

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

IN THE MATTER OF THE CLAIM OF

LOIS BURK GIANELLONI, INDIVIDUALLY,  
and as NATURAL TUTRIX OF  
ARTHUR L. GIANELLONI, JR. and  
WILLIAM DOUGLAS GIANELLONI, MINORS,  
and  
MARCELLE CECILIA GIANELLONI

Claim No. CU -0577

Decision No. CU -5981

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Watson, Blanche, Wilson,  
Posner & Thibaut  
By Alton J. Reine, Esq.

AMENDED PROPOSED DECISION

Under date of December 2, 1970, the Commission issued its Proposed Decision on this claim, certifying losses in favor of claimants in the aggregate amount of \$20,982.58. A portion of the claim based upon a 1/2 interest in certain cane crops known as "Colonias" was denied for lack of proof. Subsequently, additional supporting evidence was submitted with respect to the "Colonias" property, and the Commission was informed that Arthur L. Gianelloni, Sr. died on June 20, 1960, not on February 2, 1962 as previously indicated by the record.

Upon consideration of the new evidence in the light of the entire record, it is

ORDERED that the Proposed Decision be and it is hereby amended.

The Commission finds as follows:

1. The deceased, Arthur L. Gianelloni, Sr., owned a 1/8 interest in certain real property in Santiago de las Vegas, Cuba, and a 1/8 interest in land in Marianao, Havana, Cuba.

2. The deceased and LOIS BURK GIANELLONI each owned a 1/2 interest in certain personal property situated in the family residence at Santiago de las Vegas, and they jointly owned a 1/2 interest in certain cane crops in Cuba, known as "Colonias".

3. Upon the testate death of Arthur L. Gianelloni, Sr. on June 20, 1960, his said interests in the above properties were inherited by his three children, ARTHUR L. GIANELLONI, JR., WILLIAM DOUGLAS GIANELLONI and MARCELLE CECILIA GIANELLONI in equal shares subject to a life estate in 1/2 of his property interests in favor of his widow, LOIS BURK GIANELLONI.

4. The improved real property at Santiago de las Vegas (lot 5164 and adjoining lot 4946) was taken by the Government of Cuba on October 14, 1960 pursuant to the Urban Reform Law, and the personal property at that location was taken at the same time.

5. The land at Marianao and the "Colonias" property were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

6. On October 14, 1960, the date of loss, the 1/8 interest of the deceased in the improved real property at Santiago de las Vegas had a value of \$10,722.48, and his 1/2 interest in the personal property situated therein had a value of \$4,928.80.

7. On December 6, 1961, the date of loss, the 1/8 interest of the deceased in the land at Marianao had a value of \$402.50, and his interest in the "Colonias" property had a value of \$25,000.00, based upon a compromise agreement concluded with the Internal Revenue Service.

On October 14, 1960, the life tenant was 38 years old, according to her nearest birthday, and a life estate in property so encumbered is valued at .64867 of the encumbered estate. The decedent's interest in the Santiago realty and personalty totalled \$15,651.28. One-half of this, or \$7,825.65 was so encumbered. Thus the value of the life estate was \$5,076.26 and the value of the remainder was \$2,749.38.

On December 6, 1961, the life tenant was 39 years old, according to her nearest birthday, and the life estate was valued at .63898 of the encumbered estate. The decedent's interest in the Marianao property and "Colonias" totalled \$25,402.50. One-half of this, or \$12,701.25 was so encumbered. Thus the value of this life estate was \$8,115.84 and the value of the remainder was \$4,585.41.

