

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

In the Matter of the Claim of	}	
	}	
	}	
	}	
ESTATE OF ELIZABETH L. ROOT, DECEASED; JAMES G. ROOT & DAVID H. ROOT	}	Claim No. LIB-III-033
PERSONAL REPRESENTATIVES	}	Decision No. LIB-III-020
	}	
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

PROPOSED DECISION

The Estate of Elizabeth L. Root brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based on physical injuries Ms. Root suffered during a terrorist attack at Fiumicino Airport in Rome, Italy, on December 27, 1985.¹ In that attack, terrorists shot Ms. Root in the chest, and the gunshot wound pierced her right lung and fractured several ribs, requiring emergency surgery and hospitalization for approximately three weeks at three different hospitals in Italy and the United States. Under a previous program, the Commission awarded her Estate \$3 million in compensation for these injuries. The Estate now seeks additional compensation based on a claim that the severity of Ms. Root's injuries is a "special circumstance warranting additional compensation." Because Claimant has demonstrated that the severity of Ms.

¹ Ms. Root died in 1992 of causes unrelated to the attack. Her sons, James G. Root and David H. Root, are co-executors of the estate (herein "Claimant" or "Claimant Estate").

Root's injuries is a "special circumstance warranting additional compensation," it is entitled to an additional award of \$1.5 million.

BACKGROUND AND BASIS OF CLAIM

Ms. Root was waiting to board a flight at Fiumicino Airport² when terrorists launched an assault with machine guns and hand grenades. During the attack, she suffered a gunshot wound from a bullet that passed through her chest and pierced her right lung, fracturing several ribs and leaving her in a "state of circulatory collapse" She underwent emergency surgery and slipped into a coma for nearly a day. She was hospitalized for approximately three weeks: 12 days in Italy, and an additional 10 days in the United States. According to Claimant, Ms. Root did eventually recover, although she had permanent scars from her surgery.

A number of the Rome Airport victims sued Libya in federal court in 2006, although Claimant was not among them. *See Buonocore v. Great Socialist People's Libyan Arab Jamahiriya*, No. 06-727, 2013 WL 351610, at *1 (D.D.C. Jan. 29, 2013); Amended Complaint for Compensatory & Punitive Damages, *Buonocore v. Great Socialist People's Libyan Arab Jamahiriya*, 2013 WL 351610 (D.D.C. 2013) (No. 1:06-cv-727(JMF)). In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya, including claims "aris[ing] from personal injury ... caused by ... [a] terrorist attack." *See Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* Art. I ("Claims Settlement Agreement"), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008; *see also* Libyan Claims Resolution Act ("LCRA"), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). Two months later, in October 2008, the President

² Fiumicino Airport is also known as Rome Leonardo da Vinci Airport or Leonardo da Vinci-Fiumicino Airport.

issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

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

In October 2009, the Claimant filed a claim under the January 2009 Referral, alleging that Ms. Root had suffered physical injuries as a result of the Rome Airport attack. By Proposed Decision entered April 7, 2011, the Commission determined that her Estate was eligible for compensation under Category E of that Referral and awarded it a fixed sum of \$3 million. *See Claim of ESTATE OF ELIZABETH L. ROOT*, Claim No. LIB-II-040, Decision No. LIB-II-026 (2011) (“Physical-Injury Decision”). Claimant did not object and so, on May 13, 2011, that decision became final.

The Legal Adviser then referred an additional set of claims to the Commission on November 27, 2013. *Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* (“2013 Referral” or “November 2013 Referral”). One category of claims from the 2013 Referral is applicable here. That category, known as Category D, consists of

claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by our January 15, 2009 referral or by this referral, provided that (1) the claimant has received an award for physical injury pursuant to our January

15, 2009 referral or this referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim's death; and (3) the claimant did not make a claim or receive any compensation under Category D of our January 15, 2009 referral.

2013 Referral at ¶ 6.

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

On June 11, 2014, the Commission received from the Estate a completed Statement of Claim seeking compensation under Category D of the 2013 Referral, together with exhibits supporting the elements of its claim. The submission also incorporated by reference the evidence previously submitted in connection with the Estate's physical-injury claim under the January 2009 Referral.

DISCUSSION

Jurisdiction

As an initial matter, the Commission must consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the "Category D" paragraph of the 2013 Referral is limited to claims of (1) "U.S. nationals"; who (2) have received an award for physical injury pursuant to the January 15, 2009 referral or this referral and (3) did not make a claim or receive any compensation under Category D of the January 15, 2009 referral. 2013 Referral ¶ 6.

Nationality

This claims program is limited to "claims of U.S. nationals." Here, that means that a claimant must have been a national of the United States continuously from the date

the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-001, Decision No. LIB-III-001, at 5-6 (2014).

In its Physical-Injury Decision, the Commission found that the claim was held by 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 5. Claimant therefore satisfies the nationality requirement here.

