

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

IN THE MATTER OF THE CLAIM OF

MICHEL E. PUYANS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0541

Decision No. CU 5008

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$183,706.16, was presented by MICHEL E. PUYANS and is based on the asserted loss of real property, a bank account and unpaid rents. Claimant has been a national of the United States since his naturalization on December 20, 1940.

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.

Claimant states that he lost an interest in real property he assertedly acquired through inheritance from his father, B. Emilio Puyans, who died testate on December 18, 1956. Any interest claimant's mother may have had was relinquished by her in February, 1959. The real properties had been acquired by claimant's grandfather, B. Ricardo Puyans, who died testate in 1939. Claim was also asserted for unpaid rents and a small bank account held jointly with his sister.

Claimant describes his losses as follows:

<u>Real Property</u>		<u>Asserted Value</u>	<u>Claimant's Interest and Value</u>
<u>Item</u>			
1) 2-story Commercial Building at 24 Enramadas Street, Santiago de Cuba, Oriente		\$ 96,000	1/6 - \$ 16,000.00
2) 2-story Commercial Building at 7 Cristina Street, Santiago de Cuba		50,000	1/6 - 8,333.33
3) Vacant lot, 17-19 Factoria St., Santiago de Cuba - 685 square meters		8,000	1/6 - 1,333.33
4) 3-story marble and granite dwelling on 19th Street at corner of O, Vedado, Havana		165,000	1/6 - 27,500.00
5) San Jose de Barrancas sugar plantation, Palma Soriano, Oriente		800,000	1/8 - 100,000.00
6) Vacant lot No. 8 of Subdivision 6, Kohly Suburb, Marianao		25,500	1/8 - 3,187.50
7) 3 Dwellings at Nos. 5-7-9 Carniceria St., Santiago de Cuba		36,000	1/8 - 4,500.00
8) Commercial Building at 11 Cristina St., Santiago de Cuba		21,800	1/8 - 2,725.00
9) Commercial Building at 27 Factoria St., Santiago de Cuba		13,200	1/8 - 1,650.00
10) 2 Dwellings at 654-658 General Portuondo St., Santiago de Cuba		10,000	1/8 - 1,250.00
11) Rooming house, 656 General Portuondo St., Santiago de Cuba		5,000	1/8 - 625.00

<u>Item</u>	<u>Asserted Value</u>	<u>Claimant's Interest and Value</u>
12) 4 Semi-Commercial Buildings at Nos. 120-2-4-6 Gallo Street, Santiago de Cuba	\$ 16,000	1/8 - \$ 2,000.00
13) Dwelling at 18 San Ricardo St., Santiago de Cuba	3,600	1/8 - 450.00
14) 3 Dwellings at 27-31 Vargas St., Santiago de Cuba	7,200	1/8 - <u>900.00</u>
Total Realty		\$170,454.16

Other Asserted Interests

Bank account in Royal Bank of Canada	\$ 306.00
Unpaid rents	<u>13,000.00</u>
	\$183,706.16 (sic)

Based upon the entire record, including an affidavit from claimant's uncle, a lawyer, excerpts of his grandfather's will and inheritance partition of May 29, 1959 in the estate of claimant's father, the Commission finds that claimant owned interests in certain real property, further described below, which he acquired through inheritance from his father, B. Emilio Puyans in 1956, and by relinquishment from his mother, Yvonne M. Puyans, in February 1959.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

On December 6, 1961, the Cuban Government published its Law 989 in its Official Gazette, which effectively confiscated all assets, personal property and real estate, rights, shares and stocks, bonds and securities of persons who left the country.

The Cuban Agrarian Reform Law, published in the Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided

for the expropriation of rural properties and distribution among peasants and agricultural workers. Accordingly, the Commission finds that the sugar plantation known as Barrancas was taken by the Cuban Government pursuant to the Agrarian Reform Law, and in the absence of evidence to the contrary, that it was taken on June 3, 1959.

