

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

IN THE MATTER OF THE CLAIM OF

PATRICIA F. MEDEROS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1592

Decision No. CU

3907

Counsel for claimant:

Cutler & Efronson
By Peter M. Lopez, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$231,360.00, was presented by PATRICIA F. MEDEROS based upon the asserted loss of certain real and personal property in Cuba, the value of life insurance policies, and interests in certain Cuban corporations. 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 of 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.

The evidence establishes and the Commission finds that claimant and her husband, a nonnational of the United States at all pertinent times, jointly owned, pursuant to the community property laws of Cuba, certain items of real and personal property in Cuba, discussed in detail below.

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected the confiscation of all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left Cuba. The Commission finds that this law applied to claimant who had left Cuba prior to that date, and concludes that claimant's properties, except as indicated hereafter, were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, as a result of which claimant sustained losses within the meaning of Title V of the Act. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

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, 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 consider.

Claimant has computed her amended claim as follows:

Real Property

Condominium in Varadero		\$ 14,800.00
Two-story building in Havana	\$ 55,956.00	
Additions to building	<u>10,304.00</u>	
	66,260.00	
Less depreciation	<u>2,650.00</u>	63,610.00
Land (building site)		14,935.00
Land (adjoining lot)		<u>5,000.00</u>
Total Real Property		\$ 98,345.00

Personal Property

Banco Nacional de Cuba (deposits)	\$ 13,418.00	
Trust Company of Cuba (deposits)	21,000.00	
Banco Continental Cubano (deposits)	<u>7,000.00</u>	41,418.00
Furniture - Condominium		5,000.00
Furniture - Building	26,640.00	
Less depreciation	<u>5,328.00</u>	21,312.00
1959 Ford Station Wagon	3,400.00	
Less depreciation	<u>680.00</u>	2,720.00
Sun Life Insurance (cash value)	1,710.00	
Imperial Insurance (cash value)	1,520.00	
Imperial Insurance (prepayment)	<u>2,354.00</u>	5,584.00
Silicatos Cubanos, S.A.	1,300.00	
Electroquimica del Caribe, S.A.	9,700.00	
Troqueles y Esmaltes Cubanos, S.A.	<u>6,000.00</u>	17,000.00
Organizacion Aguila Electrica (capital & surplus)	211,341.00	
Organizacion Cazares (capital)	<u>60,000.00</u>	<u>271,341.00</u>
Total losses		<u>\$462,720.00</u>
Claimant's 50% Interest		<u>\$231,360.00</u>

The record includes a substantial amount of documentation, discussed under the respective headings of the items of property to which each document or other evidence relates.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those set forth hereafter.

Real Property

1. Condominium in Varadero

The record includes a copy of a deed which shows that the condominium, in the nature of a cooperative apartment, was acquired by claimant on

November 2, 1960 at a cost of \$14,800.00, subject to a mortgage of \$4,800.00. On the basis of an affidavit, dated April 13, 1967, from a former Cuban attorney, who had participated in the sale of the apartment and had personal knowledge of the facts, the Commission finds that the mortgage was subsequently paid and fully satisfied.

In claimant's statement to the Department of State, dated July 10, 1962, she described her cooperative apartment, indicating that it was located in Varadero Beach, next to the International Hotel, and consisted of a living room, dining room, kitchen and bathroom on the ground floor, and two bedrooms with two bathrooms on the second floor, and that it had its own private garden on a corner lot. Claimant stated that her cooperative apartment had a value of \$23,000.00.

It is noted that the amount now being claimed is \$14,800.00, the cost thereof on November 2, 1960, a little over a year before December 6, 1961 when the apartment was taken by Cuba under Law 989. This amount agrees with claimant's initial request in her official claim form, in which she stated that the condominium and the building had an aggregate value of \$70,756.00.

As will be noted below, the difference between said aggregate amount and the \$14,800.00 for the condominium is \$55,956.00, precisely what is being claimed for the two-story building before certain improvements were made by claimant. There is nothing in the record to support a value of \$23,000.00, as stated by claimant to the Department of State. In the absence of evidence to the contrary, the Commission finds that the value of the condominium on December 6, 1961, the date of loss, was \$14,800.00, and concludes that claimant's 50% interest therein had a value of \$7,400.00.

2. Two-story Building in Havana

The evidence establishes that claimant and her husband purchased a building site in Havana on May 23, 1957, and caused to be constructed on the site a two-story structure which was completed in December 1957.

