

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

IN THE MATTER OF THE CLAIM OF

EUGENE SAUNDERS ROBERTS

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 0513

Decision No. CU - 6255

Counsel for claimant:

William E. Henson, Jr., Esq.

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 \$459,740.85 was presented by EUGENE SAUNDERS ROBERTS, based upon the asserted loss of real and personal property, and of shares of stock. 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.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Claimant states that he was the owner of an improved lot with a residence thereon, located at No. 3420 Avenida 49-A (formerly Avenida Bruselas) in the section known as Reparto Kohly in the Marianao suburb of Havana, and of personal property therein, consisting of furniture, household goods and personal effects. Claimant further states that he owned a passenger automobile, a savings certificate and the following shares of stock:

- (1) 230 shares of Roberts Tobacco Company
- (2) 97 shares of Compania Inmobiliaria Taino S.A.
- (3) 34 shares of Publicidad Celex S.A.
- (4) 16 shares of Compania Anunciadora Vallador S.A.
- (5) 92 shares of Central Nela S.A.
- (6) 115 shares of A.S.C. Corporacion
- (7) 38 shares of Compania Comercial Mayajigua S.A.
- (8) 800 shares of Compania Constructora Naroca S.A.

In support of his claim, claimant submitted, among other documents, a copy of a written statement which he delivered to the American Embassy in Havana on October 7, 1960; a copy of a deed showing the purchase of real property; listings of personal property, affidavits and statements of family members and others concerning several property items; and photographs of his residence.

The various elements of the claim will be discussed under separate headings.

#### Real Property

On the basis of the evidence of record, the Commission finds that on March 12, 1954, claimant, then divorced, acquired a building lot measuring 1,244.70 square meters facing the Avenida Bruselas in the section known as Reparto Kohly in Marianao, on which he erected a building, discussed below.

On December 6, 1961 the Government of Cuba published Law 989, which confiscated all goods and chattels, rights, shares, stocks, bonds and other property of persons who left Cuba. The record shows that claimant left

Cuba for the United States on December 17, 1960. The Commission, therefore, finds that this real property was taken by the Government of Cuba on December 6, 1961.

The Act provides in Section 503(a) that on 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.

The property was free of encumbrances and the purchase price was \$15,000.00. Claimant constructed on the premises a three-story fully air-conditioned residence, consisting of an entrance hall, living room, dining room, family room, six bedrooms, two kitchens, three bathrooms and auxiliary quarters for two domestics, and a two-car garage.

Based upon the evidence of record, including the photographs and claimant's statements made before the American Embassy in Havana, the Commission finds that at the time of taking the land had a value of \$15,000.00, the improvements had a value of \$45,000, for a total of \$60,000 and concludes claimant suffered a loss in that amount.

#### Personal Property

The record shows that claimant owned a 1960 "Chevrolet" automobile, 4-door sedan, Bel Air style, with air conditioning and radio, purchased in February 1960. The passenger automobile was also subject to Law 989, and the Commission finds that at the time of taking, its value, after allowance for depreciation, was \$4,000.00.

The record further shows that claimant owned personal property consisting of furniture, draperies, household goods, kitchen utensils, electrical appliances, linen, silverware and clothing all described in the record. This property was likewise subject to Law 989, and the Commission finds that all personal property was taken on December 6, 1961, the date of enactment of that law. On the basis of the evidence, the Commission further finds that at the time of taking, the entire personal property, including the automobile, had a value of \$24,000.00.

Pursuant to the community property law of Cuba, property acquired during marriage by one or both spouses from funds of the marriage partnership, or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal parts to both spouses. Consequently, claimant's second wife had a one-half interest in the above-described personal property, and claimant's interest in that property had a value of \$12,000.00.

It is noted that the nationality of claimant's second wife as of the time of taking has not been disclosed to the Commission, but all the circumstances surrounding this claim indicate that she was not a United States national at that time and therefore is not eligible as a claimant before the Commission under Section 504 of the Act.