The claimants' losses are restated as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
<u>LOIS BURK GIANELLONI:</u>		
Personalty	Oct. 14, 1960	\$ 4,928.80
Life estate in personalty and Santiago realty	Oct. 14, 1960	5,076.26
Colonias	Dec. 6, 1961	25,000.00
Life estate in Colonias and Marianao property	Dec. 6, 1961	<u>8,115.84</u>
		\$43,120.90
<u>ARTHUR L. GIANELLONI, JR.:</u>		
Interest in personalty and Santiago realty	Oct. 14, 1960	\$ 2,608.55
Remainder in personalty and Santiago realty	Oct. 14, 1960	916.46
Interest in Colonias and Marianao realty	Dec. 6, 1961	4,233.75
Remainder in Colonias and Marianao realty	Dec. 6, 1961	<u>1,528.47</u>
		\$ 9,287.23
<u>WILLIAM DOUGLAS GIANELLONI:</u>		
Interest in personalty and Santiago realty	Oct. 14, 1960	\$ 2,608.55
Remainder in personalty and Santiago realty	Oct. 14, 1960	916.46
Interest in Colonias and Marianao realty	Dec. 6, 1961	4,233.75
Remainder in Colonias and Marianao realty	Dec. 6, 1961	<u>1,528.47</u>
		\$ 9,287.23
<u>MARCELLE CECILIA GIANELLONI:</u>		
Interest in personalty and Santiago realty	Oct. 14, 1960	\$ 2,608.54
Remainder in personalty and Santiago realty	Oct. 14, 1960	916.46
Interest in Colonias and Marianao realty	Dec. 6, 1961	4,233.75
Remainder in Colonias and Marianao realty	Dec. 6, 1961	<u>1,528.47</u>
		\$ 9,287.22

Interest at 6% per annum will be allowed from the aforesaid dates of loss.

Accordingly, the certifications of loss, as restated below, will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATIONS OF LOSS

The Commission certifies that LOIS BURK GIANELLONI owned and succeeded to, and 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-three Thousand One Hundred Twenty Dollars and Ninety Cents (\$43,120.90) with interest at 6% per annum from the respective dates of loss to the date of settlement;


The Commission certifies that LOIS BURK GIANELLONI, NATURAL TUTRIX OF ARTHUR L. GIANELLONI, JR., A MINOR, succeeded to and 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 Nine Thousand Two Hundred Eighty-seven Dollars and Twenty-three Cents (\$9,287.23) with interest at 6% per annum from the respective dates of loss to the date of settlement;

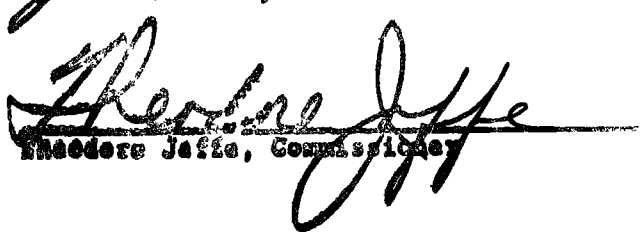
The Commission certifies that LOIS BURK GIANELLONI, NATURAL TUTRIX OF WILLIAM DOUGLAS GIANELLONI, A MINOR, succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Thousand Two Hundred Eighty-seven Dollars and Twenty-three Cents (\$9,287.23) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MARCELLE CECILIA GIANELLONI succeeded to and 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 Nine Thousand Two Hundred Eighty-seven Dollars and Twenty-two Cents (\$9,287.22) 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 Amended Proposed  
Decision of the Commission

JAN 6 1971

  
Lyle S. Carlock, 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 Amended 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. 5(e) and (g), as amended (1970).)

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**Decision No. CU 5981**

**Under the International Claims Settlement  
Act of 1949, as amended**

Counsel for claimants:

Watson, Blanche, Wilson,  
Posner & Thibaut  
By Alton J. Reine, Esq.