Claimant has submitted a copy of a Certificate of Occupancy issued by the

Cuban authorities on December 27, 1957, a copy of claimant's statement to the Havana tax authorities, indicating that the apartment on the second floor of the new building had been rented at \$100.00 per month, beginning January 1, 1958 (the Cuban peso being on a par with the United States dollar), which rental was approved by the Cuban authorities on January 17, 1958. It further appears from the evidence of record that the building contained two identical apartments, the upper one having been rented at \$100.00 per month as of January 1, 1958. Each apartment consisted of a living room, dining room, terrace, kitchen, four bedrooms, three bathrooms, servant's room with bath, and a garage.

Moreover, the apartments were well equipped to accommodate the most modern electrical facilities. This fact is substantiated by an affidavit, dated March 8, 1967, from a Registered Electrical Engineer and Contractor, attesting to the installation of various electrical facilities, including a stand-by emergency generator, a remote control operated garage door opener, and appropriate outlets for air conditioners, master antenna system, inter-communication systems, "hi-fi" speaker systems, telephones, as well as individual circuits and outlets for sundry electrical appliances normally used in residences.

Subsequently, the building was improved by the addition of a barbecue in the patio, two bars on the terraces, decorative cement block walls, fences, marble on kitchen furniture surfaces, and two wall safes in the master bedrooms. The record also includes an affidavit, dated March 28, 1967, from the architect (claimant's father) who had planned and designed the building, describing its many good features, such as the brickwork, floors, copper plumbing, outside ornamentation, design, and a copy of a Certificate, authorizing him to practice as an architect in Cuba, dated January 14, 1941.

Since claimant's original claim was in the amount of \$70,756.00 for the condominium and the two-story house in Havana, the above finding that the condominium had a value of \$14,800.00 indicates a value of \$55,956.00 for the Havana building, which is exactly what is being claimed herein in the amended claim plus the said improvements, valued at \$10,304.00 by claimant, less depreciation at 2% per annum, customarily applied by the Commission to buildings, for a net amended claim of \$63,610.00 for the building in Havana. Although claimant apparently has depreciated the structure for only two years, whereas it was taken by Cuba four years after construction and occupancy, other evidence of record supports claimant's assertions which appear to be fair and reasonable. Accordingly, the Commission finds that the value of the two-story building in Havana on December 6, 1961, the date of loss, was \$63,610.00, and concludes that claimant sustained a loss in the amount of \$31,805.00 for her 50% interest therein.

3. Land

Claimant has asserted a loss of \$14,935.00 for the building site in Havana and \$5,000.00 for an adjoining lot. The record contains a deed to the building site. Claimant's letter to the Department of State, dated July 10, 1962, mentions the adjoining lot, indicating that it was less expensive than the building site. The deed to the building site indicates a cost of \$14,935.00 on May 3, 1957, which is precisely the amount being claimed for that land.

On the basis of the entire record, the Commission finds the aggregate value of claimant's two lots on December 6, 1961, the date of loss, was \$19,935.00, as asserted by claimant, and that claimant's 50% interest therein was \$9,967.50.

Personal Property

4. Bank Deposits

Claim has been made for bank deposits in the aggregate amount of \$41,418.00, representing \$13,418.00 at Banco Nacional de Cuba, \$21,000.00 at the Trust Company of Cuba, and \$7,000.00 at Banco Continental Cubano.

The record, however, contains only one receipt from Banco Nacional de Cuba, showing a deposit on August 7, 1961, of \$13,418.00 in favor of claimant's husband. In a communication to the Commission, dated March 26, 1967, claimant stated, inter alia, that she was unable to prove bank deposits in the aggregate amount of \$28,000.00 with respect to asserted accounts at the Trust Company of Cuba and Banco Continental Cubano. The record contains an affidavit, dated August 1, 1968, from the former manager of the Trust Company of Cuba which refers to the resources of claimant's husband's electrical appliance business and his checking account at the Trust Company of Cuba, related to that business. These elements of the claim concern the interests in Organizacion Aguila Electrica and Organizacion Cazares, discussed below. The record, however, contains no evidence to support the claim for bank deposits in the asserted amount of \$28,000.00. Accordingly, the portions of the claim for bank deposits at the Trust Company of Cuba and at Banco Continental Cubano are denied.

The Commission, however, finds that on December 6, 1961, the date of loss, claimant's 50% interest in the bank deposits at Banco Nacional de Cuba had a value of \$6,709.00.

5. Furniture and Furnishings

Claimant has asserted losses of furniture and furnishings in the amounts of \$5,000.00 and \$21,312.00 (after depreciation), respectively, at the condominium and at her residence in Havana. The record includes an affidavit of August 16, 1968 from claimant and her husband, containing a complete detailed listing and description of all the items of personalty thus claimed, aggregating \$31,640.00, and indicating the dates of purchase which range from 1950 through 1960. According to the explanation accompanying the amended claim, these

items of property were depreciated at the rate of 10% per annum for two years ending 1960, with respect to the personalty in the Havana residence, while no depreciation was applied to the personalty in the condominium because it was purchased in 1960. The Commission has customarily applied a 10% per annum depreciation to such property from the date of acquisition to the date of loss.

