

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

IN THE MATTER OF THE CLAIM OF

DREXEL W. GIBSON  
and  
MARY KATHRYN GIBSON

Claim No. CU-2154

Decision No. CU 3923

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Edward K. Hessberg, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$105,666.95, was presented by DREXEL W. GIBSON and MARY KATHRYN GIBSON, based upon asserted losses of certain personal property in Cuba and upon personal injuries. Claimants have been nationals of the United States since birth.

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.

The record establishes and the Commission finds that claimants, husband and wife, jointly owned certain personal property in Cuba, including the facilities appurtenant to a language school, home furnishings, clothing and other related property. The portion of the claim for personal injuries is asserted by Drexel W. Gibson only and is discussed in detail below.

Based upon affidavits from individuals with personal knowledge of the facts and statements of claimants, the Commission finds that Mr. Gibson was arrested and imprisoned by Cuban authorities in April 1961 and that shortly thereafter all of the property involved herein was confiscated by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the taking occurred on May 31, 1961, except as noted below, as a result of which claimants sustained losses within the meaning of Title V of the Act.

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." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that

it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

The evidence includes copies of claimants' Federal income tax returns for 1961 and 1962; a copy of an audit report from the United States Internal Revenue Service approving claimants' deductions for losses in Cuba; copies of lists of books and supplies shipped from the United States to claimants in Cuba in 1958, 1959 and 1960, related to their language school; a copy of income and expenses of the school for the period ending March 28, 1960; affidavits from individuals having personal knowledge of claimants' properties in Cuba; a copy of an agreement between the Berlitz Schools of Languages of America, Inc., granting Mr. Gibson a license to operate a Berlitz School of Languages in Cuba; a copy of an inspection certificate, issued by Cuban authorities on December 20, 1960, relating to claimants' school; a copy of a balance sheet for the school as of May 27, 1961; a copy of a statement from Mrs. Gibson to the Department of State, dated March 15, 1961, relating to claimants' properties; a copy of a detailed list of claimants' home furnishings, clothing and related property, for which claim was made; and other statements of claimants concerning their claim.

On the basis of all the evidence of record the Commission finds that the valuations most appropriate to the properties and equitable to the claimants are those set forth hereafter.

#### School of Languages

The record shows that Mr. Gibson went to Cuba in May or June 1958 and that his wife and two children arrived in Cuba about September 2, 1958. By an agreement, dated December 1, 1958, The Berlitz Schools of Languages of America, Inc. granted Mr. Gibson a license to operate a language school in Cuba, employing the "Berlitz Method" of teaching. The school was located in Havana, Cuba, and commenced operations in 1958. Both claimants participated in supervising and operating the school, and invested money in improving their leasehold interest and their personal property used in the

school. Mr. Gibson is presently employed as the Director of another Berlitz School in the United States, according to an affidavit, dated March 7, 1968 from Mr. Robert Strumpen-Darrie, President of the Berlitz Schools of Languages of America, Inc.

The evidence also includes a balance sheet for claimant's school, prepared by an accountant in Cuba as of May 27, 1961. The items of property set forth in that balance sheet are supported by affidavits from Mr. Strumpen-Darrie, noted above, and from Mr. Samuel Lieberman, dated March 7, 1968, Treasurer of The Berlitz Schools of Languages of America, Inc., who had visited claimants' school in Cuba in December 1959; by a copy of a letter, dated April 9, 1963, showing the earlier shipment of books and classroom supplies to claimants in Cuba; and by copies of claimants' Federal Tax returns showing property losses in the amount of \$30,115.95 with respect to claimants' school in Havana, Cuba. The balance sheet sets forth the various items of personal property related to the operations of the school, showing an aggregate value of \$30,115.95, as claimed and as allowed by the United States Internal Revenue Service.

On the basis of the foregoing evidence, the Commission finds that on May 31, 1961, the date of loss, claimants' personal property appurtenant to their school of languages in Havana, Cuba, had a value of \$30,115.95.

#### Home Furnishings and Related Personalty

According to Mr. Gibson's detailed statement, accompanying his official claim form, and Mrs. Gibson's letter to the Department of State, dated March 15, 1961, claimants' household goods were shipped to Cuba in the summer of 1958, and other personal possessions, including their station wagon, arrived in Cuba on September 2, 1958 when Mrs. Gibson arrived by ship. Subsequently Mrs. Gibson returned to the United States in order to have a surgical operation performed on claimants' son. Upon leaving Cuba, Mrs. Gibson was able to take along her best items of jewelry and some of their other expensive property, such as silverware. However, all of

claimants' furniture, other household possessions, clothing, an expensive library, television sets, an art collection, air conditioners, rugs, record collections, a record player, cameras, station wagon, other jewelry, silver and glassware service sets, etc., all of which furnished their rented 12-room house, were left behind and were confiscated by Cuban authorities on May 31, 1961, as stated above.

Claimants have submitted a detailed list of all their personal belongings that were taken by Cuba, indicating the values thereof after reductions for depreciation. Their valuations are supported by affidavits from individuals having personal knowledge of the facts. It further appears that claimants were allowed a deduction on account of these losses by the United States Internal Revenue Service. From an examination of said list, the valuations set forth therein, aggregating \$49,551.00, appear fair and reasonable, considering claimants' station in life and the fact that their rented house had 12 rooms, including servants' quarters.

