

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

IN THE MANNER OF THE CLAIM OF

CALIXTO LOPEZ & CO.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0240

Decision No. CU -6141

Counsel for Claimant:

Francis P. Noonan, Esq.

Appeal and objections from a Proposed Decision entered March 31, 1971. Oral hearing requested and held on September 15, 1971.

Argument by Francis P. Noonan, Esq.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on March 31, 1971, certifying claimant's loss in the amount of \$2,360,021.56 sustained as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended.

Claimant, through counsel, filed objections and requested an oral hearing. In his objections, claimant's counsel stated that the loss determined in the Proposed Decision represents unrealistic low book values of claimant's assets in Cuba; that the actual value of land and improvements owned by the claimant exceeded by far the evaluations shown in the balance sheet of December 31, 1959; and that the loss determined by the Commission failed to include good will in the amount of \$1,000,000.00 created by an extensive advertising campaign and promotion of the trade mark "Eden" for cigarettes produced in claimant's factory in Cuba.

An oral hearing was scheduled and held on September 15, 1971; at the hearing counsel submitted new documentation and introduced the testimony of Jose M. Diaz, III, President and Treasurer of CALIXTO LOPEZ & CO., who stated

that the company purchased the land and buildings in Havana where the factory is located in 1901 for \$450,000.00; that the value of this property increased substantially over the years, while book entries remained unchanged; that the value of the farms and farm land equally appreciated in value many times since the property was purchased; and that the company spent over \$2,400,000.00 in building up its main product, the cigarette "Eden" which resulted in a very substantial increase in sales. Counsel for claimant then presented argument in support of the objections.

The Commission, having given full consideration to claimant's objections, the newly submitted documentation, and the testimony of the witness, as well as argument of counsel, now finds that the value of the land and buildings in Havana (previously evaluated at \$587,419.44) at the time of the loss was \$950,000.00, and the value of the farms and farm land (previously evaluated at \$96,274.42) was \$250,000.00.

The Commission has also considered the claim for good will. Based on the record the Commission finds that the brand name "Eden" had value as an intangible asset unique with the tobacco industry in Cuba. In evaluating this intangible asset, the Commission has observed that the company increased its advertising expense from \$278,400.00 in 1956 to \$437,000.00 in 1959, and that its sales increased from \$2,675,000.00 in 1956 to \$3,043,000.00 in 1959. The earnings, however, declined, but this may be attributable to the then prevailing economic and political conditions in Cuba. The average earnings for the years 1955 through 1959 amounted to \$22,888.86 per year. Thus, based upon the entire record the Commission concludes that the value of the brand name was \$330,000.00 or approximately 15 times the average earnings during the last five years.

Accordingly, to the previously determined loss of \$2,360,021.58 there is added for the increase of the value of land and buildings in Havana from \$587,419.44 to \$950,000.00 or \$312,580.56; for the increase of the value of the farm and farm land from \$96,274.42 to \$250,000.00, or \$153,725.58; and for the brand name "Eden", \$330,000.00 resulting in a total of \$3,156,327.72.

Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification will be entered, and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that CALIXTO GOMEX & CO. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Million One Hundred Fifty-Six Thousand Three Hundred Twenty-Seven Dollars and Seventy-Two Cents (\$3,156,327.72) with interest at 6% per annum from September 15, 1960, to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

OCT 20 1971



Lyle S. Garlock, Chairman



Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF

CALIXTO LOPEZ & CO.

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Claim No. CU -0240

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Counsel for claimant:

Francis P. Noonan, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$4,416,509.00, was presented by CALIXTO LOPEZ & CO., and is based upon the asserted loss of claimant's branch in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The evidence of record discloses that the claimant, CALIXTO LOPEZ & CO., was organized under the laws of the State of New Jersey and that at all times pertinent to this claim all of the outstanding capital stock of the claimant corporation was owned by Preferred Havana Tobacco Company, Inc., a Delaware corporation; and that over 50% of the outstanding stock of the parent corporation was owned by nationals of the United States at times pertinent to the claim.

The record, including a certification of an officer of claimant and stockholder records, establishes that all of the outstanding stock of Preferred Havana Tobacco Company, Inc. was owned by shareholders who reside in and are presumed to be nationals of the United States. The Commission finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claimant was engaged in the cigarette manufacturing business in Cuba, with branch offices located at Agramonte 702, Havana, Cuba, and operated various farms in rural areas which primarily produced tobacco for local consumption and export under the brand names of "Calixto Lopez" and "Eden". The evidence discloses that claimant was listed as intervened by the Government of Cuba on September 15, 1960, pursuant to Resolution 20260 of the Ministry of Labor, Government of Cuba. The Commission finds that claimant's assets in Cuba were effectively taken by the Government of Cuba on that date.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant has asserted that the actual value of the current and fixed assets of its Cuban branch was in the amount of \$4,416,509.00, including good will, estimated at \$1,000,000.00. Claimant submitted a Statement of Claim, with exhibits and photographs, to the State Department in 1961. This data referred primarily to values of the current and fixed assets of the corporation, assertedly based on August, 1960, book values, said to be in the total amount of \$2,610,174.00. However, this figure did not include reserves for depreciation of the property which were included in a balance sheet of December 31, 1959, discussed hereafter. No evidence was submitted, such as appraisal data or similar information, to support the asserted "actual value" of \$4,416,509.00, or the value of the good will included therein.