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**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 \$75,982.58, was presented originally by LOIS BURK GIANELLONI on her own behalf and as natural tutrix of her three children, ARTHUR L. GIANELLONI, JR., WILLIAM DOUGLAS GIANELLONI, and MARCELLE CECILIA GIANELLONI. Inasmuch as MARCELLE CECILIA GIANELLONI has since then reached majority, she has been added as party claimant on her own behalf. The claim is based upon the loss of certain real and personal property in Cuba. The 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 assert the following losses:

1/8 interest in land valued at \$37,720.02 (Property 1602, lot 57, Marianao, \$3,220.02; Property 5164, Santiago de las Vegas, \$18,500.00; Property 4946, Santiago de las Vegas \$16,000.00)	\$ 4,715.00
1/8 interest in buildings valued at \$51,279.87 (on the Santiago de las Vegas property)	6,409.98
1/2 interest in land valued at \$110,000.00 ("Colonias" assertedly held by the decendent in partnership)	55,000.00
Full ownership of personal property	<u>9,857.60</u>
Total	<u>\$75,982.58</u>

The evidence includes reports from abroad, decrees of distribution, affidavits from individuals with personal knowledge of the facts and claimants' statements. On the basis of the entire record, the Commission finds that claimants owned and succeeded to certain property in Cuba, discussed in detail below.

#### Real Property

The record shows that Arthur L. Gianelloni, Sr., a national of the United States from birth until his death on February 2, 1962, was the husband of LOIS BURK GIANELLONI and the father of the other three claimants herein. The deceased had inherited upon the death of his father, Vivian J. Gianelloni, Sr., in 1957, a 1/8 interest in certain real property in Cuba as follows:

1. Land in Santiago de las Vegas, Havana, Cuba (Property No. 4946) acquired by the deceased's father on December 16, 1955 for \$16,000.00.
2. Adjoining lot (Property No. 5164) with a house in Santiago de las Vegas, Havana, which the deceased's father had purchased on May 14, 1957 for \$18,500.00.
3. Land in Marianao, Havana, Cuba, known as lot 57, acquired by the deceased's father on June 18, 1951 for \$3,220.02.

The evidence of record discloses, as stated above, that the land at Santiago de las Vegas was improved by a house. An affidavit from the architect who performed certain work in 1956 and 1957 recites that the improvements were then rebuilt and altered at an aggregate cost of \$51,279.87, and that the improvements extended to the adjoining lot.

Inasmuch as all of the foregoing items of real property had been acquired by the deceased through inheritance, the properties were not subject to the community property laws of Cuba, but remained the separate properties of the deceased. The Commission finds that upon the death of Arthur L. Gianelloni, Sr., his 1/8 interests in the foregoing real properties or claims arising from the loss thereof, were inherited by his three children, ARTHUR L. GIANELLONI, JR., WILLIAM DOUGLAS GIANELLONI and MARCELLE CECILIA GIANELLONI, in equal shares subject to a life estate in favor of LOIS BURK GIANELLONI in 1/2 thereof.

Claimants state that the claimed properties were taken in 1961. However, they have submitted no evidence in support of their assertion.

The Commission finds that the improved real property at Santiago de las Vegas was within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that the property was taken by the Government of Cuba on October 14, 1960, as a result of which claimants sustained losses within the meaning of Title V of the Act. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)



On December 6, 1961, the Cuban Government published Law 989, which confiscated all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimants and the deceased who had left Cuba prior to that date, and that their interests in the land in Marianao were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The Commission further finds that as a result of said action claimants sustained losses within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Claimants assert losses on the basis of acquisition costs. Thus, they state that the land and adjoining lot at Santiago de las Vegas had a value of \$34,500.00; that the building situated thereon had a value of \$51,279.87; and that the land in Marianao had a value of \$3,220.02.

On the basis of the entire record, the Commission finds that claimants' valuations are fair and reasonable. Accordingly, the Commission finds that the improved real property at Santiago de las Vegas had a value of \$85,779.87 on October 14, 1960, the date of loss; and that the land at Marianao had a value of \$3,220.02 on December 6, 1961, the date of loss. Therefore, the 1/8 interests therein owned collectively by the claimants had values of \$10,722.48 and \$402.50, respectively, on the said dates of loss.

As noted above, the claim for the loss of said properties was inherited by ARTHUR L. GIANELLONI, JR., WILLIAM DOUGLAS GIANELLONI and MARCELLE CECILIA GIANELLONI in equal shares, subject to a life estate in 1/2 thereof in favor of LOIS BURK GIANELLONI. The record shows that the life tenant was 39 years of age on February 2, 1962 when she inherited her interest.

