

**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 LUZ ESTHER LUGO QUIÑONES, DECEASED;	}	Claim No. LIB-III-016
ROSA ESTHER VÁZGUEZ LÓPEZ, ADMINISTRATOR	}	Decision No. LIB-III-041
	}	
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joshua M. Ambush, Esq. Joshua M. Ambush, LLC
-----------------------	---

PROPOSED DECISION

Claimant Estate brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based on physical injuries suffered by Luz Esther Lugo Quiñones during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In that attack, a grenade blew Ms. Lugo's left foot off, requiring an emergency amputation of her leg a few inches below the knee; she also suffered shrapnel wounds to the left side of her body and her right ankle. Claimant Estate states that, as a result of these injuries, numerous pieces of shrapnel remained in Ms. Lugo's body, and in the years that followed she required numerous surgeries and several hospitalizations. Moreover, Claimant Estate asserts that Ms. Lugo was left permanently disabled and had to wear a painful, ill-fitting prosthesis which placed significant restrictions on her mobility and, thus, her ability to engage in innumerable life functions and activities. Under a previous program, the

Commission awarded Claimant Estate \$3 million in compensation for these injuries. Claimant Estate now seeks additional compensation based on the claim that the severity of Ms. Lugo's injuries is a "special circumstance warranting additional compensation." Because Claimant Estate has demonstrated that the severity of Ms. Lugo's injuries is in fact a "special circumstance warranting additional compensation," it is entitled to an additional award of \$4.5 million.

BACKGROUND AND BASIS OF CLAIM

Ms. Lugo was in the terminal at Lod Airport in Tel Aviv, Israel, on May 30, 1972, when three terrorists began shooting automatic rifles and throwing hand grenades at passengers gathered in the baggage claim area. Claimant Estate alleges that, when the attack began, Ms. Lugo dove to the floor and hid under a desk; unfortunately, however, a grenade was thrown in her direction, and it exploded, blowing off her left foot. After the attack, Ms. Lugo was taken to a local hospital, where doctors amputated her leg just below the knee and performed surgery to remove numerous pieces of shrapnel from her body. She also underwent several weeks of intensive rehabilitation. She remained at the hospital in Israel for two months before returning home to Puerto Rico. In the years that followed, Claimant Estate alleges, Ms. Lugo underwent extensive physiotherapy for her injuries and was eventually fitted with a prosthesis. Moreover, the Estate claims that Ms. Lugo experienced lifelong chronic pain in her left leg, caused largely by ill-fitting prostheses, and was forced to use a wheelchair. In May 2014, Ms. Lugo died of unrelated causes.

Although Ms. Lugo was not among them, a number of the Lod Airport victims sued Libya (and others) in federal court in 2006. Neither Ms. Lugo nor her estate, the Claimant in this case, ever joined that lawsuit. *See Franqui v. Syrian Arab Republic*, 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* Art. I (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008; *see also* Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). Thus, although neither Ms. Lugo nor Claimant Estate had brought a lawsuit against Libya, the U.S. and Libya settled any claim against Libya either of them might have had arising out of that terrorist attack. Two months later, in October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

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

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.

Ms. Lugo was not a plaintiff in one of the Pending Litigation cases and was thus not eligible for an award under either the 2008 Referral or Category D of the 2009 Referral. She was, however, eligible under Category E of the 2009 Referral, and in 2010, she filed a claim alleging that she had suffered physical injuries as a result of the Lod Airport attack. By Proposed Decision entered September 7, 2011, the Commission determined that Ms. Lugo was eligible for compensation under Category E of that Referral and awarded her a fixed sum of \$3 million. *See* Claim No. LIB-II-108, Decision No. LIB-II-080 (2011) (“Physical-Injury Decision”). Ms. Lugo objected to the Proposed Decision, arguing that she should receive additional compensation due to the severity of her injuries, and the Commission held an oral hearing on her objection on November 17, 2011. 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 claimants¹ 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 contrary to the overall structure of the January [2009] Referral” Claim No. LIB-II-108, Decision No. LIB-II-080 (2012) (Final Decision).

