

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

IN THE MATTER OF THE CLAIM OF

HARRY T. JOHANSEN, JR.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1916

Decision No. CU - 6222

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 \$2,809,977.00, was presented originally by HARRY T. JOHANSEN, JR. individually and as executor of the estate of Gladys T. Johansen, Deceased. Inasmuch as the record shows that HARRY T. JOHANSEN, JR. is the sole heir of his late wife, Gladys T. Johansen, and that her estate is closed, the Commission deems this claim to be on behalf of HARRY T. JOHANSEN, JR. alone, hereafter called claimant. The claim is based upon the asserted loss of certain real and personal property in Cuba. Claimant and his late wife, who died on July 6, 1964, 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.

Claimant asserts the following losses:

Cia. Thomas F. Turull, S.A. (Turull) - stock interest	\$1,883,767.00
Distribuidora Alkali, S.A. (Alkali) - stock interest	343,400.00
Cia. Agro-Industrial de Calabazar, S.A. (Agro) - stock interest	255,040.00
Cia. Inmobiliaria La Pinta, S.A. (La Pinta) - stock interest	184,475.00
Personal belongings	27,331.00
Laboratorios Gravi S.A. (Gravi) - stock interest	3,300.00
Cuban Bagasse Products, S.A. (Bagasse) - stock interest	3,000.00
West Indies Perlite Manufacturing Company (Perlite) - stock interest	11,000.00
Inmobiliaria La Torre, S.A. (La Torre) - stock interest	1,000.00
British Commonwealth Association - bond	900.00
Republic of Cuba bonds	40,765.00
Checks and cash	22,000.00
Checks and cash from estate of Thomas F. Turull, deceased	8,999.00
Life insurance policy	<u>25,000.00</u>
	<u><u>\$2,809,977.00</u></u>

Cia. Thomas F. Turull, S.A.

Based upon stock certificates (Exhibit 4), and taking into consideration the community property laws of Cuba, the Commission finds that claimant and his late wife jointly owned 1,433 shares of stock in Cia. Thomas F. Turull, S.A. (Turull), a Cuban corporation. (See Claim of Robert L. Cheaney, et ux., Claim No. CU-0915.)

Since Cia. Thomas F. Turull, S.A. 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 that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

In the Claims of Evelyn T. Bates, et al., Claim Nos. CU-2052, CU-2053, CU-2036 and CU-2055, the Commission found that Turull was intervened by the Government of Cuba on July 21, 1961, and that each share of stock in Turull on the date of loss had a value of \$345.90375. Therefore 1,433 shares of stock had a value of \$495,680.07.

Distribuidora Alkali, S.A.

On the basis of stock certificates (Exhibit 7), the Commission finds that claimant and his late wife jointly owned 400 shares of stock in Distribuidora Alkali, S.A. (Alkali), a Cuban corporation, which shares represented a 100% stock interest in Alkali. The record shows that Alkali had been organized in Cuba in 1952 to serve as a terminal for the storage and distribution of liquid cargoes, such as liquid caustic soda. In connection with these activities, Alkali operated a harborside tank farm, equipped for tank car and tank truck deliveries.

The Commission finds on the basis of the evidence of record (Exhibit 5), that Alkali was intervened by the Government of Cuba on August 10, 1961. It was formally nationalized on January 14, 1963 (Cuban Official Gazette).

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.

Originally, claimant had asserted a valuation of \$343,400.00 on account of his 100% stock interest. That valuation was based upon Alkali's balance sheet as of June 30, 1960 (Exhibit 6), apparently the last available financial statement. Projecting the net profit of \$8,585.42 for the six-month period ending June 30, 1960 over the entire year of 1960, claimant computed Alkali's net profit for 1960 to have been \$17,170.00. Applying a factor of 20 to such earnings, claimant asserted a valuation of \$343,400.00.

The Commission suggested that claimant submit evidence to establish Alkali's net earnings over the 5-year period immediately prior to the date of loss. When claimant was unable to submit any documentation other than the balance sheet as of June 30, 1960, he stated that the valuation of Alkali should be based upon that balance sheet.

Based upon the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is that shown by Alkali's balance sheet as of June 30, 1960. That balance sheet discloses

that Alkali's assets aggregated \$144,457.11, and that its liabilities aggregated \$85,645.80. The Commission therefore finds that the net worth of Alkali on August 10, 1961, the date of loss, was \$58,811.31. Accordingly, claimant's stock interest in Alkali had that value on the date of loss.

