

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

IN THE MATTER OF THE CLAIM OF

DOROTHY KIMBLE BUENO

Claim No. CU-1435

Decision No. CU 3864

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for Claimant:

Badger, Parrish, Sullivan & Frederick  
By William C. Gardiner, Esquire

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 \$67,480.00, was presented by DOROTHY KIMBLE BUENO, and is based upon the asserted loss of real and personal property located at Datil and Guisa in Bayamo, Oriente, Cuba. 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 enter-

prises 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).)

The claimant has described the asserted losses as follows:

<u>Item</u>	<u>Asserted Cost</u>	<u>Asserted Value in 1961</u>
Farm, 11 3/4 caballerias	\$ 19,750.00	\$ 50,900.00
Cattle	2,500.00	6,500.00
Two lots, house (Guisa)	2,000.00	2,600.00
Pasture (Guisa)	1,550.00	1,750.00
Medical equipment	1,800.00	1,800.00
Household	2,730.00	2,730.00
Money in bank	1,200.00	1,200.00
	<hr/>	<hr/>
T O T A L S . . .	\$ 31,530.00	\$ 67,480.00

Regarding the ownership of the farming property, known as "The Fortune" at Datil, Bayamo, comprising 11 3/4 caballerias as well as lots or pasture land near Guisa, all in Oriente Province, the evidence of record includes several affidavits of persons who were former residents of Cuba; a report dated October 11, 1967, from the Registry of Properties, Bayamo District reflecting that claimant and her husband purchased the real properties between 1946 and 1954.

The Commission finds that claimant and her husband, a Cuban national owned 11 3/4 caballeria of farm land, two house plots and thatched-roof house, a plot used as a pasture for two houses, and various improvements and personalty further discussed below.

The claimant has asserted that these properties were acquired subsequent to her marriage to Santiago Bueno (Thomas) on July 21, 1939; and that the original medical equipment was acquired in 1938 but that the items included in this claim were replacements from time to time since 1938 due to obsolescence and other factors incident to the practice of medicine.

The Commission finds that the properties included in this claim, except the bank account, were nationalized or otherwise taken by the Government of Cuba on May 13, 1961, pursuant to the agrarian reform laws and that claimant thereby suffered a loss within the purview of Title V of the Act.

The evidence of record discloses that when the land comprising 11 3/4 caballerias was acquired such area was unimproved; that claimant and her husband fenced the property, added corrals, wells, coffee plants and coffee drying platforms, a thatched roof house and planted seed in certain areas for meadows. Additionally, claimant and her husband added household furnishings to the houses and made other improvements to property in Guisa, such as fencing, wells and fruit trees.

Based on the record and evidence available to the Commission concerning the value of similar property in Cuba, the Commission finds that the properties, owned by claimant and her husband, had the following values at the time of loss:

(1) "The Fortune" at Datil		
7.85 caballerias of pasture		\$ 31,400.00
Improvements:		
Corral	\$1,500.00	
Fencing	2,000.00	
Platform	2,200.00	
Well	<u>300.00</u>	6,000.00
Livestock		6,500.00
3.9 caballeria coffee plantation		19,500.00
(2) Two lots in Guisa each of		
1,064 square meters:		2,128.00
7-room thatched-roof house		1,750.00
Improvements:		
Well, fencing, trees		600.00
(3) 3,229 square meters of		
land in Guisa used as a		
horse pasture		1,280.00
Fencing		200.00
Two horses		300.00
(4) Household goods		2,730.00
Medical equipment		<u>1,550.00</u>
TOTAL		\$ 73,938.00

The husband of claimant, Santiago Bueno (Thomas), owner of a one-half interest in the aforesaid property in accordance with the Community Property Laws of Cuba, was not a national of the United States at the time of loss, or when this claim was filed. In order for the Commission to favorably consider a claim filed under Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing claim with the Commission. (See the Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966]).

Thus, while Santiago Bueno (Thomas) has not asserted a claim herein for loss of his one-half interest in the subject property, the instant claim was based upon the total value of all property included in the claim. Accordingly, the claim asserted herein for loss of properties owned by Santiago Bueno (Thomas), to the extent of a one-half interest, is hereby denied.

The claimant also asserted a claim for loss of a joint savings account said to have been maintained in the Royal Bank of Canada, Bayamo, Oriente, Cuba, by claimant and her husband. However, the claimant was unable to obtain acceptable supporting evidence concerning this item.

The Commission appreciates the difficulties encountered by some claimants in establishing all or a part of their claims against the Government of Cuba. The Commission must be guided, however, by the evidence of record pertaining to ownership, loss and value of the property included in each claim. Thus, the Commission is constrained to find that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in a bank account which was nationalized by the Government of Cuba. Accordingly, this portion of the claim is hereby denied.

In conclusion, the Commission finds that claimant, DOROTHY KIMBLE BUENO, sustained a loss in the amount of \$36,969.00, within the meaning of Title V of the Act.

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.

CERTIFICATION OF LOSS

The Commission certifies that DOROTHY KIMBLE BUENO 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 Thirty-Six Thousand Nine Hundred Sixty-Nine Dollars (\$36,969.00) with interest thereon at 6% per annum from May 13, 1961, to the date of settlement.

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

**SEP 11 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).)