

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

IN THE MATTER OF THE CLAIM OF

MIGUEL CHIU FONG

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1971

Decision No. CU
3342

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for 20,000 pesos, was presented by MIGUEL CHIU FONG, based upon the asserted loss of the proceeds of a life insurance policy. Claimant has been a national of the United States since his naturalization on September 3, 1953.

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 shows that claimant was the sole beneficiary of a life insurance policy issued by the Pan American Life Insurance Company in the amount of 20,000 Cuban pesos, covering the life of claimant's father. Pursuant to the terms of the policy, the proceeds were payable in pesos in Cuba. It further appears that claimant's father died in Havana, Cuba, on June 26, 1959. Inasmuch as claimant was a resident of the United States, he informed the insurance company that he desired payment in United States dollars. Claimant was advised by the insurance company that it required special authorization from the Exchange Control Department of the National Bank of Cuba, a government agency, to effect such a transfer of funds from Cuba to the United States.

On June 29, 1960, claimant informed the insurance company that it should withdraw its request for such special authorization because claimant expected to visit Havana in the near future. Claimant appeared at the insurance company's branch office in Havana shortly thereafter and received a check for 20,000 Cuban pesos. However, upon presenting the check for payment to a bank in Cuba, he was denied payment even in pesos due to the fact that all Cuban banks had been instructed not to cash checks payable to Americans living outside of Cuba.

Claimant then returned the check to the insurance company in Havana upon advice of an attorney, and prepared a power of attorney in favor of a relative in Cuba so that further efforts could be made to obtain permission to remit the funds to the United States after claimant left Cuba. However, claimant never received the funds due him either in Cuban pesos or in any other currency.

On September 29, 1959, there was published in the Cuban Official Gazette, Cuban Law No. 568, which is drafted in the most general terms. This law, in its preamble, refers to Law 13 of December 23, 1948 which organized the Currency Stabilization Fund, granting it the license to regulate the international exchange. Law 568 proceeds to describe wrongful acts in the field of international exchange which adversely affected the national economy. Specifically, Law 568 then enumerates instances declared to be monetary offenses (Article 1), and provides punishment for the instigator (Article 2).

Paragraph (6) of Article 1 designates as an offense, inter alia, the transferring of funds abroad, by any means, whatever might be the origin of the funds, except in authorized cases, or those which the Currency Stabilization Fund might authorize, through the channels of an associated bank or entity authorized by the National Bank of Cuba. Paragraph (9) of Article 1 prohibits making payments in national money in favor of foreign residents, making payments in bank accounts whose officially named account holders reside abroad, without permission of the Currency Stabilization Fund.

From the foregoing it is clear that not only the transfer of funds to a creditor abroad but also payment to such creditor within Cuba required the permission of the Cuban foreign exchange authority.

The Commission has ascertained, through examination of a number of claims against the Government of Cuba, presented to it, that applications made to the foreign exchange authority of Cuba to transfer funds to the United States were fruitless. Moreover, the Cuban law on foreign exchange control discouraged payment of the amount due even within Cuba in domestic currency.

Upon careful consideration of this matter, the Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof with respect to the rights of claimant herein, was not in reality a legitimate exercise of its sovereign authority to regulate its foreign exchange. Rather, the Commission concludes that the application of this law insofar as the rights of claimant are concerned, constituted an intervention by the Government of Cuba in the contractual rights which, in effect, resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant's property, having a value of \$20,000.00, was lost as a result of the intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on July 15, 1960.

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 MIGUEL CHIU FONG 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 Thousand Dollars (\$20,000.00) with interest thereon at 6% per annum from July 15, 1960 to the date of settlement.

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

NOV 27 1968

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).)