

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

IN THE MATTER OF THE CLAIM OF

VERL R. NELSON, PAUL N. FIORITO,
DONATO FIORITO, WALLACE S. GRAY,
FLOYD R. CLODFELTER, GEORGE V.
FORSYTHE, JOSIE RAZORE, MARY JANE
BARBRE, ADMINISTRATRIX, ESTATE OF
WILLIAM A. BARBRE, DECEASED
d/b/a
THE BARNELNEY ASSOCIATES

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1382

Decision No. CU 6242

Counsel for claimants:

Short, Cressman & Cable
By Paul R. Cressman, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented on April 10, 1967, by THE BARNELNEY ASSOCIATES, a partnership, including the above-named decedent, WILLIAM A. BARBRE, and partners, in the total amount of \$140,000.00, based on a gambling concession. The above-named decedent and partners have been nationals of the United States since birth.

The decedent, WILLIAM A. BARBRE, was included as one of the partners joining in the filing of this claim in the name of the partnership. The record establishes that he died on March 30, 1964, and his wife, MARY JANE BARBRE, was appointed Administratrix of his estate by the County Court of Pima, Arizona, in 1964. Accordingly, MARY JANE BARBRE, is substituted herein in her representative capacity.

Under Title V of the International Claims Settlement Act of 1949 79 Stat. 1110 (1964), 22 U.S.C. §§1643-1645k (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 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).)

The claim is based upon the asserted ownership and loss of an interest in a gambling casino lease held by the Casino de Capri, S.A., a Cuban corporation, at the Capri Hotel in Havana, Cuba.

The evidence of record includes several affidavits, executed by the partners and others, receipts, canceled checks, banking statements, copies of share certificates issued to the partners by THE BARNELNEY ASSOCIATES, income tax data prepared and submitted to the Internal Revenue Service by the partnership and by the partners; correspondence and other evidence pertaining to the instant claim and the Claim of Julius J. Shepard, (Claim No. CU-0407) based on his interests in Compania Hotelera Shepard, S.A., which operated the hotel, and in subleases to concessionaires of the casino, beauty shops and the like. The record in the Claim No. CU-0407 also includes affidavits and a copy of a Lease, executed on April 19, 1957, between the Compania Hotelera Shepard, S.A. and the Casino de Capri, S.A., both Cuban corporations, whereby the night club area and other areas at the back of the lobby were leased, subject to certain conditions, to the Casino de Capri, S.A. for operation of night club entertainment and gambling facilities.

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The evidence discloses that on or about October 30, 1958, VERL R. NELSON and the late WILLIAM A. BARBRE met in Los Angeles, California, forming THE BARNELNEY ASSOCIATES, also known as The Barnelly Company. At that time, VERL R. NELSON transferred \$37,700.00 to the partnership and the decedent transferred \$13,000.00 to such firm. These sums were to be utilized in purchasing an interest in a gambling casino lease held by the Casino de Capri, S.A. at the Capri Hotel in Havana, Cuba. Thereafter, these partners went to Havana and on November 2, 1958, transferred the \$50,700.00 to the gambling corporation in the offices of the casino in the Hotel Capri, Havana, Cuba. On November 14, 1958, all partners, except DONATO FIORITO and JOSIE RAZORE, who were represented by other partners, met at the Hotel Capri and the following sums of the partners were also transferred to the gambling corporation in the name of the partnership:

| | |
|---------------------|-----------------|
| PAUL N. FIORITO | \$16,500.00 |
| DONATO FIORITO | 16,500.00 |
| WALLACE S. GRAY | 15,000.00 |
| FLOYD R. CLODFELTER | 11,000.00 |
| GEORGE V. FORSYTHE | 2,500.00 |
| VERL R. NELSON | <u>2,800.00</u> |
| TOTAL: | \$64,300.00 |

Based upon the total sum paid, \$115,000.00, THE BARNELNEY ASSOCIATES was to receive a 5% interest in the lease of the gambling rights and facilities in the Hotel Capri. Thereafter, on December 27, 1958, the decedent with PAUL N. FIORITO and JOSIE RAZORE arrived in Havana and the sum of \$25,000.00, funds of JOSIE RAZORE, was transferred in the name of the partnership in the purchase of additional rights in the lease for a total of \$140,000, considered by the parties as an ownership interest of 6.087% in the lease.