An examination of the detailed listing and description of the property indicates that some of the furniture, such as the hand-carved mahogany dining room set, Spanish Renaissance, sterling silverware, art objects, other sterling items of property and China custom-made service would not be subject to such depreciation rates. Moreover, all of the personal property in the condominium and other items of property were purchased in 1960 and two expensive stereophonic record players were acquired in 1959.

Upon consideration of the entire record, the Commission finds that the aggregate value asserted in the amended claim is fair and reasonable. The Commission, therefore, finds that the value of the furniture and furnishings at both residences on December 6, 1961, the date of loss, was \$26,312.00, and concludes that claimant's 50% interest therein had a value of \$13,156.00.

6. Automobile

The record shows that claimant acquired the automobile, a 1959 station wagon, in 1960 at a cost of \$3,400.00. Claimant has depreciated the automobile in the amount of \$680.00, representing a reduction of 10% per annum for two years. The Commission, however, has customarily used a 15% per annum depreciation factor with respect to automobiles, and finds no basis in the record to justify a more favorable rate. Claimant's reduction is stated to be based upon Cuban laws, but no evidence to support that assertion has been submitted.

Upon consideration of the entire record, the Commission finds that the depreciation rate of 15% per annum should be applied in this case. Accordingly, the Commission finds that on December 6, 1961, the date of loss, the automobile had a net value of \$2,380.00, and concludes that claimant's 50% interest therein had a value of \$1,190.00

7. Life Insurance

It is asserted that claimant and her husband jointly owned three life insurance policies; namely, one with the Sun Life Insurance Company of Canada, having a value of \$1,710.00, and two with the Imperial Life Assurance Company of Canada, having values of \$1,520.00 and \$2,354.00, respectively. In claimant's letter of July 10, 1962 to the Department of State, she referred to two life insurance policies, one with each of the above-mentioned companies. Claimant's original submission to the Commission dated March 26, 1967, referred to a "Xerox copy of life insurance". The evidence thus identified by claimant is a copy of a receipt from the Imperial Life Assurance Company of Canada, dated October 27, 1960, for \$2,353.60 "without interest, for the payment of future periodic payments. . ." The record contains no evidence to support the claim for the other two policies as asserted in the amended claim.

Accordingly, the portions of the claim for a policy with the Sun Life Insurance Company of Canada in the amount of \$1,710.00 and for a policy with the Imperial Life Assurance Company of Canada in the amount of \$1,520.00 are denied.

The Commission has held with respect to a claim for the value of a life insurance policy issued by another Canadian insurance company that the value or proceeds thereof under Cuban laws were subject to confiscation as the property of an American non-resident of Cuba. (See Claim of Zena K. Feldman, et al., Claim No. CU-0091.) The Commission, therefore, finds that the prepaid life insurance policy with the Imperial Life Assurance Company of Canada had a value of \$2,353.60 on December 6, 1961, the date of loss, and concludes that claimant's 50% interest therein had a value of \$1,176.80.

8. Silicatos Cubanos, S.A.

The evidence establishes and the Commission finds that claimant and her husband jointly owned 13 shares of capital stock in Silicatos Cubanos, S.A., a Cuban corporation. Since this corporation was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States"

defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Upon consideration of the entire record, including the evidence in the Claim of the Allied Chemical Corporation, Claim No. CU-2169, which also involves, inter alia, a stock interest in the said Cuban corporation and which will be decided on its own merits, the Commission finds that Silicatos Cubanos, S.A. was nationalized by the Government of Cuba pursuant to Resolution 60-613, published in the Cuban Official Gazette on December 2, 1960. The Commission, therefore, concludes that the claimant's interest in that Cuban corporation was nationalized on December 2, 1960.

The Commission further finds that the valuation most appropriate in this case and equitable to the claimant is that shown by the balance sheet for Silicatos Cubanos, S.A. as of August 31, 1960. That balance sheet discloses that the Cuban corporation owned assets in the aggregate amount of \$678,001.96, and had liabilities in the aggregate amount of \$134,249.26. Accordingly, the value of the corporation, or the excess of its assets over its liabilities, was \$543,752.70. The record shows that the corporation had 3,786 shares of capital stock outstanding with a par value of \$100.00 per share. The Commission, therefore, finds that on December 2, 1960, the date of loss, one share of stock in that Cuban

corporation had a value of \$143.62. It is concluded that the 13 shares of stock herein had a value of \$1,867.06, and that claimant's 50% interest therein had a value of \$933.53.