The Commission further finds that, with one exception, claimant's interests in improved real properties were taken on October 14, 1960 and his interests in vacant lots were taken on December 6, 1961. Moreover, it appears and the Commission finds that one property was taken by the Government of Cuba on November 1, 1959 for use as a park.

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.

The evidence includes a copy of the affidavit of claimant's uncle setting forth, on December 12, 1960, his estimated values for the items of real property, as of December, 1956; copies of the 1964 affidavits of two real estate brokers giving their opinions as to the values of the properties listed as Items (4) and (6) above; copies of 1964 affidavits by the former Mayor and the President of the Municipal Council of Santiago de Cuba, reciting their responsibilities as tax collectors and giving the rentals and tax values of the Santiago de Cuba properties listed above.

Additionally, the record includes a copy of a 1964 affidavit from a professional engineer, former president of the National Land Owners Association

in Cuba, whose members included certain large sugar companies. In 1945 he appraised the sales value of the Barrancas property at \$587,000. He discussed the land, the sugar cane and cattle land and concludes that the investment value of the property, exclusive of livestock was not less than \$1,000,000, that the rental value should have been a minimum of \$100,000 annually, and that the fair market value was not less than \$800,000.

Further, claimant has submitted a copy of an affidavit of March 11, 1964, of Edwin Ingersoll Kilbourne, who was President of the West Indies Sugar Corporation from September 1954 to July 1960, and who in this position was charged with directing operations of all producing subsidiaries in Santo Domingo and Cuba. Based on this experience he furnished information as to Barrancas, located in the center of the cane producing area of Central Palma, and which he states was one of the large cane producers for Cia. Central Altagracia, S.A., and one of the finest independent Colonias in Oriente Province. He recites that in 1954 his company was willing to pay \$800,000 for the property, but the transaction was not realized as owner would not consent. He states that from 1949 to 1956, the values of land, cane and sugar quota (provided under Cuban Law) increased substantially in Cuba. In september, 1959, West Indies Sugar subsidiaries were required to submit an evaluation of their properties in Oriente Province. The value identified and established for the average pertinent classifications of the company's holdings are given by Mr. Kilbourne as:

	<u>Value Per Acre</u>
Cane land (not including plants)	\$143.73
Pasture land	156.24
Timber land	159.55
Other reserve land	110.79

Mr. Kilbourne has applied these figures to Barrancas properties, as follows:

	<u>Value Per Acre</u>	<u>Total Value</u>
2700 acres of Cane land (exclusive of plants)	\$143.73	\$398,871.00
2200 acres of Pasture land	156.24	343,728.00
725 acres of Timber land	159.55	115,673.75
<u>575 acres Other reserve land</u>	110.79	<u>63,704.25</u>
6,200 acres		\$921,977.00

The record does not include evidence as to the extent of cane, crops, buildings, railway lines, corrals, hauling and other equipment, livestock, irrigation and related water facilities, and the Commission makes no finding as to their existence or value.

Based upon the aforesaid record, the Commission finds that claimant owned the asserted interests in real properties described, with values and dates of loss as