Two items of property on that list require further consideration; namely, \$3,000.00 (the Cuban peso being on a par with the United States dollar) turned over to Dr. Nilo Picazo, and \$450.00 left with a private depository in Havana, Cuba. Claimants state that after Mr. Gibson's arrest and imprisonment, claimants engaged the services of Dr. Nilo Picazo, a Cuban lawyer, and paid him \$3,000.00. They add, however, that no legal services were ever rendered by Dr. Picazo.

The Commission has held that claims for attorney's fees and expenses involved in contesting Cuba's taking of American owned property are not within the purview of Title V of the Act. (See Claim of E. R. Squibb & Sons Inter-American Corporation, Claim No. CU-2469, and Claim of Mathieson Pan-American Chemical Corporation, Claim No. CU-2470.) The Commission holds that the same rationale applies to the portion of this claim for legal fees paid to Dr. Picazo to defend Mr. Gibson after he was arrested and imprisoned by Cuban authorities. Accordingly, this portion of the claim for \$3,000.00 is denied.

With respect to the \$450.00 left with a private depository in Havana, the Commission has held that although such private depository was beyond the jurisdiction of the Cuban Government, the action of Cuba pursuant to Article X of Law 863, published in Cuban Official Gazette on August 4, 1961, rendered all such funds null and of no legal effect. (See Claim of Betty G. Boyle, Claim No. CU-3473; reaffirmed in Claim of Henry Singhi McAvoy, Claim No. CU-0742, Final Decision entered March 26, 1969.) Accordingly, the Commission finds that claimants sustained a loss of \$450.00 on deposit on August 4, 1961, and a loss of other personalty totaling \$46,101.00, on May 31, 1961.

#### Personal Injuries

Section 503(b) of the Act provides as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

Mr. Gibson states that as a result of his imprisonment, his health has been permanently impaired; he suffered back injuries as a result of a fall from a 4th tier bunk when prodded by a bayonet; his teeth were broken from stones and other hard matter in the prison food, all of which necessitated medical and dental expenses aggregating \$2,000.00. A further claim of \$14,000.00 is asserted for loss of earnings at \$2,000.00 per month for the seven-month period between his arrest and arrival in Miami, resulting from lack of physical ability and energy to perform at previous levels caused by his imprisonment. An additional sum of \$10,000.00 is claimed for false arrest, the aggregate amount thus claimed is \$26,000.00.

The Commission has held that in a claim under Section 503(b) of the Act, it must be established, inter alia, that the claimant suffered a disability and that the disability was the proximate result of actions of the Government of Cuba in violation of international law. (See Claim of Julio Lopez Lopez, Claim No. CU-3259.)

With respect to this portion of the claim, counsel for claimant has stated that most of the dental work was done in Cuba, that it is impossible to obtain the medical and dental bills from the Havana doctors, and that the very small portion of the work done in the United States would be "misleadingly minor". Some of the affidavits submitted in support of the claim for property losses also mention Mr. Gibson's imprisonment, but contain no statements that Mr. Gibson suffered a disability as a result of his treatment in the Cuban prison. One affiant stated that Mr. Gibson had been arrested by the Cuban Secret Police and imprisoned in La Cabana Prison, which information he had obtained from other sources than his own personal knowledge. Another affiant, Enrique J. Tapia, stated in an affidavit, dated September 7, 1966, that he was in Cuba when Mr. Gibson was imprisoned, but again there is no hint of any mistreatment or disability. Two other affiants likewise stated that they were not in Cuba when Mr. Gibson was imprisoned.

The record is devoid of any evidence to support Mr. Gibson's assertions. Assuming that he was imprisoned by Cuban authorities, there still is no corroborative evidence to establish that claimant sustained a disability as a result of Cuban Government actions in violation of international law. It will not suffice under Section 503(b) of the Act to show that Cuba may have violated international law by imprisoning Mr. Gibson, if Cuba did not, in fact, cause a disability. In addition, the clear language of Section 503(b) necessarily implies that the statute does not cover claims for false arrest irrespective of whether such action violated international law. (See Claim of Bernard Weiss, Claim No. CU-2357.)

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) (Supp. 1967).)

The Commission finds that claimant, Drexel W. Gibson, has failed to meet the burden of proof with respect to his claim under Section 503(b) of the Act. Accordingly, this portion of the claim is denied.

Recapitulation

Claimants' losses within the meaning of Title V of the Act may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
School of Languages	5/31/61	\$30,115.95
Home Furnishings, etc.	5/31/61	46,101.00
Private Deposit	8/4/61	450.00
Total		\$76,666.95

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1959, 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, as follows:

<u>FROM</u>	<u>ON</u>
5/31/61	\$76,216.95
8/4/61	450.00
Total	<u>\$76,666.95</u>



CERTIFICATION OF LOSS

The Commission certifies that DREXEL W. GIBSON and MARY KATHRYN GIBSON 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 Seventy-Six Thousand Six Hundred Sixty-Six Dollars and Ninety-Five Cents (\$76,666.95) with interest thereon at 6% per annum from May 31, 1961 on \$76,216.95, and from August 4, 1961 on \$450.00, to the date of settlement,

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

SEP 24 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, 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, 32 Fed. Reg. 412-13 (1967).)