Cia. Agro-Industrial de Calabazar, S.A.

On the basis of stock certificates (Exhibit 10), the Commission finds that claimant and his late wife jointly owned 900 shares of stock in Cia. Agro-Industrial de Calabazar, S.A. (Agro), a Cuban corporation, which shares represented a 100% stock interest in Agro. The record shows that Agro had been organized in Cuba in 1949. It was engaged in the business of mixing and distributing insecticides, fungicides and pesticides to the Cuban market. The evidence (Exhibit 5) establishes that Agro was also intervened by the Government of Cuba on August 10, 1961. It was formally nationalized on January 14, 1963 (Cuban Official Gazette).

Claimant initially asserted a valuation of \$255,000.00 for Agro on the basis of its balance sheet as of December 31, 1960 (Exhibit 9) and the application of a factor of 20 to its net earnings for 1960. Subsequently he stated that Agro's balance sheet as of December 31, 1960 should be the basis of its valuation.

The Commission finds that the valuation most appropriate in this case and equitable to the claimant is that shown in Agro's balance sheet as of December 31, 1960. That balance sheet discloses that Agro's assets aggregated \$117,516.56, and that its liabilities aggregated \$32,390.44. Therefore, Agro's net worth on August 10, 1961, the date of loss was \$85,126.12, and claimant's stock interest had that value.

Cia. Inmobiliaria La Pinta, S.A.

Based on stock certificates (Exhibit 13), the Commission finds that claimant and his late wife jointly owned 750 shares of stock in Cia. Inmobiliaria La Pinta, S.A. (La Pinta), a Cuban corporation, which shares represented a 100% stock interest in La Pinta. The evidence of record, including a report from abroad, establishes that La Pinta's sole asset

consisted of certain improved real property at Avenida 15 #22601, Alturas de Jaimanitas, Marianao, Havana, Cuba. This property was known as Finca Manana and served as the residence of claimant and his late wife.

Claimant states that the real property was taken in 1961 on the basis of information obtained by his agent in Cuba to the effect that the property was taken because it belonged to Americans who were not physically present in Cuba. This statement is confirmed by an affidavit of May 25, 1970 from the Vice President of the Phelps Dodge International Corporation.

On December 6, 1961, the Cuban Government published in its Official Gazette Law 989 which effected a confiscation of personal property, real property and other assets and rights of persons who had left the country. The Commission finds that this law was applicable to claimant and his late wife who had left Cuba prior to that date. In the absence of evidence to the contrary, the Commission finds that the improved real property was 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]), and that claimant thereby suffered a loss.

Claimant asserts that the improved real property had a value of \$184,475.00. The record shows that the property consisted of 10,030.56 square meters of land, improved by a modern 2-story residence on about 800 square meters; and other small constructions such as a gardener's cottage, swimming pool and the like. The land was fully landscaped and contained over 100 varieties of fruit and decorative trees, shrubs and flowers. The property had been acquired in 1946 for \$74,900.00 and was unencumbered by any liens.

The record includes several photographs of the property (Exhibit 11), and two appraisals. One appraisal, included in an affidavit of April 12, 1967, was made by Alberto G. Mendoza, formerly a member of a real estate firm in Havana, which had sold real property adjoining Finca Manana. That appraisal recites that in 1958 the land had a value of \$6.50 per square

meter, or \$65,198.25 for La Pinta's land (Exhibit 13A). The other appraisal was made by Manuel Gamba, Graduate Architect, Vice President of the Frederic Snare Corporation and formerly the General Manager of its Cuban branch. Mr. Gamba states that he personally appraised the improvements of Finca Manana in 1958, and that the aggregate value of the improvements and the land was \$184,475.00 (Exhibit 13B).

Based upon the entire record, the Commission finds that the improved real property known as Finca Manana had a value of \$184,475.00 on December 6, 1961, the date of loss. Inasmuch as La Pinta had no liabilities on the date of loss, the Commission finds that the claimant's stock interest in La Pinta had a value of \$184,475.00 on the date of loss.

#### Personal Belongings

On the basis of the evidence of record, the Commission finds that claimant and his late wife jointly owned certain furniture and other items of personal belongings which they maintained at Finca Manana, their residence in Marianao. The Commission further finds that the personal belongings were taken by the Government of Cuba on December 6, 1961 when the house was taken.

