

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

IN THE MATTER OF THE CLAIM OF

JULIO LOPEZ LOPEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3259

Decision No. CU 3461

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$131,605.00, was presented by JULIO LOPEZ LOPEZ based upon the asserted loss of certain real and personal property, and for asserted permanent disability resulting from actions of the Government of Cuba. Claimant has been a national 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.

With respect to the portion of the claim based upon real and personal property, the record includes an affidavit from an individual having personal knowledge of the facts; a photograph of the appliance store for which claim is made; a photograph of the front section of the house being claimed; and affidavits and other convincing evidence relating to ownership and value of the said real and personal property.

On the basis of the entire record, the Commission finds that claimant owned a house and lot at 324 Rabi Street, Havana, Cuba, which he had acquired in 1950; that he owned a retail appliance store in Havana, Cuba; and that he owned certain items of furniture and other household possessions situated in the house at 324 Rabi Street.

The said affidavit based upon personal knowledge recites that claimant's property was seized by the Government of Cuba in 1962. In the absence of evidence to the contrary, the Commission finds that claimant's real and personal property were taken by the Government of Cuba on April 22, 1962, as stated by claimant, as a result of which claimant suffered a loss of property within the meaning of Title V of the Act.

Based upon a document, identified as Record No. 60, executed by claimant in Havana, Cuba, before an attorney at law and notary public, on September 27, 1961, the Commission finds that claimant's real and personal property had the following values on April 22, 1962, the date of loss:

House and lot	\$10,000.00
Retail appliance store	9,000.00
Household furnishings	<u>2,605.50</u>
Total	\$21,605.50

Claimant also asserts a claim for \$100,000.00, based upon a permanent disability sustained as a result of the said taking of his property by the Government of Cuba.

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 . . .

In support of this portion of his claim, claimant has submitted the following evidence:

1. A statement from a doctor, who is the director of Hato Rey Psychiatric Hospital, Inc., Puerto Rico, to the effect that claimant "was under psychiatric treatment from June 1962 until July 1965"; that in July 1965 claimant had a "cerebrovascular accident with residual right sided hemiplegia" (paralysis); that the doctor was unable to see claimant until January 31, 1967 "due to his physical condition"; and that at that time "he presented the picture of a Chronic Brain Syndrome associated with circulatory disturbance other than cerebral arteriosclerosis, cerebral embolism [obstruction] of the right side associated with arterial hypertension and right sided hemiplegia".

2. A statement from a doctor, dated August 10, 1967 at Puerto Rico, to the effect that claimant "had moderately severe essential hypertension for over 6 years and that he developed a cerebrovascular accident and hemiplegia with aphasia" (loss of power of speech); that "Undoubtedly his forced exile from Cuba with its attendant loss of all his possessions adversely affected the course of his underlying hypertensive cardiovascular disease that led to the hemiplegia".

Attached to this statement was a "Consultation and Referral Report" by the same doctor, dated April 27, 1967. In that report, the doctor states: "In my opinion he [claimant] has been totally and permanently disabled since July 1965. Since April 1962 he has suffered from hypertension and [has been] under professional care, although he was gainfully employed until July 1965."

The Commission has had occasion to consider personal injury claims of nationals of the United States against the Government of Italy under Title III of the International Claims Settlement Act of 1949, as amended, and has

allowed claims when the evidence established that the personal injuries were the proximate result of a violation of international law by Italy. (See 10 FCSC Semiann. Rep. 140 (Jan.-June 1959); and Claim of Zadik Danon, Claim No. IT-10837, id. at 160.)

Under Title II of the War Claims Act of 1948, as amended (76 Stat. 1107 (1962)), the Commission considered certain claims for "injury or permanent disability" resulting from military action by Germany or Japan. Here, again, the Commission held that the injury or permanent disability must have been the proximate result of such military action. (See Claim of Robert Newton Pritchard, Claim No. W-009, 22 FCSC Semiann. Rep. 46 (Jan.-June 1965).)

Pursuant to recognized rules of international law, a claim for personal injuries or disability does not arise unless it is proven that the government being charged "has failed in its international duty." (I Whiteman, Damages in International Law 517 (1937).) Moreover, it must be established that a "causal connection" existed between the asserted injuries and the violation of international law. (Id. at 561.) In none of the numerous cases cited by this authority (Id. at 517-634), was there even an allegation that the personal injuries resulted from a taking of property. All of these cases involved more direct relationships between the injuries and the acts complained of.

In the instant case, claimant asserts a claim for permanent physical and mental disability based upon the taking of his property by the Government of Cuba. Such a confiscation and the failure of Cuba to compensate claimant for the taking constituted a violation of international law and results in a certification of loss in this action.

The record, however, indicates that claimant had a history of hypertension

and that he was under psychiatric care for about three years until July 1965 when he had a "cerebrovascular accident" resulting in his present condition. It further appears that claimant was gainfully employed from 1962 when his property was taken until July 1965.

The Commission has carefully considered this entire matter and holds that in a claim for disability under Section 503(b) of the Act it must be established, as one prerequisite to favorable action, that the disability was the proximate result of the actions of the Government of Cuba in violation of international law.

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).)

Claimant bases his claim for disability solely on the action of the Government of Cuba in taking his property. The Commission finds that the action of Cuba in this respect was not the proximate cause of claimant's disability. The Commission further finds that claimant has failed to sustain the burden of proof with respect to his claim for disability. Accordingly, this portion of the claim is denied.

With respect to the portion of the claim for the loss of real and personal property, the Commission has decided that in certification of losses 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 JULIO LOPEZ LOPEZ 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 Twenty-one Thousand Six Hundred Five Dollars Fifty Cents (\$21,605.50) with interest thereon at 6% per annum from April 22, 1962 to the date of settlement.

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

JAN 14 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).)