The evidence submitted by claimant also includes a certified balance sheet, with notes and schedules, prepared on December 31, 1959, reflecting the assets and liabilities of the Cuban branch. This balance sheet reflects the following assets (the peso being on a par with the dollar):

A S S E T S

Current Assets:

<u>Cash on hand and in banks:</u>		
Cash on hand		\$ 6,100.00
Cash in banks		<u>122,041.89</u>
		128,141.89
Notes receivable		12,488.72
Accounts receivable - trade	\$ 577,559.60	
Less reserve for doubtful accounts	<u>12,588.24</u>	564,971.36
Miscellaneous accounts receivable		29,840.61
Inventory of tobacco, etc. at cost		<u>736,129.42</u>
		\$1,471,572.00

Investments (at cost) 4,900.00

Properties:

Land and building - Havana	\$ 587,419.44	
Farms and farm buildings	96,274.42	
Machinery and equipment	481,147.95	
Automobiles and trucks	119,393.50	
Furniture and fixtures	<u>46,660.27</u>	
	\$1,330,895.58	
Less reserve for depreciation	<u>443,253.49</u>	887,642.09

Deferred Assets:

Service deposits	\$ 1,586.00	
Unexpired insurance premiums and deposits	6,434.09	
Custom-house duties pending liquidation	2,560.00	
Prepaid expenses	9,769.35	
Deposit for dividend tax assessment	13,649.81	
Expenses incurred pending liquidation	<u>18.06</u>	<u>34,017.31</u>
		\$2,398,131.40

The Commission has carefully considered all of the evidence of record, as discussed above, taking into account the basis of evaluation most appropriate to the property, and has determined that the balance sheet of December 31, 1959, is the most equitable to the claimant as the most reliable basis of evaluation of the claimant's assets in Cuba at the time of loss.

The Commission finds that the value of claimant's assets in Cuba was \$2,398,131.40. The Commission does not deduct liabilities of United States

nationals, except for taxes due the Cuban Government. The Commission finds that the losses of claimant must be offset by the sum of \$38,109.84, the total amount of taxes owed to the Government of Cuba, as shown in the record. (See Claim of Simmons Company, Claim No. CU-2303.)

The Commission finds that the adjusted value of the claimant's losses in Cuba, is in the amount of \$2,360,021.56 and concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act.

With reference to so much of the claim as is in excess of \$2,360,021.56, the record discloses that subsequent to filing of the claim on July 16, 1965, the Commission made suggestions to claimant and through counsel, on a number of occasions, as to the type of evidence proper for submission. However, claimant has not submitted evidence of such probative value as to support the asserted value of \$4,416,509.00. An uncertified trial balance sheet prepared in August 1960 does not substantiate the claim in the asserted amount.

The Commission appreciates the difficulties encountered by some of the claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining not only to ownership and loss of the property, subject of the claims, but with respect to evaluation thereof at the time of loss. The Commission is constrained to find that claimant has not met the burden of proof in establishing the asserted value.

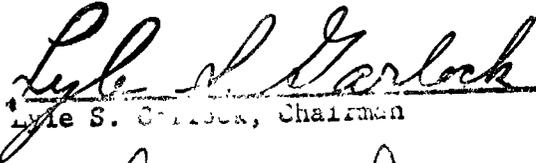
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

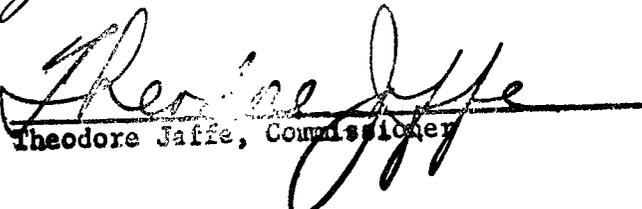
CERTIFICATION OF LOSS

The Commission certifies that CALIXTO LOPEZ & CO. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Million Three Hundred Sixty Thousand Twenty-one Dollars and Fifty-six Cents (\$2,360,021.56) with interest at 6% per annum from September 15, 1960, to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAR 31 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)