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 Estate 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 Estate 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 ICOSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On May 2, 2014, the Commission received from Ms. Lugo a completed Statement of Claim seeking compensation under Category D of the 2013 Referral, together with exhibits supporting the elements of her claim. Her submission also incorporated by reference the evidence she had previously submitted in connection with the physical-

injury claim she made under the January 2009 Referral. Four days later, Ms. Lugo died of unrelated causes, and her estate is now pursuing her claim.

DISCUSSION

Standing

As an initial matter, the Commission has reviewed the Resolution issued by the Superior Tribunal of Arecibo, Commonwealth of Puerto Rico, on January 28, 2015, indicating that Ms. Lugo died intestate on May 6, 2014. The Resolution designates Rosa Esther Vázquez López as administrator of Ms. Lugo's estate. Based on this review, the Commission finds that the ESTATE OF LUZ ESTHER LUGO QUIÑONES, DECEASED; ROSA ESTHER VÁZGUEZ LÓPEZ, ADMINISTRATOR, is the proper claimant in this claim.

Jurisdiction

The Commission must next 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 Estate therefore satisfies the nationality requirement here.

Prior Award

To fall within the category of claims referred to the Commission, a claimant must have received an award under either the January 2009 or November 2013 Referrals. The Commission awarded Ms. Lugo \$3 million based on her physical-injury claim under the January 2009 Referral. Claimant 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, neither Ms. Lugo nor her estate made a claim or received any compensation under Category D of the January 2009 Referral. Therefore, Claimant Estate 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 ¶ 6.¹ The Commission has previously held that, in making this determination, it would consider three factors: "[(1)] the nature and extent of

¹ 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. Lugo survived the Lod Airport attack, and her subsequent death in 2014 was unrelated to the attack, only the first basis for entitlement is relevant here.

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 claims] program [had], for the most part, been adequately compensated” *Id.* at 6. Starting from that premise, the Commission held that “only the most severe injuries will constitute a special circumstance warranting additional compensation under Category D.” *Id.* Even with this stringent standard, Claimant Estate has shown that Ms. Lugo’s injuries are among the most severe in this program, and it is thus entitled to additional compensation beyond the \$3 million the Commission already awarded to Ms. Lugo.

Factual Allegations

Claimant Estate states that Ms. Lugo was inside Lod Airport near the baggage claim area when the attack began. It states that Ms. Lugo immediately dove to the floor and took cover underneath a nearby desk. Claimant Estate alleges that, at this point, a

“grenade blast blew off [Ms. Lugo’s] left foot, which hit her niece in the shoulder as it flew off.” It further alleges that “[s]hrapnel from the exploding grenade penetrated [Ms. Lugo’s] left thigh and knee”

Claimant Estate states that, when the attack ended, “a tourniquet was applied [to Ms. Lugo’s leg,] and [she] was rushed to the Tel Hashomer/Haim Sheba Medical Center in Tel Aviv where her leg was amputated below the knee.” Ms. Lugo remained hospitalized at Tel Hashomer for two months, where she underwent additional treatment that included the removal of shrapnel from her body.

Injuries Alleged: Claimant Estate asserts that, as a result of the Lod Airport attack, Ms. Lugo’s “lower [left] leg was completely crushed, including both bones and soft tissue[,]” necessitating a below-the-knee amputation and a two-month period of hospitalization in Tel Aviv.

According to Claimant Estate, the explosion and Ms. Lugo’s two-month hospitalization in Tel Hashomer Hospital were, however, only the beginning. Claimant Estate avers that Ms. Lugo had to have numerous surgeries (including “several painful surgeries to remove shrapnel from her legs[]”), hospitalizations, and lengthy stays at rehabilitation centers in the years following the terrorist attack. Most of this treatment has involved the care of Ms. Lugo’s left leg stump. For instance, in the first few years after the attack, doctors made multiple attempts to fit a prosthesis on Ms. Lugo’s leg stump, but she “was not able to use the prosthetic because of the poor condition of the skin.” Although Ms. Lugo finally got a prosthesis for her leg, the prosthesis continued to cause her pain until the final years of her life about four decades later, “causing friction and cellulitis.” Claimant Estate further asserts that Ms. Lugo “was confined to a wheelchair most of the time and suffered from constant painful infections in her stump.”