own below:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>	<u>Claimant's Interest & Value</u>
1) 2-story Commercial Building at 24 Enramadas Street, Santiago de Cuba, Oriente	October 14, 1960	\$ 96,000	1/6 - \$ 16,000.00
2) 2-story Commercial Building at 7 Cristina Street, Santiago de Cuba	October 14, 1960	50,000	1/6 - 8,333.33
3) Vacant lot, 17-19 Factoria St., Santiago de Cuba - 685 square meters	December 6, 1961	8,000	1/6 - 1,333.33
4) 3-story marble and granite dwelling on 19th Street at corner of O, Vedado, Havana Less Mortgage	October 14, 1960	165,000 <u>15,000</u> 150,000	1/6 - 25,000.00
5) San Jose de Barrancas Sugar plantation, Palma Soriano, Oriente	June 3, 1959	921,977	1/8 - 115,247.12
6) Vacant lot No. 8 of Subdivision 6, Kohly Suburb, Marianao	December 6, 1961	25,500	1/8 - 3,187.50
7) 3 Dwellings at Nos. 5-7-9 Carniceria St., Santiago de Cuba	October 14, 1960	36,000	1/8 - 4,500.00
8) Commercial Building at 11 Cristina St., Santiago de Cuba	October 14, 1960	21,800	1/8 - 2,725.00
9) Commercial Building at 27 Factoria St., Santiago de Cuba	October 14, 1960	13,200	1/8 - 1,650.00
10) 2 Dwellings at 654-658 General Portuondo St., Santiago de Cuba	October 14, 1960	10,000	1/8 - 1,250.00
11) Rooming house, 656 General Portuondo St., Santiago de Cuba	October 14, 1960	5,000	1/8 - 625.00
12) 4 Semi-Commercial Buildings at Nos. 120-2-4-6 Gallo Street Santiago de Cuba	October 14, 1960	16,000	1/8 - 2,000.00
13) Dwelling at 18 San Ricardo St., Santiago de Cuba	October 14, 1960	3,600	1/8 - 450.00
14) 3 Dwellings at 27-31 Vargas St., Santiago de Cuba	October 14, 1960	7,200	1/8 - <u>900.00</u>
		Total	\$183,201.28

The record indicates that claimant was allowed a loss of \$114,708 by Internal Revenue Service for his losses in Cuba.

There remain for determination the items of claim based on an asserted bank account and unpaid rents.

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 has submitted no evidence in support of the asserted joint bank account in the Royal Bank of Canada, and by his letter of December 6, 1966, indicated that he would not trouble to furnish evidence in support of his portion of this small account. The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership and taking by the Government of Cuba of rights and interests in said bank account. Thus this part of the claim must be and hereby is denied.

With respect to the claim for unpaid rentals, it is apparent from the affidavit of claimant's uncle that a number of the properties were in arrears as to rents, even prior to the taking which the Commission has found for the properties. However, under the Act the Commission is obliged to determine claims against the Government of Cuba, for losses arising from the nationalization or other taking by Cuba (Sec. 503(a), supra). Claimant has not shown that any rentals not received by him and the co-owners, prior to loss of the properties, were taken by the Government of Cuba. After the properties were taken by the Government of Cuba, of course, they belonged to the Government and rentals were not due to the former owners. Accordingly, so much of the claim as is based on rentals is hereby denied.

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, as follows:

<u>FROM</u>	<u>ON</u>
June 3, 1959	\$115,247.12
November 1, 1959	4,500.00
October 14, 1960	58,933.33
December 6, 1961	4,520.83
	<u>\$183,201.28</u>

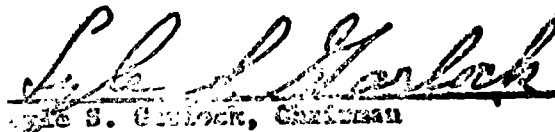
It may be noted that the total amount of loss found for the real properties herein, is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof. (See Claim of Eileen M. Smith, Claim No. CU-3038.)

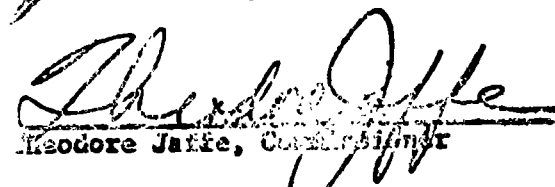
CERTIFICATION OF LOSS


The Commission certifies that MICHEL E. PUYANS 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 One Hundred Eighty-Three Thousand Two Hundred One Dollars and Twenty-Eight Cents (\$183,201.28) with interest thereon at 6% per annum from the aforesaid dates of loss to the date of settlement.

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

JUN 17 1970


L. S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)