evidence*

Claimant has supported his claim with, among other things, his own affidavits (dated April 20, 2010 and November 11, 2014), an affidavit from a Puerto Rican physician who visited Claimant in Israel shortly after the attack (dated February 8, 2010), recent photographs, and medical records. These medical records include a “disease summation” (hereafter “discharge summary”), apparently written a few months after Claimant’s discharge from Tel Hashomer Hospital in Israel, and medical reports from the 1970s, as well as recent medical reports and notes.

The discharge summary from Tel Hashomer Hospital, dated October 16, 1972, notes that Claimant was admitted on May 30, 1972, and discharged on July 4, 1972. According to the summary, Claimant, then seventeen years old, was one of the casualties

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<sup>6</sup> Paresthesia is an abnormal sensation, typically tingling or pricking (“pins and needles”), caused chiefly by pressure on or damage to peripheral nerves.

of the Lod massacre and was admitted in a serious condition, in shock, and with multiple wounds, primarily in the face, chest, abdomen, and left thigh. In particular, a serious wound was found in the right eye, of which only remnants remained. The summary further states that Claimant had a fracture in the chest, a fracture in the right mandible, and a tear wound in the right shoulder. It further notes that a bullet penetrated into the chest wall but did not damage internal organs, that another bullet penetrated the chest wall but did not penetrate into the thorax, that a third bullet also penetrated the chest wall and passed the lung and diaphragm and was visible in an X-ray in the abdomen, and that a fourth bullet “passed from side to side” and wounded the left thigh.

The discharge summary further states that, on admission, Claimant received a blood transfusion and was transferred to the operating room, where doctors performed a number of operations, including a nucleation of the eye, an open reparation of the fracture in the mandible, sutures by a plastic surgeon of “tears” in the face, and a tracheotomy. Surgeons extracted the bullet found in the peritoneum cavity<sup>7</sup> without damage to the intestine or any other organs. The doctors performed a laparotomy and sutured a superficial tear found in the liver. The doctors also closed a tear in Claimant’s diaphragm and introduced a drain to the thorax through the bullet penetration to the right chest.<sup>8</sup> Later, doctors extracted the bullet from the left chest wall and, after excision, sutured the wound in the shoulder. The doctors excised the entry and exit wounds in the thigh and, though there was no damage to the femur, they expressed fear of damage to the sciatic nerve. The summary further states that, during this recovery, the doctors noticed a partial

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<sup>7</sup> The peritoneum is the membrane surrounding the abdomen. The peritoneum cavity is another way to say the abdominal cavity.

<sup>8</sup> The thorax is a person’s chest, and this procedure apparently involves the insertion of a tube through the chest wall and into the pleural space or mediastinum to remove air or fluid or pus.

injury on the left side sciatic nerve which, according to instructions from the orthopedists, was treated by “a stock to the foot.”<sup>9</sup> A hematoma was found in the right lung, which was absorbed gradually. After a number of days, the doctors removed the drain from the thorax and the hematoma was completely absorbed.

Claimant has also submitted undated medical notes from the Centro Medico de Puerto Rico. These notes first list much of what was found in the Tel Hashomer disease summation discussed above. They then state that Claimant received outpatient examinations on August 4, 1972, August 14, 1972, and August 21, 1972. They further state that an oral surgeon examined Claimant on February 2, 1973, and that one of Claimant’s teeth needed to be extracted because of infection. They conclude by noting that Claimant was referred to the “Manhattan Eye, Ear and Throat Institute” in New York where he was still receiving treatment.

Claimant has also provided two pages of undated records from the Manhattan Eye, Ear and Throat Hospital, which note that Claimant was seen by a Dr. Smith on five occasions: from February 12, 1973 to February 16, 1973; from April 2, 1973 to April 6, 1973; from July 9, 1973 to July 13, 1973; from January 9, 1974 to January 13, 1974; and from June 5, 1974 to June 11, 1974. The records give no indication, however, of what services Dr. Smith provided.