Claimant Estate alleges that Ms. Lugo's physical injuries have also profoundly affected her personal and professional life. It states that, "[p]ermanently disabled by injuries, [Ms. Lugo] also suffered a lifetime of lost wages and work opportunities[.]" noting that, prior to the attack, she had worked as a dental assistant. After the attack and the amputation of her leg, however, she "could no longer work, and became dependent on her sister." Indeed, Claimant Estate alleges that Ms. Lugo "was eventually awarded permanent disability compensation from the National Insurance Institute of Israel." It further states that, since the attack, Ms. Lugo suffered "permanent ringing in her ears" as well as a variety of gastro-intestinal problems which it attributes to the Lod Airport attack.

Supporting Evidence

Claimant Estate has supported its claim with, among other things, an affidavit from Ms. Lugo's niece (dated January 4, 2010), several newspaper articles and photographs of Ms. Lugo around the time of the incident, various medical records from the mid-1970s, and one medical report from 2010. The medical records include those from Ms. Lugo's initial treatment in Israel (the discharge summary from Tel Hashomer Hospital), as well as a number of medical reports and letters describing Ms. Lugo's subsequent treatment in Puerto Rico. Claimant Estate has also provided a 1974 decision of the Superior Court of Puerto Rico addressing the distribution of *ex-gratia* funds that Japan provided to the Commonwealth of Puerto Rico for the benefit of Puerto Ricans harmed by the Lod Airport attack, along with a "valorization" detailing how the calculation of Ms. Lugo's specific award was made.

Initial Injuries/Stay in Israel: In her 2010 affidavit, Ms. Lugo's niece states that she and her aunt were in the Lod Airport terminal preparing to gather their luggage when

she “heard loud noises” and saw that three men “were shooting at the passengers in the baggage claim area with machine guns, and they were throwing grenades into the crowd.” She states that she and her aunt “crawled to safety underneath a nearby desk.” She then states, “a grenade . . . landed in the corner where we were hiding and it blew my aunt’s foot off.” She adds, “my aunt’s burnt foot, which looked like charcoal, landed on my shoulder.” When describing that moment, Ms. Lugo herself stated that she “felt a terrible pain all over her body[,] . . . that she lost control of her bladder, [and] that her head was rattled”

The discharge summary from Tel Hashomer Hospital indicates that Ms. Lugo was admitted on May 30, 1972, with her “left leg . . . completely crushed, including both bones and the soft tissues.” It notes that “[m]any shrapnels [sic] were found in the injured limb.” The summary also indicates that a “below the knee amputation was performed[,]” and that a “considerable part of the stump was left open and closed gradually and satisfactorily with granulation tissue.” Doctors noted that “[n]o skin graft is needed[,]” that the “knee movements are good[,]” and that Ms. Lugo “will soon be able to wear a prosthesis.” Claimant Estate has also submitted affidavits from Raphael Walden, M.D. (dated March 18, 2010), and Alberto Folch, M.D. (dated February 8, 2010)—two doctors who were present at the Tel Hashomer Hospital after the incident. While neither doctor claims to have treated Ms. Lugo personally at that time, both doctors recall Ms. Lugo and have attested to the nature of her injuries—indeed, Dr. Walden says he was the “lead surgeon who provided medical care for the [Lod Airport] victims,” and he signed Ms. Lugo’s discharge summary, while Dr. Folch was a Puerto Rican doctor who travelled to Israel to assist in the immediate aftermath of the attack.

