

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

IN THE MATTER OF THE CLAIM OF

HERBERT LLOYD COPELAN  
and  
MEG COPELAN

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0100

Decision No. CU 5903

Counsel for claimants:

Pilot and Klein  
By Sidney I. Pilot, 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 by HERBERT LLOYD COPELAN for \$141,403.89 based upon the asserted ownership and loss of his interests in two theaters and certain personal property in Cuba. Under the community property law of Cuba, it appears that MEG COPELAN would have an interest in this claim, and accordingly she has been added as a claimant. 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.

Claimants describe their losses as follows:

(1) 1/2 interest in equipment and furnishings of Miramar Theater (not including the building)	\$ 66,391.89
(2) 1/4 interest in Cine Venta, a drive-in theater	54,000.00
(3) Home furnishings, clothing and automobiles	<u>21,012.00</u>
	\$141,403.89

Based on the entire record including affidavits and a provisional stock certificate for 125 shares of Cines Aereos, S.A., the Commission finds that claimants owned a one-half interest in the equipment and furnishings of the Miramar Theater; a one-quarter interest in Cines Aereos, S.A., which operated Cine Venta, a drive-in theater; and certain personalty further described below.

On October 13, 1960, the Cuban Government published its Law 891, which listed the Miramar Theater as nationalized. Accordingly, the Commission finds that claimants' interest in the equipment of Miramar Theater, and of the drive-in theater as well, were taken by the Government of Cuba on that date.

Claimant HERBERT LLOYD COPELAN has stated that he and his family left Cuba about June 1, 1960, but that they were evicted from their home about the latter part of 1959 and were not permitted to remove any items of personal property. The Commission finds that claimants' personal property, unrelated to the theaters, was taken by the Government of Cuba on December 15, 1959.

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.

Miramar Theater

The record in this respect includes a copy of the minutes of the take-over effected by the interventor, which lists some items with values set at \$1,428.78 and other items categorically described, without detail or asserted value. In addition the record includes an affidavit of the former supervisor of the theater listing in detail the equipment confiscated, with amounts totalling \$132,783.78, including duty in the amount of \$34,055.00.

It appears that Internal Revenue Service allowed claimants a loss of \$5,000.00 as their investment in the stock of Miramar. However, Title V requires a finding of value as of the date of loss. (See Claim of Lucia W. Mendoza, Claim No. CU-3219.)

The Commission finds on the basis of the record that the value of Miramar at the time of loss was \$132,783.78 of which claimants' interest was one-half or \$66,391.89.

Additionally, Internal Revenue Service allowed claimants a loss of \$47,894.00 for personally-owned projection equipment in the Miramar Theater. Claimant HERBERT LLOYD COPELAN has submitted a listing of this equipment, which is supported by letters from suppliers. The Commission finds that claimants also suffered a loss of \$47,894.00 in connection with the taking of Miramar Theater on October 13, 1960.

Cine Venta

As stated above, this drive-in theater was operated by Cines Aereos, S.A., in which claimants owned a one-fourth interest. Claimant HERBERT LLOYD COPELAN stated in a letter of December 29, 1960 to the American

Embassy in Cuba, that this theater, without the property (land) cost approximately \$160,000.00 to build, including screen, tower, grading, paving, concessions buildings, projection building, sound posts and sound boxes, and wiring for same, etc.

Claimant HERBERT LLOYD COPELAN has submitted a provisional certificate issued in 1955 for 125 shares at \$100.00 par, of Cines Aereos, S.A. reflecting a one-fourth interest, the authorized capital being set out as \$50,000.00. Additionally he has submitted the affidavit of the Secretary and part owner of Cines Aereos, stating that to the best of his knowledge and recollection, the cost of that theater, without land, was well over \$100,000.00 including screen, screen tower, grading and paving, concessions buildings, projection building, all sound posts and boxes, and wiring. This general statement is not supported by evidence which would permit a finding of value at the time of loss.

Further, it appears that Internal Revenue Service allowed claimants a loss of \$6,250.00 as their investment in the stock of Cines Aereos. However, as stated above, Title V requires a finding of value as of the date of loss.

In the absence of specific evidence of value on the date of loss, the Commission is constrained to hold that claimants have not established the extent of their loss with respect to this item of claim and, accordingly, this portion of the claim is denied.

#### Other Personalty

Claim has been asserted for home furnishings, clothing and automobiles in the total amount of \$21,012.00.

The record includes claimant HERBERT LLOYD COPELAN's submission of January 24, 1961 to the American Embassy, of a list of personalty taken, with approximate costs, which totaled \$20,291.00. Claimant HERBERT LLOYD COPELAN also submitted a listing as of November 21, 1967, of the personalty, with purchase figures, totaling \$50,666.00.

It further appears that Internal Revenue Service allowed claimants a loss of \$21,012.00 in this connection.

The Commission finds, on the basis of the record that the value of the personal property, not related to the theaters, taken from the claimants by the Government of Cuba, was \$21,012.00.

Accordingly, the Commission concludes that claimants suffered losses in the aggregate amount of \$135,297.89, within the meaning of Title V of the Act, as a result of the taking of their property by the Government of Cuba.

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, as follows:

	<u>FROM</u>	<u>ON</u>
HERBERT LLOYD COPELAN	October 13, 1960	\$57,142.94
	December 15, 1959	<u>10,506.00</u>
		\$67,648.94
MEG COPELAN	October 13, 1960	\$57,142.95
	December 15, 1959	<u>10,506.00</u>
		\$67,648.95

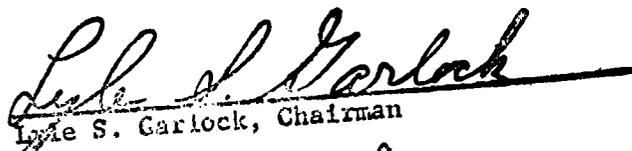
#### CERTIFICATIONS OF LOSS

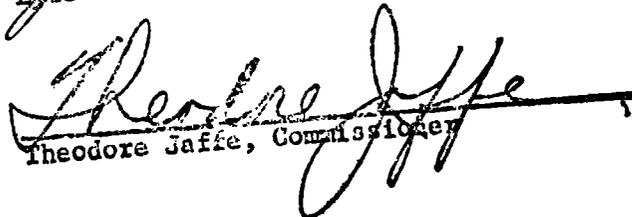
The Commission certifies that HERBERT LLOYD COPELAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty-seven Thousand Six Hundred Forty-eight Dollars and Ninety-four Cents (\$67,648.94) with interest at 6% per annum from the aforesaid dates to the date of settlement; and

The Commission certifies that MEG COPELAN 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 Sixty-seven Thousand Six Hundred Forty-eight Dollars and Ninety-five Cents (\$67,648.95) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

OCT 14 1970

  
Lyne 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.

NOTE: 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. 1.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)