**Shomer & Shomer Attorney at Law**

To:

Mr. Massimo Elliota

Re: **Road Traffic Accident Dated 11th August 2014**

**Wafa Azam and Sahar Azam**

Further to our conversation over the phone, the following is my reply:

**The Salaries of Ms. Wafa Azam and Mr. Sahar Azam** (hereinafter: the “**Employees**”):

1. As I have already explained in previous letters, the employment agreements signed by the injured parties and the Nissim company, were signed in real time with a date for commencement of employment, regardless of the accident.
2. The firm’s manager, Mr. Nissim Azam, who accepted the Employees for employment and agreed the terms and conditions of their salary and raises, will testify to the fact.
3. Moreover, we hasten to add that the Employees agreed to a low initial salary, owing to the fact that the company is a new one which had not yet set is business activities in motion; as a mark of support and from a desire to integrate into the labour market, the Employees agreed to a low initial salary provided that the salary be raised in the three consecutive years up to the point that it reaches the customary salary level.
4. As evidence of the veracity of the foregoing, and to prove the Employee’s claims, you are invited to peruse the pay slips of the employee who replaced Mr. Wafa Azam, Mr. Rami Azam (Wafa Azam’s son), whose salary, in accordance with the pay slips, is 15,000 NIS per month.

**\*\*\* Enclosed herewith are Rami Azam’s pay slips for the period.**

**Mandatory Pension Payment – Loss of Pension for the Injured Parties**

1. In accordance with the Mandatory Pension Act, an employer is obligated to starting a pension plan after the completion of 6 months of employment.

**\*\*\* For your convenience and to clarify the point, the Pension Act, translated into English, is enclosed herewith.**

1. In accordance with the Mandatory Pension Act, the employer contributes to the pension fund a monthly payment commensurate with the employee’s salary, which comprises three components:
	1. Payment for severance pay at a rate of 8.33%
	2. Payment for employer contributions at a rate of 6.5%
	3. Payment for employee contributions at a rate of 6%
2. The first two components (a + b) are paid at the employer’s expense (8.33% + 6.5%) and the last component is deducted from the employee’s salary.
3. The pension fund is designed to ensure that workers in the marketplace have monthly compensation in the event of disability and/or compensation in the event of termination of employee-employer relations, and most importantly of all an old age stipend once the employee retires.
4. In the absence of a pension fund, the injured parties in fact lost their retirement bonus (severance) and the old age stipend paid after the age of retirement, and **which constitutes 75% of the final salary**.
5. In accordance with the Salary Protection Act, Sections 19A and 25B(c), the employer is under a duty to secure the employee’s pension rights; the Israeli legislator took care to compel employers to open pension funds for their workers, and an employer who fails to comply with the legislation is subjected to a fine of 226,000 NIS under Section 61(c) of the Penal Code Act.

**\*\*\* Enclosed herewith are translations of the relevant sections of law.**

1. Thus, an employer has no interest in acting contrary to the law, and all employers in Israel open pension funds for their workers.
2. To prove the foregoing, we clarify, that Mr. Wafa Azam has a pension fund on account of his term of employment at the *Tafron* factory, and he is entitled, upon retirement, to a partial stipend. The sum of money saved in the account, to date, is 799,554 NIS, which sum is frozen until retirement age, at which point Mr. Wafa Azam will start to receive a partial pension from the fund.

**\*\*\* Enclosed herewith a report of the balances of Mr. Wafa Azam’s pension account.**

1. We further claim, that all remaining employees who continued to work for the Nissim Azam company, enjoy the benefit of pension insurance, and the company opened for its employees (each according to his seniority) a pension fund and pays monies on their account.

**\*\*\* Enclosed herewith is a certificate evidencing that the Nissin company has pension insurance for three company employees, Rami Azam, Nissim Azam and Dagash Nisrin.**

1. To our dismay, the process of starting a pension fund for Mr. Wafa Azam and Ms. Sahar Azam was never completed, a month and a half after the entitlement to the fund had been established, and it is a well-known fact that this period of time does not enable completion of the process of setting up a fund, and at times the process of opening a fund lasts several months.
2. However, we emphasise, that even if a pension fund was opened for the injured parties in July 2014, that would yet not be of any assistance to them, since there is a qualification period of 5 years, after which one can enjoy the benefits of the insurance coverage.
3. In conclusion, the issue of the failure to open a fund before the accident neither adds to, nor subtracts from, the calculation of the losses incurred by Mr. Wafa Azam and Ms. Sahar Azam, and in this instance, under Israeli law, the insurance company (the mandatory vehicle insurance) must bear payment for the loss of pension rights, at a rate of 12.5% of their salary, until retirement.