Two other medical reports, both from 1977 (five years after the attack) include medical history sections that provide further evidence of the nature of Ms. Lugo's initial injuries from the 1972 attack. One is a letter dated September 16, 1977 from Juan Llompart, M.D. to Attorney Vicente Ydrach, a lawyer who represented some of the Lod Airport victims at one time and may have represented Claimant. In describing Ms. Lugo's initial injuries at the time of the attack, Dr. Llompart's report states that Ms. Lugo had "multiple metallic fragments in the left thigh, knee and stump and . . . in the right heel." It adds that Ms. Lugo underwent an "operation . . . to repair the stump[]" and that "a small metal fragment was removed from the right heel" It also indicates that "several metal fragments [were] removed from the left thigh and knee" Another report is from Juan Jose Felix Reyes, M.D., an orthopedic surgeon in Puerto Rico, and is dated October 12, 1977. It also confirms Ms. Lugo's initial injuries and treatment, noting further that Ms. Lugo's right hip also had "metallic fragments" and that these were surgically removed by the doctors in Israel.

Finally, the discharge summary confirms that Ms. Lugo was released from Tel Hashomer on July 30, 1972, a fact also confirmed in the various affidavits and reports referenced above. Claimant Estate has also provided a copy of a 2002 newspaper article about Ms. Lugo's ordeal supporting this timeline; the article indicates that Ms. Lugo underwent "two intense months of rehabilitation in Israel." Both the Llompart and the Reyes 1977 reports indicate that she returned to Puerto Rico soon after being discharged from Tel Hashomer.

Rehabilitation after return to Puerto Rico/1970s: According to the medical records, Ms. Lugo underwent numerous procedures and received extensive rehabilitative services in the five years that followed. The medical history portions of Dr. Reyes' and

Dr. Llompart's 1977 reports indicate that, upon her return to Puerto Rico, Ms. Lugo spent approximately a year and a half at a rehabilitation center. The evidence does not, however, conclusively indicate whether her treatment there was in-patient or out-patient, although Dr. Reyes says that she "stay[ed]" there, and Dr. Llompart says she was "hospitalized" there. During this time, according to Dr. Llompart, Ms. Lugo received "local wound care of the left leg amputation stump and the wound broke down frequently" Drs. Llompart and Reyes also both report that Ms. Lugo underwent three operations in 1973 (i.e., while she was still apparently at the rehabilitation center). In one such instance, she was hospitalized at San Carlos Hospital for seven days where she had "5 metal fragments removed from the left thigh and knee" Later, she was hospitalized at Arecibo District Hospital, where she had "several additional metal fragments" removed from the same area by Dr. Folch, the same doctor who travelled to Israel immediately after the attack. Claimant Estate has not provided any specific information about the third operation.

Also in the "History" portion of his report, Dr. Llompart indicates that in 1974, Ms. Lugo received a prosthesis on her leg stump; however, "the stump again broke down and [she] had to have a re-fitting . . . because of the bad skin conditions." Finally, according to Dr. Llompart, in July of that year Ms. Lugo went to the Institute of Physical Medicine and Rehabilitation in New York City, where she stayed for about two months and was provided with what appears to be another prosthesis for her left leg. Dr. Reyes' report also makes reference to her receiving a prosthesis at the Institute of Physical Medicine and Rehabilitation in New York City but does not mention any prosthesis in conjunction with her treatment in Puerto Rico. In the 2002 newspaper article, Ms. Lugo explains that the medical center in Puerto Rico "couldn't do anything for me; that's why I

went to [another] hospital in New York, where I was for another two months[.]” Following her treatment in New York, Ms. Lugo returned to Puerto Rico, where she was again treated at Arecibo District Hospital “and by private physicians in Arecibo and Hatillos[.]” including Dr. Folch.

In his report, Dr. Llompart notes that Ms. Lugo visited him on September 13, 1977 (about three years after her return from New York). At that time, Ms. Lugo was receiving treatment at Arecibo District Hospital, “where she [was] waiting to have another operation done in the left knee or thigh to have additional removal of metal fragments.” During the examination, Dr. Llompart observed that Ms. Lugo’s left leg wound was closed and that she walked with a prosthesis, but that she suffered from “[i]nstability in the left knee and amputation stump.” He noted that her “below knee amputation stump” measured three inches in length,² and that she had a two-inch by one-inch scar on her left knee. He also noted that in her left thigh she had a “moderate degree of diffuse [sic] muscle atrophy.” In addition, he noted multiple scars on her left thigh, knee, leg stump, and right ankle. He also noted that she had complained that she had suffered pain in her right ankle for the previous year.

