

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

IN THE MATTER OF THE CLAIM OF

JUANITA K. McAFEE
and
R. D. McAFEE

Claim No. CU-1767

Decision No. CU-490

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

Counsel for claimant:

R. D. McAfee, Esq.

Petition to reopen; Proposed Decision dated and entered October 18, 1967;
Final Decision entered November 21, 1967.

AMENDED FINAL DECISION

Under date of November 21, 1967, the Commission entered its Final Decision denying this claim for lack of proof.

Subsequently, the original claimant and her husband petitioned to reopen the claim on the basis of newly discovered evidence pursuant to the governing regulations of the Commission (FCSC Reg., 45 C.F.R. § 531.5 (1) (1970).) The new evidence consists of a detailed affidavit from the original claimant and copies of deeds to certain real property on the Isle of Pines, Cuba.

Upon consideration of the new evidence in light of the entire record, R. D. McAFEE is added as party claimant, and the Commission amends the decision in this matter as follows:

The Commission now finds that pursuant to the community property laws of Cuba claimants, nationals of the United States at all pertinent times, each owned 1/2 interests in certain real and personal properties in Cuba, discussed below. (See Claim of Robert L. Cheaney et ux., Claim No. CU-0915.)

On December 6, 1961, the Cuban Government published Law 989 which effected the confiscation of all properties of persons who had left Cuba. The

Commission finds that this law applied to claimants who had left Cuba prior to December 6, 1961. In the absence of evidence to the contrary, the Commission finds that claimants' interests in the properties in question were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The Commission finds that claimants owned 1/2 interests in the following properties on the Isle of Pines, Cuba, which interests had the indicated values on December 6, 1961, the date of loss:

	<u>1/2 Value</u>
a) 20.55 acres of rural land at Hacienda Bibijagua, Nueva Gerona	\$ 2,500.00
b) 25 acres of rural land improved by a house at Hacienda Bibijagua, Nueva Gerona	10,000.00
c) 17.16 acres of rural land subdivided into lots and improved by 3 model houses and a fourth house under construction at Hacienda Santa Fe, Nueva Gerona	7,966.00
d) a 1/2 interest in 3,203.98 square meters of rural land improved by a fruit-packing house at Sierra de Casas, Nueva Gerona	4,750.00
e) Furniture, household goods, automobiles, boats, livestock and farm equipment at Nueva Gerona	<u>10,975.00</u>
Total	<u>\$36,191.00</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 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.

Accordingly, the following Certifications of Loss will be entered, and in all other respects the Final Decision of November 21, 1967, as amended herein is affirmed.

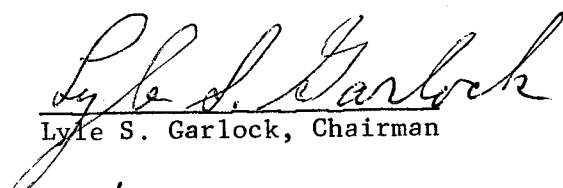
CERTIFICATIONS OF LOSS

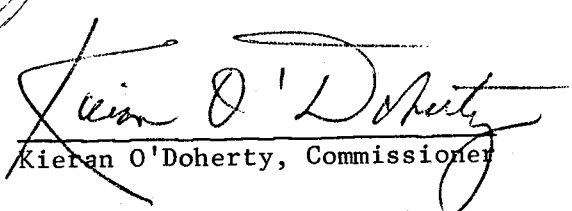
The Commission certifies that JUANITA K. McAFEE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-six Thousand One Hundred Ninety-one Dollars (\$36,191.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that R. D. McAFEE 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 One Hundred Ninety-one Dollars (\$36,191.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, 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.

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

IN THE MATTER OF THE CLAIM OF

JUANITA K. McAFEE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1767

Decision No. CU 490

Counsel for claimant:

R. D. McAfee, 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 amount of \$273,150.00 was presented by JUANITA K. McAFEE based upon the asserted loss of German real and personal property located on the Isle of Pines, Cuba. Claimant has been a national of the United States since her birth in the State of Kentucky.

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.

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 in all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership of certain improved real and personal property located on the Isle of Pines, Cuba; however, claimant submitted no documentary evidence in support of her claim. By Commission letter of July 5, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish her claim under the Act.

On August 11, 1967, counsel was invited to submit any evidence he might have within 45 days from that date, and he was informed, that, absent such evidence it might become necessary to determine the claim on the basis of the present record. No evidence has since been submitted in support of this claim.

CU-1767

The Commission finds that claimant has not met the burden of proof, in that she has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

OCT 18 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 21 NOV 1967

Francis Mackinnon
Clerk of the Commission

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).)