**Calculation of Compensation for Mr. Wafa Azam on Account of the Road Traffic Accident Dated 11th August 2014**

1. **Pain and Suffering:**
2. In accordance with the Compensation for Victims of Road Traffic Accidents Act, the maximum amount of compensation for this component is 175,000 multiplied by the level of medical disability ascribed to the injured party.
3. Mr. Wafa Azam was assigned a medical disability level of 55% on account of the accident (in accordance with the determination of the National Insurance Institute).
4. In accordance with the medical opinions of Dr. Shtahl and Dr. Swiri, the level of his medical disability is 100%.
5. Thus, and exclusively for the purposes of compromise and settlement, we will calculate in accordance with the minimal amount for this head of damages, per a disability rate of 55% and hospitalisation from 11th August 2014 through 21st October 2014, *viz*., 72 days in hospital.
6. In accordance with the calculator employed in Israel and designed for lawyers and judges, the amount of compensation stands at 102,516 NIS.

**\*\*\* Enclosed herewith a calculation using the calculator customarily used in Israel.**

1. **Loss of Past Earnings, Loss of Future Earnings, and Loss of Pension Rights:**
2. Since Mr. Wafa Azam completely lost his ability to earn a living, and in particular in light of the fact that the National Insurance Institute determined that he has lost his ability to earn a living at a rate of 100%, forever, thus his functional impairment is complete.
3. In the circumstances, Mr. Wafa Azam fully lost his salary from the date of the accident and until his retirement.
4. Moreover, Mr. Wafa Azam lost his pension stipend from retirement until his death.
5. But for the accident, Mr. Wafa Azam would have continued to work through to retirement age, thus he would have been entitled to payment of a monthly stipend worth 75% of his final salary, from retirement and until his death.
6. In the circumstances, Mr. Wafa Azam is entitled to payment of a pension stipend at a rate of 75% of his salary, to the tune of 11,250 NIS per month, from the day of retirement and until the end of his lifespan.
7. We note, that payment of the pension is not conditional upon, and is not offset against, the old age stipend paid to Mr. Wafa Azam after he reaches the age of retirement, so the issue of payment of the old age stipend from the National Insurance Institute is not taken into account, because said payment has no influence and/or affect and is not related to the payment he has lost from the pension fund.
8. In accordance with the lost earning and lost pension rights calculator customarily used in Israel, Mr. Wafa Azam is due compensation to the tune of 3,076,909 NIS.

**\*\*\* Enclosed herewith a calculation using the calculator customarily used in Israel.**

1. From this sum, one must offset National Insurance payments on account of disability stipend, which he started to receive following the accident, to the tune of 3,272 NIS (per month) \* 129.04 (capitalisation coefficient – up to the age of retirement) = 422,218 NIS.
2. In light of the foregoing, the entitlement on account of the head of damages of lost income stands at 2,654,691 NIS.
3. **Medical Expenses:**
4. In accordance with the law in Israel, the injured person is insured by a national health insurance plan, so most of the medical services he requires are provided by the State in consideration of low payments.
5. In accordance with case law, and in the absence of any extraordinary medical expenses over and above the national health insurance scheme, for this head of damages, the customary award is compensation of 50,000 NIS.
6. **Housing Adjustments and Ancillary Expenses:**
7. Owing to the nature of the accident, and the disability from which Mr. Wafa Azam suffers, there is a need to carry out adjustments to his residential arrangements, including the expenses incidental on making a stairwell-free entrance suitable for the handicapped, enlarging internal doorways inside the home, etc.
8. In accordance with the judgements of the court in Israel, for this head of damages, the award is made by way of an estimate and judicial evaluation, and, on average, the customary award is 100,000 NIS (owing to the nature of the injury and the level of disability).
9. **Third Party Assistance**
10. Owing to Mr. Wafa’s injury, he requires assistance and accompaniment in daily activities, including bathing, getting dressed, food preparation and serving, mobility assistance, help cleaning the home, and a chaperone for attending errands at all the institutions he must visit.
11. Mr. Wafa Azam required the constant assistance of members of his family for a full year, every day, for all hours of the day.
12. Evidence in support of that claim can be found in the National Insurance Institute’s decision regarding the special services stipend, under which his entitlement was approved through July 2015.
13. It is customary to calculate this head of damages in accordance with the hourly rate of the minimum wage, 29.12 NIS, multiplied by 40 monthly hours, and in total, 1,164 NIS per month \* 264 (capitalisation coefficient) = 307,296 NIS.
14. **Conclusion:**
15. The sum of compensation due to Mr. Wafa Azam after the offset of the amount of the stipend from the National Insurance Institute, is 3,214,503 NIS plus legal fees and VAT.
16. As for the question of legal fees, I emphasise that my legal fees, in accordance with the Israel Bar Association rules, are 11% + VAT (at 17%), and naturally, we must take into account also your fees in accordance with the rules applicable in Switzerland.