Dr. Llompart also had x-rays taken of her right ankle and left thigh, knee, and amputation stump: While the x-rays revealed “a small metal fragment at the level of the os calcis[.]” in the right ankle,³ the function of her right ankle and foot was “otherwise normal.” Similarly, the x-rays of the left thigh, knee, and amputation stump revealed numerous “small metal fragments,” but the “amputation stump of the tibia and fibula

² A below-the-knee stump is measured from the “medial tibial plateau” (basically, the middle of the knee) to the end of the stump. See Carol A. Ross, *Guidelines of Measurement of Amputation Stump Length*, BULLETIN OF PROSTHETICS RESEARCH 67, 72, 77-80 (Spring 1972). So, a three-inch stump means that she no longer had the greater part of her lower leg.

³ The os calcis (also known as the calcaneus) is another term for the heel bone. See *Stedman’s Medical Dictionary* 286, 1384 (28th ed. 2006).

showed no abnormalities.” Dr. Llompart opined that, due to the loss of the lower portion of her left leg, Ms. Lugo suffered a “90% impairment of the lower extremity that is equivalent to a 36% impairment of the entire person.” Although he indicated that the right ankle problem was “of a minimal nature[,]” he nevertheless concluded that “in this region she has a 5% degree of permanent residual disability.”

Another medical report submitted by Claimant Estate indicates that about a month later, on October 6, 1977, Ms. Lugo underwent another radiological examination, this time with Felipe N. de Jesús, M.D., a radiologist in Bayamon, Puerto Rico, although it is unclear whether Dr. de Jesús saw Ms. Lugo or just her x-rays. Dr. de Jesús observed numerous metallic fragments in the images of Ms. Lugo’s left thigh and knee, as well as one metallic fragment “in the region of the [right] calcaneus.”⁴ Dr. de Jesús also noted that her “[l]eft [k]nee in the frontal and lateral projections shows a short leg stump” but that he saw “[n]o evidence of osteomyelitis of the amputated segment of the tibia and fibula.”

A few days later, on October 12, 1977, Ms. Lugo visited Dr. Reyes for an orthopedic examination. In his report, Dr. Reyes noted “atrophy of the musculature[.]” on Ms. Lugo’s leg stump, at the distal end of which was a five-inch healed scar. He further noted that the stump “measures four inches and it was very tender.” Dr. Reyes observed numerous other scars all over the stump and on Ms. Lugo’s left knee, including a two-inch by one-inch scar on the knee. He also indicated that Ms. Lugo complained of pain in the “lateral aspect of [her right] ankle.” Dr. Reyes’ disability determination matched Dr. Llompart’s: he also concluded that Ms. Lugo had a 5% permanent disability in her

⁴ As noted above, *see supra* note 3, the calcaneus is the heel bone.

right ankle, and a 90% permanent disability of her lower left extremity, representing “a 36% “impairment [sic] of the entire person.”⁵

Claimant Estate has submitted a 1974 Superior Court of Puerto Rico decision addressing the distribution of *ex-gratia* funds from Japan, which also provides evidence of both her initial injuries and the treatment she underwent in the first two years after the attack. The Special Commissioners appointed by the court established a point system for distributing those funds and awarded Ms. Lugo 1,800 points out of a possible total of 2,000. Although in other claims we have minimized the importance of this document because the Special Commissioners’ formula differs from the 2013 Referral’s mandate and the Commission’s standards for determining whether the severity of a claimant’s injuries warrants additional compensation in this program,⁶ we think it provides some substantiating evidence here because Claimant Estate has provided a “valorization” document that specifically describes how the 1800 points were calculated. Ms. Lugo received points for (i) having been exposed to the terrorist attack “with physical damage”; (ii) both needing “[i]mmediate medical care” and having been “[r]ushed emergency to hospital”; (iii) under the category “Emergency Room,” needing “[m]ajor surgery”; (iv) under the category “Hospitalization” in Tel Aviv, requiring “moderate care” (as opposed to, on the one hand, “intensive care” or, on the other, “minimal care”); (v) under the category “Hospitalization” in Puerto Rico, requiring “prolonged intensive care or subsequent operations”; (vi) under the category “External Clinics” in Puerto Rico, requiring “[f]ollow up in clinics or equivalent for prolonged time”; and (vii) under the

⁵ Immediately after describing his disability determination, Dr. Reyes mentions the “Guides for the Evaluation of Permanent Impairment of the American Medical Association,” suggesting, implicitly at least, that his determination was based on that guide.