The Commission has adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate

taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) (See Claim of Richard Franchi Alfaro and Anna Alfaro, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71.) According to that method of valuation, a life estate in property so encumbered is valued at .63898 of the entire estate, and the remainder interest is valued at .36102 of the entire estate. Therefore, since the encumbered properties had values of \$5,361.24 (1/2 of \$10,722.48) and \$201.25 (1/2 of \$402.50), the values of the life estates were \$3,425.72 and \$128.59, respectively; and the remainder interests aggregated \$7,296.76 and \$273.91, (including the unencumbered portions). Claimants losses thus are as follows:

LOIS BURK GIANELLONI - \$3,425.72 for the improved real property in Santiago de las Vegas, and \$128.59 for the land at Marianao.

ARTHUR L. GIANELLONI, JR. - \$2,432.25 (1/3 of \$7,296.76) for the improved real property in Santiago de las Vegas, and \$91.30 (1/3 of \$273.91) for the land at Marianao.

WILLIAM DOUGLAS GIANELLONI - \$2,432.25 (1/3 of \$7,296.76) for the improved real property in Santiago de las Vegas, and \$91.31 (1/3 of \$273.91) for the land at Marianao.

MARCELLE CECILIA GIANELLONI - \$2,432.26 (1/3 of \$7,296.76) for the improved real property in Santiago de las Vegas, and \$91.30 (1/3 of \$273.91) for the land at Marianao.

A portion of the claim in the amount of \$55,000.00 is based upon the asserted loss of a 1/2 interest in cane crops in Cuba. In support of this portion of the claim, claimants have submitted four almost identical affidavits executed in 1964 attesting to 50% ownership interest of the deceased, Arthur L. Gianelloni, Sr., in certain "Colonias" in Cuba, known as Rincon and San Agustin, and that the total value thereof was \$110,000.00.

It appears that these affidavits were prepared for submission by claimants to the Internal Revenue Service in support of asserted tax deductions for their Cuban losses. In their official claim form, claimants stated that there had as yet been no determination with respect to their claimed tax deductions, basis not identified on the claim form. On two occasions the Commission inquired concerning this matter, but to date there has been no reply.

Moreover, the Commission offered to assist claimants in initiating a request for any possible information from abroad that might support this

portion of the claim. The Commission noted that favorable reports from abroad had been received with respect to the real properties that were inherited by claimants from the deceased. The Commission's offers were included in communications to counsel for claimants in which the Commission had also inquired concerning the asserted tax deductions. As already noted, there has been no reply to the Commission's letters.

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) (1969).)

The Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of the claim based on a 1/2 interest in the said land. Accordingly, this portion of the claim is denied.

#### Personal Property

On the basis of the evidence of record, the Commission finds that LOIS BURK GIANELLONI and the deceased each owned a 1/2 interest in certain personal property maintained at the family residence in Santiago de las Vegas, Cuba. The Commission further finds that said personal property was taken by the Government of Cuba on October 14, 1960 when the residence was taken.

Pursuant to a decree of distribution issued by a Louisiana court, the deceased's 1/2 interest in the claim for the loss of personal property was inherited by his three children, subject to a life estate in 1/2 thereof in favor of his widow. Therefore, LOIS BURK GIANELLONI owned a 1/2 interest in the claim for the loss of personal property plus a life estate in a 1/4 interest thereof (i.e., 1/2 of the decedent's interest); and the remainder interests (in the decedent's 1/2) were owned by the other three claimants in equal shares.

Claimants have submitted a detailed list of the various items of personal property. An examination thereof indicates that the valuations are fair and reasonable. Accordingly, the Commission finds that the aggregate

value of the items of personal property on October 14, 1960, the date of loss, was \$9,857.60. A 1/2 interest therein therefore had a value of \$4,928.80.