The evidence includes a detailed inventory of some of the personal belongings prepared by an appraiser as of December 27, 1949, indicating an aggregate value thereof in the amount of \$17,791.84 (Exhibit 12). Claimant has submitted his list of other items of personal property acquired subsequent to December 27, 1949, including silver service valued at \$2,500.00; and a complete set of fine English Bone China and a set of Rosenthal, all valued at \$1,125.00, the aggregate amount thereof being \$9,540.00.

An examination of the appraised inventory discloses that it consists primarily of items of furniture which were subject to depreciation at the rate of 5% per year, and certain lamps, rugs and electric appliances which were subject to a 10% per year rate of depreciation. Claimant states in

his letter of December 10, 1970 that the air conditioners, valued at \$1,000.00, had been replaced several times since their initial acquisition in 1948. Claimant's list includes additional items of furniture that had been purchased in 1956, valued at \$1,250.00; rugs acquired in 1954 for \$300; clothing for claimant and his late wife with an estimated value of \$3,500.00; and a horse, saddle and related equipment valued in the aggregate at \$300.00.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate in this case and equitable to the claimant are those set forth hereafter. It is concluded that certain of the items of personal property, valued by claimant at approximately \$19,000.00, should be depreciated by 1/3 or \$6,333.00. Accordingly, the Commission finds that the aggregate value of the personal belongings on December 6, 1961, the date of loss, was \$21,000.00.

Laboratorios Gravi, S.A.

Based upon stock certificates (Exhibit 14), the Commission finds that claimant and his late wife jointly owned 33 shares of preferred stock in Laboratorios Gravi, S.A. (Gravi), a Cuban corporation. In the Claim of Carmen E. Lluria, Claim No. CU-3075, the Commission found that Gravi was taken by the Government of Cuba on June 29, 1961, and that one share of its preferred stock had a value of \$100.00 on the date of loss. Accordingly, the Commission finds that claimant's 33 shares of preferred stock had a value of \$3,300.00 on June 29, 1961.

Cuban Bagasse Products, S.A.

On the basis of stock certificates (Exhibit 15), the Commission finds that claimant and his late wife jointly owned 600 shares of stock in Cuban Bagasse Products, S.A. (Bagasse), a Cuban corporation. In the Claim of George F. Baker, III, Claim No. CU-1017, the Commission found that Bagasse was intervened by the Government of Cuba on August 3, 1960, and that one share of its stock had a value of \$2.8607 on the date of loss. Therefore,

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the Commission finds that claimant's 600 shares of stock had a value of \$1,716.42 on the date of loss.

West Indies Perlite Manufacturing Corporation

Based upon stock certificates (Exhibit 16), the Commission finds that claimant and his late wife jointly owned 11,000 shares of stock in West Indies Perlite Manufacturing Corporation (Perlite), a Cuban entity. In the Claim of Eleanor M. Crosby and Kenneth M. Crosby, Claim No. CU-0544, the Commission found that Perlite was nationalized by the Government of Cuba on October 24, 1960, and that one share of its stock had a value of \$1.00 on the date of loss. Therefore, claimant's 11,000 shares of stock had a value of \$11,000.00 on October 24, 1960.

Inmobiliaria La Torre, S.A.

Based upon a stock certificate (Exhibit 17) and claimant's statements, the Commission finds that claimant's late wife acquired by gift one share of stock in Inmobiliaria La Torre, S.A. (La Torre), a Cuban corporation. The Commission further finds that said interest, to which claimant succeeded, was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Tabor, supra.)

In the Claim of Robert M. Thomson and Lucy M. Thomson, Claim No. CU-0679, the Commission found that the value of one share of stock in La Torre was \$1,000.00. Therefore, the Commission finds that the loss on December 6, 1961 to which claimant succeeded had a value of \$1,000.00.

British Commonwealth Association

Under date of December 10, 1970, the claimant submitted two affidavits from Angus M. Irvine, dated October 3, 1970 and December 10, 1970, accompanied by a copy of a bond issued by the British Commonwealth Association, an organization that owned land in Cuba. As Treasurer of that Association, affiant attests that claimant's wife owned 9 debenture notes issued by the Association representing its debt of \$900.00. Apparently, the Association was a non-profit British organization which owned land in Cuba that was used for recreation purposes.

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Based upon the evidence of record, the Commission finds that claimant and his late wife jointly owned bonds of the British Commonwealth Association in the amount of \$900.00. However, the evidence fails to establish that the debt was taken by Cuba or that the debt was a charge on property taken by Cuba, or that the Association was a Cuban entity that was nationalized or otherwise taken by Cuba. Accordingly, this portion of the claim is denied.