The evidence discloses that on January 1, 1959, elements of the Army of the Government of Cuba took over the Hotel Capri, (see Claim No. CU-0407, supra.) effectively depriving not only the hotel management of control of the hotel but also the concessionaires, including the Casino de Capri, S.A., of the control of the gambling operations and other concessions. Accordingly,

the Commission concludes that the funds invested by the partnership in the casino lease were effectively taken at that time and that the partners sustained a loss 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". 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.

In the instant claim, the Commission finds that the only basis for evaluating the respective shares of the partners in the partnership, THE BARNELNEY ASSOCIATES, and through the partnership, the investment in the lease of Casino de Capri, S.A., is to ascertain those proportionate sums paid by the partners and credited to each immediately before the date of loss. The evidence of record shows and the Commission finds that the most appropriate basis for the determination of the interests of the partners are the sums transferred to the partnership and expended by that firm, as follows:

| | |
|---------------------|-----------------|
| VERL R. NELSON | \$40,500.00 |
| JOSIE RAZORE | 25,000.00 |
| PAUL N. FIORITO | 16,500.00 |
| DONATO FIORITO | 16,500.00 |
| WALLACE S. GRAY | 15,000.00 |
| WILLIAM A. BARBRE | 13,000.00 |
| FLOYD R. CLODFELTER | 11,000.00 |
| GEORGE V. FORSYTHE | <u>2,500.00</u> |

TOTAL: \$140,000.00

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.

CERTIFICATIONS OF LOSS

The Commission certifies that VERL R. NELSON 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 Forty Thousand Five Hundred Dollars (\$40,500.00) with interest thereon at 6% per annum from January 1, 1959 to the date of settlement;

The Commission certifies that JOSIE RAZORE 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-Five Thousand Dollars (\$25,000.00) with interest thereon at 6% per annum from January 1, 1959 to the date of settlement;

The Commission certifies that PAUL N. FIORITO 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 Sixteen Thousand Five Hundred Dollars (\$16,500.00) with interest thereon at 6% per annum from January 1, 1959 to the date of settlement;

The Commission certifies that DONATO FIORITO 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 Sixteen Thousand Five Hundred Dollars (\$16,500.00) with interest thereon at 6% per annum from January 1, 1959 to the date of settlement;

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The Commission certifies that WALLACE S. GRAY 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 Fifteen Thousand Dollars (\$15,000.00) with interest thereon at 6% per annum from January 1, 1959 to the date of settlement;

The Commission certifies that MARY JANE BARBRE, ADMINISTRATRIX, ESTATE OF WILLIAM A. BARBRE, DECEASED, 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 Thirteen Thousand Dollars (\$13,000.00) with interest thereon at 6% per annum from January 1, 1959 to the date of settlement;

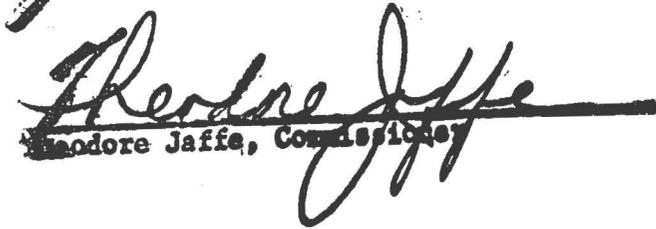
The Commission certifies that FLOYD R. CLODFELTER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eleven Thousand Dollars (\$11,000.00) with interest thereon at 6% per annum from January 1, 1959 to the date of settlement; and

The Commission certifies that GEORGE V. FORSYTHE 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 Thousand Five Hundred Dollars (\$2,500.00) with interest thereon at 6% per annum from January 1, 1959 to the date of settlement.

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

JUN 23 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).)

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