Prior Award

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

No Claim Under Category D of the January 2009 Referral

With respect to the final jurisdictional requirement, the Estate did not make a claim or receive any compensation under Category D of the January 2009 Referral. The Estate thus meets this element of its 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 ¶ 6.³ The Commission has previously drawn on decisions from the January 2009 Referral to determine what constitutes a “special circumstance” in this program. The 2009 Referral decisions, made pursuant to the same Libyan Claims Settlement Agreement and involving the same terrorist attacks, addressed the exact same question as that presented here: does the “severity of [a victim’s] injury” constitute a “special circumstance warranting additional compensation”? The Commission adopted the same standard that it applied under the 2009 Referral and held that in determining whether the severity of a victim’s physical injuries is a “special circumstance warranting additional compensation” under Category D of the 2013 Referral, the Commission 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 No. LIB-III-021, Decision No. LIB-III-016, at 7 (Proposed Decision).

Factual Allegations

Claimant alleges that Ms. Root, who was 77 years old at the time of the attack, “was shot through the chest with bullets piercing her right lung and fracturing her 4th, 5th, and 6th ribs.” It states that she was taken by ambulance to C. Forlanini Hospital in Rome, where she underwent surgery that included the suturing of the entry and exit wounds, a blood transfusion, and “revision of her right hemithorax cavity and reconstruction of the thoracic bone.” During the surgery, Ms. Root’s heart temporarily stopped. Although

³ 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 Ms. Root survived the Rome Airport attack, and Claimant does not assert that the attack resulted in her death in 1992, only the first basis for entitlement is relevant here.

doctors restarted it, she then fell into a coma. Claimant states that Ms. Root was subsequently transferred to another hospital in Rome, San Camillo Hospital, where tubes remained in her chest and she was hooked up to a respirator. Claimant notes that, four days after the incident, Ms. Root was “stable but in intensive care[,]” and that the respirator was removed a few days later, on January 3, 1986, one week after the attack.

Claimant alleges that Ms. Root was then flown to the United States on January 7, 1986, accompanied by her Italian doctor, and was “on a stretcher placed over four first class seats.” Upon her return to the U.S., she was immediately transferred to Riverside Methodist Hospital in Columbus, Ohio, where she remained hospitalized until January 18, 1986. Claimant states that Ms. Root “was discharged from the hospital 22 days after being shot, 12 days of which were in intensive care.” It explains that she “did recover[,]” but that she “was unable to cough productively, had a hoarse voice from the tubes, and of course scar tissue from the surgery for the rest of her life”

Supporting Evidence

Claimant has supported its claim with, among other things, an undated narrative setting forth the facts of the claim, contemporaneous medical records, numerous contemporaneous newspaper articles and photographs, and an excerpted copy of a journal kept by one of Ms. Root’s sons at the time of the incident, which describes her ordeal and treatment in Italy in the days following the attack.

The medical records from Forlanini Hospital indicate that Ms. Root was admitted on December 27, 1985, and that she was “in [a] state of circulatory collapse initiated by [a] thoracic injury from a firearm.” Her pleural cavity⁴ was filled with blood, and three

⁴ A lung’s pleura is “[t]he serous membrane enveloping the lungs and lining the walls of the pulmonary cavities.” *Stedman’s Medical Dictionary* 1512 (28th ed. 2006). The pleural cavity is “the potential space between the [two] layers of the pleura.” *Id.* at 330.

of her ribs were fractured. A radiological report indicates that there was a “[m]etallic fragment under the 4th rib” She underwent surgery consisting of a “revision of [the] right hemithorax cavity[,]” suturing of the wound, and “[r]econstruction of the . . . thoracic bone.” Doctors also performed a blood transfusion. Following the surgery, “2 drains [were] left in the pleural cavity.” The records also indicate that, at some point, Ms. Root was “in [a] state of superficial coma” The same day, she was discharged and transferred to San Camillo Hospital, also in Rome.

The Estate has been unable to obtain records from San Camillo Hospital; however, it has submitted numerous contemporaneous newspaper articles that consistently describe the nature of Ms. Root’s injuries and the treatment she received. They indicate that she regained consciousness the day after the attack, but that she remained in the intensive care unit. For several days, she was unable to speak because of the drainage tubes and respirator. The articles also note that her sons arrived in Italy to be with their mother on December 29, 1985, two days after the attack.

According to the news articles, Ms. Root returned to the United States, arriving on January 8, 1986, accompanied by one of the Italian doctors who treated her at San Camillo Hospital. One of the articles notes that when the plane arrived in Columbus, Ohio, “a critical-care team from Riverside [Methodist Hospital] rushed [her] through the airport to a waiting ambulance. She was wrapped from head to foot in blankets to protect her from the cold.” A photograph printed in the *New York Times* the following day shows her wrapped in blankets and being transferred to the ambulance.

Claimant has submitted a printout from Riverside Methodist Hospital in Columbus, Ohio, showing that Ms. Root was admitted on January 8, 1986, and was discharged on January 18, 1986. It has also submitted a 2009 letter from one of the

doctors who treated her there. The doctor recalls that she “was treated for complications resulting from a gunshot wound to her chest and lung sustained during [the Rome Airport attack].”