Claimant has also submitted the medical notes of Dr. Guillermo Pico Hijo, covering the period 1972 to 1978. In these notes, Dr. Hijo states, *inter alia*, that Claimant underwent three surgeries conducted by Dr. Byron Smith in New York, including to the

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<sup>9</sup> Claimant does not define the phrase “stock to the foot,” and we have not been able to find a medical definition for it.

buccal mucosa.<sup>10</sup> According to Dr. Hijo, Claimant's "[a]pppearance is fair but not good." In a note dated January 19, 1973, Dr. Hijo indicates that Claimant had cellulitis and fluctuating abscess in the frontal region "nasal to right eyebrow." Dr. Hijo additionally states, in a note dated March 24, 1975, that Claimant had swelling on the right side of his forehead and burning in his right eye socket for the previous two days as well as some pain. He further notes that, as of January 17, 1978, Dr. Smith had performed five or six procedures for orbital reconstruction of Claimant's right eye and that, in the previous six months, Claimant had been feeling severe retro-orbital pain and headaches in his right side, as well as a headache, blurring of vision, nausea and dizziness two weeks earlier. Finally, Dr. Hijo notes that Claimant suffered frequent irritation.

Claimant has also submitted treatment records from the ophthalmologist practice of Dr. Luis Montalvo Bonilla and Dr. Carlos Montavo Vega. These records note, *inter alia*, that on August 5, 1998, Claimant reported blurred vision for 18 hours, involuntary movement, discomfort, and pressure. They also note that, on March 4, 2008, Claimant was instructed not to undertake any "heavy work with eye." Claimant has also provided medical records from an ophthalmologist, Dr. Jaime Jackson. In a note dated November 13, 2013, Dr. Jackson states that Claimant had had surgery on his remaining eye six months earlier, and was now complaining of blurred vision and other problems. Claimant has also submitted the medical records of Dr. Angel del Valle Torres, in which Dr. Torres notes, *inter alia*, that Claimant had repeatedly missed work in 2009 while under doctor's care. Claimant has additionally submitted a treatment letter dated June 14, 1999, from Dr. Jose A. Soberal, in which Dr. Soberal states he has been treating Claimant since 1980, and

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<sup>10</sup> The buccal mucosa is the inside lining of the cheeks.

that, in 1980, Claimant had periodontal inflammation and infection, strong pain in his mandibles, and could not open his mouth. Further, Dr. Soberal states that Claimant complained of insomnia in October 1980, had a blood sugar problem in 1995, high blood pressure in 1998 and, as the date of the letter (1999) suffered from anxiety and depression. Claimant has also submitted the 2014 treatment record from Dr. Israel Aviles Hernandez, who states that Claimant has left lower extremity paresthesia and pain, and recounts that Claimant suffered a left sciatic nerve injury after a terrorism attack in 1972 and has a drop foot. Finally, Claimant has also submitted nine recent pictures that show a red gash in place of his right eye, as well as scars to his face, right shoulder, back, left side of his chest, right side of his chest, abdomen and left leg.

*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 terrible and were life-altering. He suffered multiple gunshot wounds to his face, chest, and leg, including one to his right eye. He spent approximately five weeks at Tel Hashomer Hospital in Israel in the immediate aftermath of the terrorist attack and then underwent significant additional outpatient medical care in Puerto Rico. He also underwent five or six (the evidence is not definitive) surgeries between 1973 and 1978 for orbital reconstruction of his right eye, as well as at least one operation attempting to repair the disfigurement to his face.

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. First

and foremost, Claimant has lost one of his eyes. Claimant has also submitted evidence of subsequent vision problems in the other eye, as well as headaches, facial swelling, facial pain, facial burning sensations, nausea, dizziness and frequent irritation. While Claimant has not provided evidence that definitively links these problems to the 1972 attack or medical reports explaining how the 1972 attack would cause these problems, these problems can reasonably be attributed to the loss of Claimant's eye. Claimant has also provided evidence that he suffers difficulties with his face, chest, and leg. He has provided evidence of periodontal inflammation and infection, pain in his mandibles, left lower extremity paresthesia, left sciatic nerve injury, and drop foot. While Claimant again has not provided evidence that definitively links these problems to the 1972 attack, or medical reports explaining how the 1972 attack would cause these problems, these problems can also reasonably be attributed to the injuries Claimant sustained in the 1972 attack as described in the Tel Hashomer disease summation, including the fracture to his chest, fracture to his right mandible, tear wound to his right shoulder, wound to his left thigh, superficial tear to his liver, tear in his diaphragm, and injury to his sciatic nerve.