**Calculation of Compensation for Ms. Sahar Azam on Account of the Road Traffic Accident Dated 11th August 2014**

**1) Pain and Suffering:**

1. In accordance with the Compensation for Victims of Road Traffic Accidents Act, the maximum amount of compensation for this component is 175,000 multiplied by the level of medical disability ascribed to the injured party.
2. Ms. Sahar Azam was assigned a medical disability level of 55% on account of the accident (in accordance with the determination of the National Insurance Institute).
3. For compromise and settlement purposes, we will calculate in accordance with the minimal amount for this head of damages, per a disability rate of 55%, and hospitalisation from 11th August 2014 through 21st Augu 2014, *viz*., 10 days in hospital.
4. In accordance with the calculator employed in Israel and designed for lawyers and judges, and the amount of compensation stands at 90,933 NIS.

**\*\*\* Enclosed herewith a calculation using the calculator customarily used in Israel.**

2) **Loss of Past and Future Earnings (Including Pension Rights):**

1. Since Mr. Wafa Azam (*sic*) completely lost his ability to earn a living, and in particular in light of the fact that the National Insurance Institute determined that he has lost his ability to earn a living at a rate of 100%, forever, thus his functional impairment is complete.
2. In the circumstances, Mr. Wafa Azam fully lost his salary from the date of the accident and until retirement.
3. In accordance with the lost earning rights calculator customarily used in Israel, Mr. Wafa Azam is due compensation to the tune of 2,614,217 NIS.

**\*\*\* Enclosed herewith a calculation using the calculator customarily used in Israel.**

Offsets the need to be applied:

1. From this sum, one must offset National Insurance payments on account of disability stipend, to the tune of 1,522 NIS \* 166.7 (capitalisation coefficient) = 253,717 NIS.
2. In light of the foregoing, the entitlement on account of the head of damages of lost income, including pension, in accordance with life expectancy, stands at 2,360,500 NIS.

**3) Medical Expenses:**

1. In accordance with the law in Israel, the injured person is insured by a national health insurance plan, so most of the medical services she requires are provided by the State in consideration of low payments.
2. In accordance with case law, and in the absence of any extraordinary medical expenses over and above the national health insurance scheme, for this head of damages, the customary award is compensation of 50,000 NIS.

**4)** **Housing Adjustments and Ancillary Expenses:**

1. Owing to the nature of the accident, and the disability from which Ms. Wafa Azam (*sic*) suffers, there is a need to carry out adjustments to the residential arrangements, including the expenses incidental on making a stairwell-free entrance suitable for the handicapped, enlarging internal doorways inside the home, etc.
2. Since her partner has demanded this sum, and to the extent that his demand is accepted, then no double-payment should be made on account of this component, since they both live in the same apartment.

**5)** **Third Party Assistance:**

1. Owing to Ms. Sahar’s injury, she requires assistance and accompaniment in daily activities, including bathing, getting dressed, food preparation and serving, mobility assistance, help cleaning the home, and a chaperone for attending errands at all the institutions she must visit.
2. Ms. Sahar Azam required the constant assistance of family members for a full year, every day, for all hours of the day.
3. It is customary to calculate this head of damages in accordance with the hourly rate of the minimum wage 29.12 NIS, multiplied by 40 monthly hours, and in total, 1,164 NIS per month \* 264 (capitalisation coefficient) = 307,296 NIS

**6) Conclusion:**

1. The sum of compensation due to Mr. Wafa Azam (*sic*) after the offset of the amount of the stipend from the National Insurance Institute, is 2,808,729 NIS plus legal fees and VAT.
2. As for the question of legal fees, I emphasise that my legal fees, in accordance with the Israel Bar Association rules, are 11% + VAT (at 17%), and naturally, we must take into account also your fees in accordance with the rules applicable in Switzerland

Further to our conversation over the phone, the following are the injured parties’ minimum demands:

1. **Compensation for Mr. Wafa Azam 3,214,503 NIS, for settlement and compromise purposes, the custom is to compute the compensation award at 70% of the entitlement, so that the minimum for Mr. Wafa Azam is 2,200,000 NIS plus legal fees.**
2. **Compensation for Ms. Sahar Azam 2,808,729 NIS, for settlement and compromise purposes, the custom is to compute the compensation award at 70% of the entitlement, so that the minimum for Mr. Wafa Azam is 2,000,000 NIS plus legal fees and VAT.**

Yours truly,

Adv. Rami Shomer