Claimant has also provided some photocopied excerpts of a hand-written journal that one of Ms. Root’s sons kept while they were visiting her in the hospital in Rome. The journal is consistent with the information contained in the medical records and in the newspaper articles. It also contains additional details regarding the nature and severity of Ms. Root’s injuries and the treatment she received. For instance, it notes that, as she was coming out of surgery, “her heart had stopped. The doctors had been able to re-start it but she had gone into coma.” The journal added that she later came out of the coma.

The journal notes that when Ms. Root’s sons were able to see her, she was on a respirator and was unable to talk because of the tubes in her throat. The doctor told them that the bullet had passed through their mother’s right lung, which was filled with blood. The respirator was used in part to ensure that blood would not fill the left lung. The journal notes that Ms. Root was able to write her first note on Tuesday (four days after the incident), and that she “was much better.” It further notes that she came off the respirator on January 3, 1986 (four days after that), and that, approximately two days later, the last of the tubes was removed.

Application of Special Circumstances Factors to Evidence

In light of the evidence detailed above, Claimant has proven that the severity of Ms. Root’s physical injuries is a special circumstance warranting additional compensation under this claims program. Of the three factors to be considered in making this determination, the most significant one here is the nature and extent of the injury. The evidence is clear that Ms. Root suffered a very serious physical injury as a result of

the gunshot wound she sustained during the Rome Airport attack. A bullet passed through her right lung, a vital organ, a fact we have previously considered important in determining the severity of a claimant's initial injury. *See* Claim No. LIB-II-159, Decision No. LIB-II-167, at 10 (2013). When she was admitted to the hospital in Rome she was in a state of "circulatory collapse." Blood was filling her pleural cavity, and she required a blood transfusion and intubation. She required emergency surgery to repair her chest wound and reconstruct her thoracic bone. When Ms. Root emerged from surgery, her heart temporarily stopped, and she fell into a coma from which she did not awake until the following day. She had to be placed on a respirator for several days to prevent blood from filling her left lung, and she needed drainage tubes for nearly a full week. She was hospitalized for approximately three weeks, and much of her initial hospitalization was spent in intensive care. Given these facts, the Commission concludes that Ms. Root's injuries were among the most severe in this program.

There is little evidence that speaks to the second and third factors, the impact the injury had on Ms. Root's ability to perform major life functions and activities, and the degree to which her injury disfigured her outward appearance. Claimant asserts that, although Ms. Root recovered from the incident, she was "unable to cough productively, had a hoarse voice from the tubes" in her throat, and had scars from her chest surgery. Beyond these bare assertions, however, Claimant has submitted no evidence to support this aspect of the claim. While Ms. Root undoubtedly suffered some residual effects from her ordeal, the burden is on the Claimant to submit evidence and information sufficient to establish the elements of its claim. 45 C.F.R. § 509.5(b) (2014). Moreover, the Commission's standard for physical-injury claims under the Libya Referrals requires

that claimants verify their injuries with medical records. *See* Claim No. LIB-I-001, Decision No. LIB-I-001, at 9 (2009); Physical-Injury Decision, *supra*, at 8.

Nevertheless, the Commission concludes that the severity of Ms. Root's injuries rises to the level of a special circumstance warranting additional compensation under Category D. Accordingly, her estate 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. In its first decision awarding "additional compensation" for physical injuries under the 2013 Referral, the Commission held that, "in determining the appropriate level of compensation [for successful claimants], 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 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).

Ms. Root's injuries were among the most severe in this claims program, considering, *inter alia*, the nature of the injury, the extensive surgery she underwent immediately after the incident, the fact that her heart temporarily stopped and that she fell into a coma for approximately one day, the fact that she was hooked up to a respirator for several days after the incident, and the number of days she initially spent in the hospital

(including several days in the intensive care unit). With regard to the other relevant factors, there is no evidence of any permanent impairment or subsequent medical procedures following her release from the hospital in Ohio. Nor is there any medical evidence of disfigurement to Ms. Root's outward appearance, though Claimant alleges that Ms. Root had "scar tissue from the surgery for the rest of her life" and we presume, based on the nature of her initial injuries, that she had some long-term scarring on her chest.

Considering the Commission's other awards for additional compensation for physical injuries under both the 2009 and 2013 Referrals and the evidence presented in this case, the Commission determines that \$1,500,000.00 is an appropriate amount of compensation. Compensable claims in this claims program are not entitled to interest as part of the awards. *See* Claim No. LIB-III-021, Decision No. LIB-III-016, at 17. Accordingly, the Commission determines that the Claimant is entitled to an award of \$1,500,000.00 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 ICSA. 22 U.S.C. §§ 1626-1627 (2012).

AWARD

Claimant is entitled to an award in the amount of One Million Five Hundred
Thousand Dollars (\$1,500,000.00).

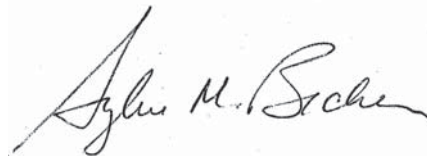
Dated at Washington, DC, May 12, 2015
and entered as the Proposed Decision
of the Commission.

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

July 1, 2015



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2014).