

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

IN THE MATTER OF THE CLAIM OF

ROBERT L. CHEANEY
MARJORIE L. CHEANEY

Claim No. CU-0915

Decision No. CU 4120

Under the International Claims Settlement
Act of 1949, as amended

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 ROBERT L. CHEANEY, for \$232,467.33, based upon personal property, an interest in a business, experimental seed samples, a debt owed by a nationalized Cuban enterprise, and cash. Subsequently, MARJORIE L. CHEANEY petitioned to join as a co-claimant. This matter having been considered, it is so ordered, and MARJORIE L. CHEANEY is joined as claimant herein. 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.

Personal Property

Claimants state that they lost personal property consisting of household furnishings and appliances, clothes, fishing equipment, photographic equipment, tools and equipment, records, books, and toys. In support of this item claimants submitted itemized lists and indicated that the items were purchased in 1953 and 1954 with the exception of the dining room table and chairs which were purchased in 1958 and an RCA record player which was purchased in 1959. In addition claimants also submitted receipts and bill of lading check lists from the Bekins Van Lines dated June 7, 1956.

According to the Community Property Law of Cuba, those properties which belong in equal parts to both spouses include (1) those acquired by one or both spouses during the marriage with money of the marriage partnership; (2) property acquired by the industry, salary or work of either or both spouses, and (3) the fruits, income or interests received or accrued during the marriage from the common or private properties of the spouses or spouse.

Based upon the entire record, the Commission finds that the claimants owned the above-mentioned personal property, in equal parts.

Law 989, published in the Official Gazette on December 6, 1961, by its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. Accordingly, this law applies to these claimants, who had left Cuba prior to that date; and the Commission finds that this property was taken by the Government of Cuba on December 6, 1961, pursuant to Law 989.

In arriving at the value of the personal property consideration was given to claimants' itemization and approximate dates of purchase. Each

item was depreciated 5% for each year from the approximate dates of purchase with the exception of the books which principally were technical in nature. The Commission finds that at the time of loss the aggregate value of the personal property amounted to \$7,542.00 and that claimants suffered a loss in that amount within the meaning of Title V of the Act, as the result of the taking of the personal property by the Government of Cuba as of December 6, 1961.

Business

Claimants also state that they lost a one-half partnership interest in a rice farming operation in Mayajigua, Las Villas, Cuba, which partnership claimant, ROBERT L. CHEANEY, and Rafael Capo Lemus entered into in 1959. Claimant, ROBERT L. CHEANEY, asserts that he financed 75% of the venture but that Rafael Capo Lemus was in charge of the operation since claimant was fully employed by the enterprise Agricola Cayamas. Claimants further state the partners went to considerable expense to level the land, build canals and install pumps and motors; and that in 1960 rice was planted on 165 acres, which acreage was leased by the partners on a basis of 10% of the production. Claimants state that the business was nationalized on or about January 15, 1961.

Based upon the entire record the Commission finds that the claimants jointly owned a one-half interest in this rice farming operation in Mayajigua, Las Villas which, in the absence of evidence to the contrary, is found to have been nationalized on January 15, 1961.

In arriving at the value of the machinery and equipment purchased by the partnership for use in the rice farming operation, consideration was given to an itemized list submitted by the claimants. Each item was depreciated 5% for each year from the date of purchase with the exception of the 1954 Chevrolet sedan which was depreciated in accordance with the National Automobile Dealers Used Car Guide. The Commission finds that at the time of loss the value of the machinery and equipment including the 1954 Chevrolet sedan was \$15,883.66, one-half of which belongs to claimants.

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The claimants assert that there were 165 acres of rice that were planted and ready for harvesting at the time of loss on January 15, 1961. In arriving at the value of the rice harvest, consideration was given to the joint affidavit of owners and stockholders of the enterprise Agricola Cayamas wherein they state that the normal production of such a farm as Mayajigua, Las Villas, was approximately 3,000 pounds per acre and the wholesale market value of seed rice in Cuba was from \$10.00 to \$14.00 per 100 pounds depending upon certain factors. The Commission finds, based upon such evidence, that the value of the rice to be harvested was \$59,400.00. This value was arrived at by taking the total rice harvest for 165 acres which is 495,000 pounds or 4,950 bags of 100 pounds each and multiplying the number of bags by \$12.00 (the average between \$10.00 and \$14.00 as stated above by the owners and stockholders of Agricola Cayamas, S.A.). Ten percent of the \$59,400.00 is deducted for the use of the land or \$5,940.00 and another ten percent is deducted for the estimated cost of harvesting, leaving a balance of \$47,520.00, one-half of which belongs to claimants. The Commission therefore finds that claimants suffered a loss in the amount of \$31,701.83 (which includes their interest in the machinery and equipment and the rice) within the meaning of Title V of the Act, as the result of the taking of the machinery, equipment, and rice by the Government of Cuba as of January 15, 1961.