Since the life tenant was 39 years of age on the date of inheritance of her life interest, the value of her life interest was equivalent to .63898 of the encumbered estate, valued at \$4,928.80 (1/2 of \$9,857.60), or the amount of \$3,149.40. Therefore, the remainder interests had an aggregate value of \$1,779.40. It is concluded that claimants succeeded to and suffered losses with respect to the personal property as follows:

LOIS BURK GIANELLONI - \$8,078.20, representing \$4,928.80 for her own 1/2 interest and \$3,149.40 for her life estate.

ARTHUR L. GIANELLONI, JR. - \$593.14

WILLIAM DOUGLAS GIANELLONI - \$593.13

MARCELLE CECILIA GIANELLONI - \$593.13

Claimants' losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>LOIS BURK GIANELLONI</u>		
Improved Real Property	October 14, 1960	\$ 3,425.72
Land at Marianao	December 6, 1961	128.59
Personal Property	October 14, 1960	<u>8,078.20</u>
Total		<u>\$11,632.51</u>
<u>ARTHUR L. GIANELLONI, JR.</u>		
Improved Real Property	October 14, 1960	\$ 2,432.25
Land at Marianao	December 6, 1961	91.30
Personal Property	October 14, 1960	<u>593.14</u>
Total		<u>\$ 3,116.69</u>
<u>WILLIAM DOUGLAS GIANELLONI</u>		
Improved Real Property	October 14, 1960	\$ 2,432.25
Land at Marianao	December 6, 1961	91.31
Personal Property	October 14, 1960	<u>593.13</u>
Total		<u>\$ 3,116.69</u>
<u>MARCELLE CECILIA GIANELLONI</u>		
Improved Real Property	October 14, 1960	\$ 2,432.26
Land at Marianao	December 6, 1961	91.30
Personal Property	October 14, 1960	<u>593.13</u>
Total		<u>\$ 3,116.69</u>

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 respective dates 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>
LOIS BURK GIANELLONI	October 14, 1960	\$11,503.92
	December 6, 1961	<u>128.59</u>
	Total	<u>\$11,632.51</u>
ARTHUR L. GIANELLONI, JR.	October 14, 1960	\$ 3,025.39
	December 6, 1961	<u>91.30</u>
	Total	<u>\$ 3,116.69</u>
WILLIAM DOUGLAS GIANELLONI	October 14, 1960	\$ 3,025.38
	December 6, 1961	<u>91.31</u>
	Total	<u>\$ 3,116.69</u>
MARCELLE CECILIA GIANELLONI	October 14, 1960	\$ 3,025.39
	December 6, 1961	<u>91.30</u>
	Total	<u>\$ 3,116.69</u>

CERTIFICATIONS OF LOSS

The Commission certifies that LOIS BURK GIANELLONI owned and succeeded to, and 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 Six Hundred Thirty-two Dollars and Fifty-one Cents (\$11,632.51) with interest at 6% per annum from the respective dates of loss to the date of settlement;


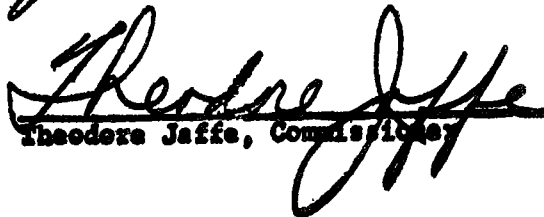
The Commission certifies that LOIS BURK GIANELLONI, NATURAL TUTRIX OF ARTHUR L. GIANELLONI, A MINOR, succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand One Hundred Sixteen Dollars and Sixty-nine Cents (\$3,116.69) with interest at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that LOIS BURK GIANELLONI, NATURAL TUTRIX OF WILLIAM DOUGLAS GIANELLONI, A MINOR, succeeded to and 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 Thousand One Hundred Sixteen Dollars and Sixty-nine Cents (\$3,116.69) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MARCELLE CECILIA GIANELLONI succeeded to and 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 Thousand One Hundred Sixteen Dollars and Sixty-nine Cents (\$3,116.69) 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

DEC 2 1970

  
Lytle 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 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).)

CU-0577