

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

**IN THE MATTER OF THE CLAIM OF**

**OCTAVIO LINARES  
FLORENCE LINARES**

**Claim No. CU -0756**

**Decision No. CU-4809**

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

Counsel for claimants:

Max L. Kleinman, Esq.

Appeal and objections from a Proposed Decision entered April 29, 1970;  
Oral Hearing requested.

Oral argument November 17, 1970 by Max L. Kleinman, Esq., for claimants.

**FINAL DECISION**

The Commission issued its Proposed Decision in this claim on April 29, 1970, denying the claim for the reason that claimants failed to establish ownership of rights and interests in property which was nationalized or otherwise taken by the Government of Cuba. Thereafter, claimants objected to the Proposed Decision, through counsel, and submitted additional correspondence and affidavits, including a letter of the Royal Bank of Canada reflecting the claimants' 1957 report of their net worth.

At an oral hearing held on November 17, 1970, claimant OCTAVIO LINARES presented testimony with additional supporting evidence. Further, argument was made by counsel for claimants as to the extent of ownership of the subject property by claimants, loss thereof, and the value of such property at the time of loss.

Based upon the record, including testimony of claimant and the additional evidence, the Commission finds that pursuant to the community property law of Cuba, OCTAVIO LINARES and FLORENCE LINARES owned equal

interests in a ranch known as "La Ceja", with 660 acres of land, with improvements, cattle, other livestock and personal property; that the aforesaid ranch was encumbered by a mortgage in the amount of \$10,000.00 at the time of loss; and that claimants also owned two adjoining lots near Santa Clara, Las Villas, Cuba, comprising an area of approximately 25,000 square meters of land.

The Commission further finds that the properties, subject of this claim, were confiscated on or about August 31, 1959, when claimant OCTAVIO LINARES was imprisoned by agents of the Government of Cuba.

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 Commission finds that on the aforesaid date of loss, the value of the properties, subject of this claim, were as follows:

Cane and cultivated acreage, 150 acres, at \$500 per acre	\$ 75,000.00
510 acres, as pasture, grazing and timber, including 5,000 cedar trees, at \$200.00 per acre	102,000.00
Two adjoining lots, approximately 25,000 square meters, near Santa Clara, Las Villas	10,000.00
Dwelling house, smaller tenant houses and other improvements to the land	18,000.00
312 head of cattle, at \$100.00 per head	31,200.00
56 horses, 8 pair oxen, other livestock	3,800.00
Machinery and equipment	7,000.00
Personal property	<u>5,000.00</u>
Total	\$252,000.00

The claim asserted by claimants in the amount of \$15,000.00 for sugar cane plants and cultivation facilities as well as \$50,000.00 for loss of 5,000 growing cedar trees remains denied. However, the value of the cultivated areas in cane and other crops, as well as the areas utilized for timber, has been included in the above computations in reaching a total value of \$177,000.00 for the 660 acres in the tract of "La Ceja", owned by the claimants.

As stated above, at the time of loss the ranch was encumbered by a mortgage in the amount of \$10,000.00 which was held by Con Angel Alvarez Ulacia. Accordingly, this sum is hereby deducted from the total evaluation, as given above, leaving the net amount of \$242,000.00.

The Commission concludes that claimants each suffered a loss in the amount of \$121,000.00 within the meaning of Title V of the Act, as the result of the taking of the 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.

The Certifications of Loss, as stated below, will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed.



CERTIFICATIONS OF LOSS

The Commission certifies that OCTAVIO LINARES 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 Twenty-One Thousand Dollars (\$121,000.00) with interest thereon at 6% per annum from August 31, 1959 to the date of settlement; and

The Commission certifies that FLORENCE LINARES 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 Twenty-One Thousand Dollars (\$121,000.00) with interest thereon at 6% per annum from August 31, 1959 to the date of settlement.

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

JAN 6 1971

  
Lyle S. G.  
  
Theodore Jaffe, Consul General

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.

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OF THE UNITED STATES  
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**IN THE MATTER OF THE CLAIM OF**

OCTAVIO LINARES  
FLORENCE LINARES

**Claim No. CU -0756**

**Decision No. CU 4809**

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

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 \$259,800.00, was presented by OCTAVIO LINARES and FLORENCE LINARES and is based upon the asserted loss of real and personal property in Cuba. Claimants have been nationals of the United States since naturalization in 1935, and birth, respectively.

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.

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).)

Claimants have asserted loss, as of August, 1959, of property at or near Manacas, Las Villas, and at La Gomera, Las Villas, described as follows:

660 acres 99 of which were planted with sugar cane and 50 with other crops	\$125,000
Dwelling and several other houses	18,000
312 cattle	36,000
56 horses, 8 pair of oxen, pigs, chickens	3,800
Machinery and equipment	7,000
5,000 cedar trees	50,000
Personalty	5,000
Sugar cane	<u>15,000</u>
	\$259,800

In support of the claim, there have been submitted affidavits of acquaintances of claimants which are general in nature. There has also been submitted a 1964 letter of the Royal Bank of Canada setting out a statement of October 1, 1957, which the Bank was informed had been made by claimant OCTAVIO LINARES. This showed assets as \$120,239 and liabilities of \$5,000. Further, claimants have submitted a copy of a ruling by the Internal Revenue Service allowing them a loss in the amount of \$56,700, although it is not identifiable as connected with the asserted Cuban losses.

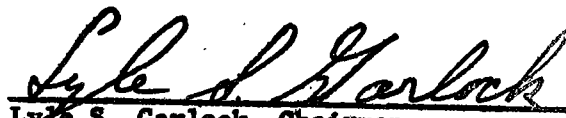
Claimant was invited to submit evidence of his ownership of the properties and the value thereof. A letter of May 1, 1967 addressed to the Commission gives certain detail as to the properties, but claimant stated his letter of October 3, 1967 that he did not have additional material.

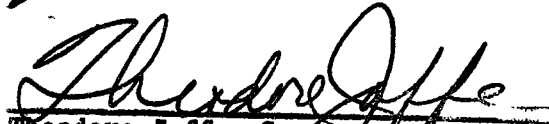
He thereafter submitted requests to the Commission to assist in securing evidence of his ownership. The Commission has attempted without success to obtain this evidence. Claimant, however, has not submitted the material on which his letter of May 1, 1967 or the requests of October 13, 1967 were based.

The record having been examined, discloses no basis on which the Commission can make a certification of loss. Accordingly, the Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

APR 29 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freidberg, Commissioner

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).)