Experimental Rice Samples

Claimant, ROBERT L. CHEANEY, contends that he lost three sets of experimental rice samples, representative of his time, effort, and expertise in the value of \$150,000.00. In support of this item claimant submitted his own statement dated August 25, 1967, a joint affidavit from owners and stockholders of Agricola Cayamas, S.A. dated September 15, 1967, and a formula for arriving at the amount of loss. Claimant states that he was an expert in the maintenance of seed quality rice and in the development of new seed stocks through selective processes. This is substantiated by the statement of

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G. M. Watkins, Program Director, Dominican Republic Program, of the Texas A & M University System and the joint affidavit of stockholders and owners of Agricola Cayamas, S.A., a Cuban enterprise which operated a large rice farm at Cayamas, Oriente, Cuba. The evidence is that Agricola Cayamas, S.A. had hired claimant, ROBERT L. CHEANEY, in 1957, at a salary of \$24,000.00 per year plus a 15% interest in any profits from seed sales to outside growers. It further appears that he had personally developed for the company strains of rice of established great marketable value which were ideal from a planting, cultivating and harvesting standpoint; and that his duties with Agricola Cayamas, S.A. were to give over-all technical assistance in the whole operation; maintain the seed quality; and develop new seed stocks through selective processes. In 1956 there were two rice diseases prevalent in Cuba called "Hoja Blanca" and "Blast," which were chiefly responsible for heavy losses in production. All Cuban rice varieties were susceptible to these two diseases except one which had considerable resistance to the two-mentioned diseases but which also had many undesirable characteristics. On a trip to Surinam in 1947, the claimant noticed a seed variety known as Paquita which possessed good table quality and produced good field and mill yields. In 1956 a rice breeding program was initiated and crosses were made between the "Alba" and "Paquita" varieties and the Surinam variety "Dima." This material was selected and replanted twice each year. By the end of 1960 several of the many selections were ready to put into a multiplication program prior to making sales to farmers. These selections had not yet been given a name when confiscated. They represented, however, 5 years of intensive work in the development of highly productive types of rice which had resistance to serious diseases, possessed good milling and table quality and could be harvested by mechanical harvesters. It is these samples which he developed that the claimant values at \$150,000.00.

Based upon the entire record, the Commission finds that Agricola Cayamas, S.A. owned three sets of experimental rice samples developed by

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ROBERT L. CHEANEY which samples were nationalized on December 6, 1961, pursuant to Law 989. The Commission finds that Mr. CHEANEY did not own said samples personally and that any value of same to him would arise only from his 15% interest in profits made from seed sales to outside growers. No such sales appearing in this record no allowance can be made to him on account of the nationalization of such property. The Commission expressly rejects this claimant's contention that he is entitled to claim a loss of \$150,000.00 on projected future sales. His losses, in this regard, if any, would arise out of a breach of his contract of employment and not out of any property right and is not one of the types of losses covered by the Act.

Debt

Claimant, ROBERT L. CHEANEY, further states that he was employed by the enterprise Agricola Cayamas at \$24,000.00 per annum; that in January 1960 while he was on vacation, Agricloa was intervened by the Government of Cuba; and that although the company maintained some control, the Government of Cuba would not continue to pay his salary of \$24,000.00 per annum. The company then asked Mr. CHEANEY to continue for one more year at \$15,000.00 per annum in the hope that its problems could be worked out. This he did. The claimant though thereafter left Cuba in December 1960 without collecting his December salary. He thus contends he is entitled to the difference in salary from \$24,000.00 to \$15,000.00 per annum for the year 1960 and for the loss of his salary for the month of December 1960.

With respect to the portion of the claim that is based upon the loss of the difference in salary between \$24,000.00 and \$15,000.00 for the year 1960, the claimant has submitted no evidence to establish any taking by the Government of Cuba. His acceptance of the reduced salary was a voluntary act on his part and is the opposite of a taking. Accordingly, the Commission denies that portion of the claim.

The record, however, shows, and the Commission finds, that Agricola Cayamas owed claimant \$1,250.00 as salary for the month of December 1960

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and that Agricola Cayamas was nationalized on April 17, 1961 while owing this sum. The Commission has held that debts of nationalized Cuban enterprises are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) The Commission therefore finds that claimant, ROBERT L. CHEANEY, suffered a loss of \$1,250.00 for loss of salary within the meaning of Title V of the Act.

Cash

Claimant, ROBERT L. CHEANEY, states that \$305.00 was confiscated from his person at the airport of Camaguey on November 22, 1959 prior to his leaving Cuba on a trip. Although the Cuban Government asserted it would return the money, it did not do so. In support of this claim, the claimant submitted a receipt from the Minister of Taxes for the \$305.00.

The Commission finds on the basis of the evidence of record that the claimants jointly owned cash that was taken on November 22, 1959, and that the amount taken at the time of loss was \$305.00, within the meaning of Title V of the Act.

Claimants' losses may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Personal Property	December 6, 1961	\$ 7,542.00
Business	January 15, 1961	31,701.83
Debt owed to claimants	April 17, 1961	1,250.00
Cash	November 22, 1959	<u>305.00</u>
	Total	\$40,798.83

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.

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CERTIFICATION OF LOSS

The Commission certifies that ROBERT L. CHEANEY 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 Twenty Thousand Three Hundred Ninety-nine Dollars and Forty-one Cents (\$20,399.41) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MARJORIE L. CHEANEY 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 Twenty Thousand Three Hundred Ninety-nine Dollars and Forty-two Cents (\$20,399.42) with interest thereon 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

OCT 21 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)

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