⁶ See Claim No. LIB-II-064, Decision No. LIB-II-073, 5-7 (2012) (discussing this same Report in the context of another Lod Airport victim); Claim No. LIB-II-088, Decision No. LIB-II-108, 4-6 (2012).

category “Current Status and Prognosis Related to Event” (as of that time, 1974), remaining “under specialized treatment” and “[p]ermanently affected to a major extent.”

In addition, a letter to Ms. Lugo from the Israeli National Insurance Institute, submitted by Claimant Estate with this claim, reflects that, on April 28, 1975, Ms. Lugo received a disability determination from that agency—she was assigned a “temporary degree of invalidity of 100%” until December 31, 1974. Although Claimant Estate has provided no evidence of the agency’s determination of Ms. Lugo’s degree of disability after that date, it has provided a copy of a completed Israeli National Insurance Institute form titled “Life Certificate,” which was stamped by the Social Security Administration office in Arecibo, Puerto Rico, and signed by Ms. Lugo, and was apparently sent to the Israeli Insurance Institute on January 30, 2009.

Claimant Estate has provided no medical records from 1978 through 2009 (i.e., until after the 2008 Claims Settlement Agreement), although the 2002 newspaper article, for which Ms. Lugo evidently was interviewed, indicates that she was using a cane on that occasion. Further, Ms. Lugo told the interviewer that, as a result of her injuries, she “stopped working . . . [that she] was a dentist assistant and work ended and everything ended[.]”

Recent Condition: Claimant Estate has also provided a medical report from Boyd H. Collazo, M.D., dated April 15, 2010, describing a physical examination he conducted of Ms. Lugo in Bayamon, Puerto Rico, on March 26, 2010 (i.e., after the filing of her physical-injury claim under the 2009 Referral). The report states that Ms. Lugo arrived in a wheelchair, with her niece carrying her prosthesis. Ms. Lugo claimed, among other things, that since the Lod Airport attack she has suffered from permanent ringing in her ears as well as various digestive ailments. She also stated that, since the incident, her left

leg has always hurt so that she has been “unable to do anything but suffer that pain,” and that she has “spent all of these 38 years in a wheelchair knitting.”

Dr. Collazo noted that Ms. Lugo had a below-knee amputation of the left leg, “consistent with the injuries she sustained at the Lod Airport attack[] and the several surgeries she underwent.” He also observed that Ms. Lugo’s leg stump showed many scars and evidence of the “ravages of persistent and repeated episodes of cellulitis,” and that she also had what appeared to be “fragment wounds.” He indicated that the scars were consistent with the date of the incident. In addition, Dr. Collazo observed that most of the stump “consist[ed] of flaps.” He described it as an “old flaccid stump, characterized by layers of wrinkles upon each other” Further, Dr. Collazo noted that Ms. Lugo’s leg stump did not have enough structure to sustain her prosthesis, suggesting to him that the initial amputation was “an emergency, unplanned surgery.”

Dr. Collazo further opines that Ms. Lugo is “completely disabled,” although he does not give a specific disability determination. He concludes that Ms. Lugo “suffers the obvious results of having lost an extremity in a blast injury” and that all of her “medical sequelae ... are incapacitating. These are all permanent, irreversible conditions from which [Ms. Lugo] will never recover.”

Finally, Claimant Estate has submitted several photographs of Ms. Lugo from shortly after the incident. In four of these photographs—authenticated by Ms. Lugo herself in 2010—she is depicted sitting in a wheelchair; in three of them, it is clear that her left foot and some portion of her left leg are missing.