9. Electroquimica del Caribe, S.A.

The Commission finds on the basis of the evidence of record that claimant and her husband jointly owned 97 shares of capital stock in Electroquimica del Caribe, S.A., a Cuban corporation. For the reasons stated above with respect to Silicatos Cubanos, S.A., claimant is entitled to file a claim based on her interest therein.

The evidence, including that in Claim No. CU-2169, supra, establishes and the Commission finds that Electroquimica del Caribe, S.A. was nationalized by the Government of Cuba on October 13, 1960, pursuant to Law 890. It is, therefore, concluded that claimant's interest in that Cuban corporation was nationalized on October 13, 1960.

The Commission finds that the valuation most appropriate in this case and equitable to the claimant is that shown by the balance sheet for Electroquimica del Caribe, S.A. as of August 31, 1960. That balance sheet discloses that the Cuban corporation owned assets in the aggregate amount of \$2,424,398.61, and had liabilities in the aggregate amount of \$202,780.07. Accordingly, the value of the corporation, or the excess of its assets over its liabilities, was \$2,221,618.54. The record shows that the corporation had 21,118 shares of capital stock outstanding with a par value of \$100.00 per share. The Commission, therefore, finds that on October 13, 1960, the date of loss, one share of stock in that Cuban corporation had a value of \$105.20. It is concluded that the 97 shares of stock herein had a value of \$10,204.40, and that claimant's 50% interest therein had a value of \$5,102.20.

10. Troqueles y Esmaltes Cubanos, S.A.

Based upon the evidence of record, including an affidavit, dated September 18, 1968, from the former Secretary of Troqueles y Esmaltes Cubanos, S.A., a Cuban corporation, the Commission finds that claimant and her husband jointly owned a stock interest in that corporation. For the reasons stated above with respect to Silicatos Cubanos, S.A., claimant is entitled to file a claim based on her interest therein.

In the absence of evidence to the contrary, the Commission finds that claimant's stock interest in that Cuban corporation was taken by the Government of Cuba on December 6, 1961, pursuant to Law 989. The Commission further finds that the value of claimant's stock interest in that Cuban corporation on the date of loss was \$3,000.00.

11. Organizacion Aguila Electrica and Organizacion (Exposicion) Cazares

Claimant has asserted in her amended claim that the values of these enterprises were \$211,341.00 and \$60,000.00, respectively, or the aggregate amount of \$271,341.00. In her original submission, claimant stated that these were the names of "our electric appliance business", consisting of several branches in Havana including one known as "Exposicion Casarez", now identified claimant as Organizacion Cazares. Initially, she claimed \$226,340.00 as the value of these enterprises.

The record includes an affidavit, dated August 1, 1968, from the former manager of a branch of the Trust Company of Cuba, stating that the electric appliance stores had a value in excess of \$200,000.00 including a checking account at the bank. The evidence also includes a balance sheet covering the electric appliance business as of June 30, 1960, apparently the latest available financial record. That balance sheet shows that the enterprise as a whole owned assets in the aggregate amount of \$377,262.15, and had liabilities in the aggregate amount of \$165,921.31, including reserve for bad debts in the amount of \$3,988.98.

On the basis of the entire record, the Commission finds that claimant and her husband jointly owned said electric appliance business and that it

was intervened by the Government of Cuba on October 18, 1961, pursuant to Resolution 7276. The Commission further finds that the value of this enterprise, or the excess of its assets over its liabilities was \$211,340.84. It is, therefore, concluded that claimant's 50% interest therein on October 18, 1961, the date of loss, was \$105,670.42.

Recapitulation

Claimant's losses within the meaning of Title V of the Act may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
1. Condominium	December 6, 1961	\$ 7,400.00
2. Two-story Building	December 6, 1961	31,805.00
3. Land (two lots)	December 6, 1961	9,967.50
4. Bank Deposits	December 6, 1961	6,709.00
5. Furniture and Furnishings	December 6, 1961	13,156.00
6. Automobile	December 6, 1961	1,190.00
7. Life Insurance	December 6, 1961	1,176.80
8. Silicatos Cubanos, S.A.	December 2, 1960	933.53
9. Electroquimica del Caribe, S.A.	October 13, 1960	5,102.20
10. Troqueles y Esmaltes Cubanos, S.A.	December 6, 1961	3,000.00
11. Electric Appliance Business	October 18, 1961	<u>105,670.42</u>
	Total	<u>\$186,110.45</u>

The Commission has decided that in certifications 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>
October 13, 1960	\$ 5,102.20
December 2, 1960	933.53
October 18, 1961	105,670.42
December 6, 1961	<u>74,404.30</u>
Total	<u>\$186,110.45</u>

CERTIFICATION OF LOSS

The Commission certifies that PATRICIA F. MEDEROS 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-six Thousand One Hundred Ten Dollars and Forty-five Cents (\$186,110.45) 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

SEP 24 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).)