#### Savings Certificate

Claimant states that he acquired in 1951, before marriage to his present wife, a savings certificate of \$5,000 from the Banco de Caribe de Ahorro y Capitalizacion S.A., which was in the nature of a savings policy, and for which he paid monthly premiums of \$40.00. At the end of ten years the bank would have repaid \$5,000, but in the meantime claimant enjoyed the right to collect this amount prematurely under a certain lottery plan. Claimant states that he paid the premiums through nine years from September 1951 to September 1960, in the aggregate amount of \$4,320.00; that he requested the refund of the paid premiums, to which he was entitled, in October 1960. The bank was unable to comply because the Government of Cuba nationalized the bank on October 13, 1960 pursuant to Law 891, published on that date.

The Commission finds, on the basis of the evidence, that claimant was

the owner of the above savings certificate; that he was entitled to a refund of the premiums in the amount of \$4,320.00; and that he suffered as a result of the nationalization of the Banco de Caribe S.A., a loss in that amount.

Shares of Stock

Based upon the evidence of record, the Commission holds that claimant was the owner of the asserted shares of stock of the above-named eight corporations, which he owned as a result of a family partition, and not in community property.

Since all the corporations were organized under the laws of Cuba, they do not qualify as corporate "nationals of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per cent or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest.

(See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record shows that the enterprises to which reference is made above, were nationalized, intervened or confiscated on the following dates:

Roberts Tobacco Company: October 5, 1961  
Central Nela S.A. together with ASC Corporacion  
and Cia. Comercial Mayajigua S.A. by Resolution  
No. 5 published in the Official Gazette of  
August 19, 1960  
Compania Inmobiliaria Taino S.A. a holding company  
whose properties were taken by the Urban Reform Law  
of October 14, 1960  
Cia. Constructora Naroca S.A.  
nationalized October 15, 1959.

The record does not indicate the date of nationalization or intervention for the companies: Publicidad Celex S.A. and Cia. Anunciadora Vallador S.A.

Roberts Tobacco Company

The record shows that claimant owned 230 shares of this company, and that the same was expropriated by the Government of Cuba on October 5, 1961.

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The capital stock of this corporation was \$500,000 divided in 1,000 shares of \$500 each. The principal business activity consisted in the importation to Cuba of American cigarettes and other smoker's articles, as well as chewing gum and razor blades. No balance sheets nor any other financial statements of the company have been submitted to the Commission. Claimant's father and claimant himself who managed the company state that the company had sales in excess of \$6,000,000 and a net profit before taxes of \$250,000 per year. In the absence of other specific information concerning the assets and liabilities of the company, the Commission holds, on the basis of the record including claims of American suppliers of the Roberts Tobacco Company, that at the time of taking the net worth of the corporation was \$500,000 and the value of each share \$500. Accordingly, the value of claimant's 230 shares was \$115,000.00.

Compania Inmobiliaria Taino S.A.

The record shows that claimant owned 97 shares of this company, and that the assets of the corporation were taken under the Urban Reform Law, published by the Government of Cuba on October 14, 1960.

The capital stock of this company was \$265,000 divided in 530 shares of \$500 each. The assets of this company consisted of three large building lots improved with two office buildings located at the intersection of Calle 23 and Calle J, in the Vedado section of Havana having a value of \$260,000. Prior to their taking, the office buildings were rented to Compania Constructora Naroca S.A. It appears that the company had no liabilities. The Commission holds, on the basis of the record before it, that at the time of taking the net worth of the company was \$260,000 and the value of each share \$490.57. Accordingly, the value of claimant's 97 shares was \$47,585.29.

Central Nela S.A.

The record shows that claimant owned 92 shares of stock of the aforesaid company, which was nationalized by the Cuban Government under Resolution No. 5 of August 19, 1960.