Application of Special Circumstances Factors to Evidence

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

Nature and Extent of Injury: Ms. Lugo's injuries were horrific and life-altering. She lost one of her legs below the knee and has been unable to walk normally since the attack, more than 40 years ago.

Impact on Claimant's Major Life Functioning and Activities: Ms. Lugo's physical injuries have also had a substantial impact on her ability to perform major life activities. Her mobility is severely impaired. She lost her left leg below the knee and had to use a cane or a wheelchair to move about for the last four decades of her life. Her left leg always hurt, and she went through several prostheses: the stump lacked sufficient structure to sustain a prosthesis, had been "ravaged" by cellulitis, and was "characterized by layers of wrinkles upon each other" Moreover, Ms. Lugo had to stop working completely after the incident, leaving her job as a dental assistant at the age of 44.

Disfigurement: Claimant's injuries have left her terribly disfigured. She lost her left leg below the knee. Moreover, she has extensive scarring on her left thigh, knee, and stump. These injuries could never be completely hidden: she wore a prosthesis on her left leg and required a cane or wheelchair to move around.

Considering all these factors together, the Commission concludes that the severity of Ms. Lugo's injuries rises to the level of a special circumstance warranting additional compensation under Category D. Accordingly, Claimant 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).

Severity of Initial Injury: Ms. Lugo’s physical injuries are among the worst in any of the Commission’s Libya claims programs. Her left foot was blown off by an exploding grenade, requiring the amputation of her left leg below the knee.

Hospitalizations/Subsequent Surgeries: The attack and her initial injuries were only the beginning of Ms. Lugo’s ordeal. She spent two months in the hospital in Israel, where she underwent numerous surgeries to care for her leg stump (including to complete the amputation of her left leg below the knee) and remove shrapnel from her body, and then spent a year and a half at the Rehabilitation Center in Puerto Rico, where she struggled to find a comfortable prosthesis. In the years that followed, she continued her treatment, including, on at least three occasions, surgery to remove shrapnel remaining in

her left thigh and knee. One of these surgeries required a 7-day hospitalization at San Carlos Hospital; another involved a hospitalization of unknown duration at Arecibo District Hospital in 1973. In addition, Ms. Lugo spent two months at a rehabilitation center in New York in 1977. In sum, Ms. Lugo has been hospitalized for significant periods of time and has undergone numerous surgical procedures over the years.

Permanent Impairment/Disfigurement: Ms. Lugo was seriously and permanently impaired, and her outward appearance revealed conspicuous physical disfigurement until the end of her life. Her physical injuries resulted in the Israeli National Insurance Institute giving her a temporary disability rating of 100%, and Drs. Llompart and Reyes giving her a permanent disability of 90% as to her left leg (representing 36% of the whole person) and 5% residual disability in the right ankle. In addition, the “Life Certificate” that Ms. Lugo submitted to the Israeli Insurance Institute in 2009 suggests that she was still receiving disability benefits from that agency at that time. There is therefore no question that she was permanently disabled to a substantial extent. She had serious mobility problems that affected all aspects of her life, and she was unable to work for more than four decades until she passed away in 2014. She was also severely disfigured: her left leg was lost in the terrorist attack, and she had to wear a prosthetic, requiring her to use a cane and/or wheelchair to get around.

In light of these facts, and in consideration of the factors listed above, the Commission holds that \$4,500,000.00 is an appropriate amount of compensation in this claim. Moreover, Claimant Estate is not entitled to interest as part of this award. *See* Claim No. LIB-III-021, *supra*, at 17. Accordingly, the Commission determines that the Claimant Estate is entitled to an award of \$4,500,000.00 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 Four Million Five Hundred Thousand Dollars (\$4,500,000.00).

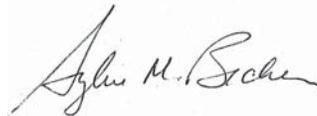
Dated at Washington, DC, February 11, 2016
and entered as the Proposed Decision
of the Commission.

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

March 15, 2016



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2015).