Claimant also alleges that, as a result of the injuries he suffered in the attack, he lives an isolated life; he does not, however, explain how this is due to the physical (as opposed to emotional) injuries he suffered during the attack. In any event, Claimant does state that he is nonetheless married and has three children, a grandson, and granddaughters. Claimant also asserts that as a result of the 1972 attack injuries he was not able to complete college and is only able to do clerical work. Other than his own affidavits, Claimant has not provided evidence tying these asserted difficulties to the 1972 attack. Nonetheless, we believe the nature of Claimant's substantiated injuries and follow-up surgeries permits an



inference that the 1972 attack caused some measure of ongoing social difficulties of this ilk. Claimant also states he continues to suffer anxiety, depression, and insomnia. 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).

In short, the attack permanently impaired Claimant and, as documented by the medical records, resulted in the loss of the use of his right eye as well as substantial medical problems in his face, chest, and leg, all of which have together limited his undertaking of numerous major life functions and activities.

Disfigurement: Claimant's injuries have left him with substantial and visible scars. He has provided nine recent pictures that show a red gash in place of his right eye, as well as scars to his face, right shoulder, back, left side of his chest, right side of his chest, abdomen, and left leg.

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 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)).

When applied to the facts of this claim, these factors lead us to conclude that Claimant merits a significant award of compensation. First, as discussed above,<sup>11</sup> Claimant's initial injuries were extremely severe: he suffered multiple gunshot wounds to his face, chest, and leg, including one to his right eye. Second, he spent a significant amount of time in various hospitals: To start, he spent about five weeks at Tel Hashomer Hospital in Israel immediately after the May 1972 terrorist attack. His hospitalizations also included at least outpatient treatment several times at the Centro Medico de Puerto Rico in 1972 and 1973, and five stays at the Manhattan Eye, Ear and Throat Hospital in 1973 and 1974, ranging from four to six days each. Third, he required five or six orbital reconstruction surgeries to his right eye, as well as at least one operation for the disfigurement to his face. Fourth, as described in detail above,<sup>12</sup> Claimant was permanently impaired to a significant degree: in particular, he has lost the use of his right eye. Finally, he has serious disfigurement to his outward appearance: a red gash where his right eye used to be and significant scars on his face, right shoulder, back, left side of his

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<sup>11</sup> See *supra* pp. 14.

<sup>12</sup> See *supra* pp. 14-16.

chest, right side of his chest, abdomen, and left leg. In light of these facts, and in consideration of the factors listed above, \$3 million is an appropriate amount of compensation in this claim. *Cf.* Claim No. LIB-II-155, Decision No. LIB-II-171 (2012) (awarding \$3 million to claimant whose shrapnel injuries required him to undergo a number of surgeries, including a craniectomy and a corneal transplant, and which permanently impaired his vision, deformed his face, and had other substantial long-term effects on his major life functions and activities).

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>13</sup> That principle applies equally here. Accordingly, Claimant is entitled to an award of \$3,000,000.00, and 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).

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<sup>13</sup> See Claim No. LIB-III-021, Decision No. LIB-III-016, at 17.

AWARD

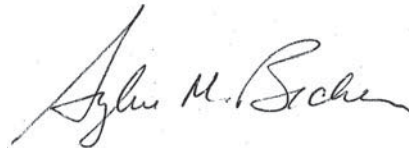
Claimant is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

Dated at Washington, DC, January 12, 2016  
and entered as the Proposed Decision  
of the Commission.



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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).