At the time of nationalization this corporation had a paid-up capital stock of \$1,143,000 divided in 1,143 shares of \$1,000 each. The company owned a sugar mill with storage facilities at Mayajigua, Las Villas Province, and sugar cane land of 12,000 acres. The average production of sugar during

the last three years before nationalization was 115,000 bags of 250 Spanish pounds (253-1/2 American pounds) each. In the absence of any financial statement concerning the net worth of the company, the Commission finds that the corporation's assets, consisting of land, improvements, machinery, and other equipment had a value of \$1,340,000.00, the declared liabilities to be deducted were \$539,780.00 resulting in a net worth of \$800,220.00. Thus the value of one share was \$700.10. Accordingly, the value of claimant's 92 shares was \$64,409.20.

Compania Comercial Mayajigua S.A.

Claimant was the owner of 38 shares of this company, a subsidiary of Central Nela S.A., which was nationalized on August 19, 1960.

The company had a capital stock of \$25,000 divided in 500 shares of \$50.00 each. The record reflects that certified public accountants, having checked the inventory, assets, liabilities, etc., found that this company, at the time of taking, had a net worth of \$53,686.93 and that the value of one share was \$107.37. Accordingly, the value of claimant's 38 shares was \$4,080.06.

Compania Constructora Naroca S.A.

This company had a capital stock of \$500,000 divided in 5,000 shares of \$100 each. The record shows that at the time of taking, the assets of the company, consisting of construction equipment, a repair shop, and a warehouse, had a value of \$725,000, while the company was indebted to Alexander M. Roberts in the amount of \$833,308.68 plus interest. In the absence of any further information regarding the value of the company, the Commission finds that the known liabilities of the corporation exceeded the value of the assets, and that from an accounting view the shares of stock were without value. Accordingly the portion of the claim relating to these shares of stock is denied.

A.S.C. Corporacion

This company had a capital stock of \$150,000 divided in 1,500 shares of \$100 each. It was in the business of leasing land and dealing in the storage of sugar. No information whatsoever has been furnished concerning the assets and liabilities of this company and the record does not indicate

that the company owned any substantial property.

Publicidad Celex S.A. and Compania Anunciadora Vallador S.A.

These were two advertising companies, which are described as creditors of various Cuban enterprises, intervened or nationalized by the Government of Cuba. However, no information was furnished as to the liabilities of the companies, nor were the creditor claims described in any detail. The Commission finds that the record does not establish that the shares of stock of these two companies had any value at the time of their nationalization or taking.

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 Commission finds that claimant has failed to meet the burden of proof with respect to property owned by A.S.C. Corporacion, Publicidad Celex S.A. and Compania Anunciadora Vallador S.A., and the portion of the claim relating to these three companies is therefore denied.

Summary

The Commission finds that claimant suffered the following losses within the meaning of Title V of the Act:

<u>Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Residence	December 6, 1961	\$ 60,000.00
Personal property	December 6, 1961	12,000.00
Savings Certificate	October 13, 1960	4,320.00
Roberts Tobacco Company	October 5, 1961	115,000.00
Cia. Inmobiliaria Taino	October 14, 1960	47,585.29
Central Nela S.A.	August 19, 1960	64,409.20
Cia. Comercial Mayajigua	August 19, 1960	<u>4,080.06</u>
	Total	\$307,394.55

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:

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<u>FROM</u>	<u>ON</u>
August 19, 1960	\$ 68,489.26
October 13, 1960	4,320.00
October 14, 1960	47,585.29
October 5, 1961	115,000.00
December 6, 1961	72,000.00
	<u>\$307,394.55</u>

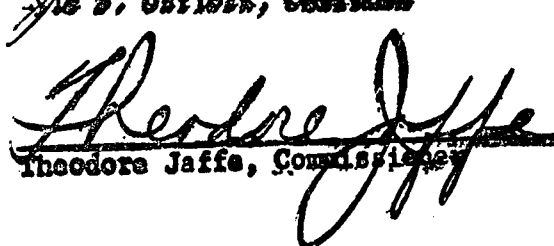
CERTIFICATION OF LOSS

The Commission certifies that EUGENE SAUNDERS ROBERTS 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 Three Hundred Seven Thousand Three Hundred Ninety-Four Dollars and Fifty-Five Cents (\$307,394.55) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

**JUL 7 1971**

  
E. S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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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