#### Republic of Cuba Bonds

The evidence establishes (Exhibits 18 and 19) and the Commission finds that claimant and his late wife jointly owned 31 bonds of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977, each in the face amount of \$1,000.00 with attached semiannual interest coupons of \$22.50 each, commencing with the ones that matured on June 30, 1960. The record shows that the bonds had been entrusted to Cecil Laurence Freeman who had kept them in his safe deposit box (Exhibit 18). The Government of Cuba required the removal of the contents of the box, and on March 30, 1931 Mr. Freeman deposited the bonds with the National Bank of Cuba, as evidenced by Receipt No. 2586 (Exhibit 19).

Records available to the Commission disclose that Cuba first defaulted with respect to these 4-1/2% bonds on December 31, 1960. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.) The Commission finds that said default gave rise to a claim against Cuba under Title V of the Act. The Commission further finds that on December 31, 1960, the date of loss, Cuba was indebted to claimant and his late wife in the aggregate amount of \$32,395.00, representing principal in the amount of \$31,000.00 and interest in the amount of \$1,395.00.

It is noted that claimant asserts a loss of \$40,765.00 on account of the 4-1/2% bonds. His computation includes principal in the amount of \$31,000.00 and interest in the amount of \$9,765.00, covering the 7-year period from January 1, 1960 to December 31, 1966. As indicated below, the Commission is allowing interest from the respective dates of loss herein

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to the date of settlement. Insofar as this portion of the claim is concerned, interest is being allowed for the period commencing December 31, 1960, the date of loss.

Checks and Cash

The affidavit of February 24, 1965 by Cecil Laurence Freeman (Exhibit 18) discloses that claimant had entrusted to the affiant two drafts issued by the Royal Bank of Canada, Havana Branch. These drafts, Nos. 94845-1960 and 94735-1960, in the amounts of \$10,000.00 and \$5,000.00, respectively, were drawn in favor of claimant. It appears that claimant was unable to obtain the proceeds of the drafts due to Cuba's currency controls.

On the basis of the foregoing evidence, the Commission finds that claimant and his late wife jointly owned \$15,000.00 on deposit with the Royal Bank of Canada, Havana Branch. (See Claim of Ana Maria Lopez Gutierrez, Claim No. CU-0197.) The Commission further finds that these funds were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966] and Claim No. CU-0197, Ana Maria Lopez Gutierrez.)

Claimant also asserts a loss of \$7,000.00 in cash which had been entrusted in 1961 to one Hector Sintès, then a resident of Cuba. According to Mr. Freeman's affidavit of February 24, 1965, the money had been left by claimant with affiant who turned it over to Mr. Sintès in 1961. No further evidence has been submitted in support of this portion of the claim.

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) (1970).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of the claim based on Cuban currency

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in the amount of \$7,000.00. The evidence does not establish that the currency was taken by the Government of Cuba. Accordingly, this portion of the claim is denied.

Checks and Cash From Estate  
of Thomas F. Turull, Deceased

On the basis of the evidence of record in this claim (Exhibits 20 and 21) and the record in the Claims of Evelyn T. Bates, et al., supra, the Commission finds that claimant's late wife inherited from her late father on March 14, 1961 a 1/3 interest in certain bank drafts issued by the Royal Bank of Canada, Havana Branch, in the aggregate amount of \$16,000.00. The Commission further finds that the drafts represented a deposit at that bank, and that the funds were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Auld, supra, and Gutierrez, supra.)

As already noted, claimant succeeded to his wife's interests upon her testate death on July 6, 1964. It is therefore concluded that claimant succeeded to a loss in the amount of \$5,333.33 sustained on December 6, 1961.

It is also asserted that claimant's late wife inherited from her father a 1/3 interest in \$11,000.00 in Cuban currency that had been delivered to a resident of Cuba for safekeeping. No further evidence has been submitted in support of this portion of the claim. Moreover, this very issue was considered by the Commission in connection with the Claim of Evelyn T. Bates, Claim No. CU-2052, who also asserted a 1/3 interest in said currency. That portion of Claim No. CU-2052 was denied because the claimant in question failed to sustain the burden of proof. Considering the record in this claim and the record in Claim No. CU-2052, the Commission finds no valid basis for allowing the portion of this claim based upon an asserted 1/3 interest in the Cuban currency. Therefore, this portion of the claim is denied.

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Life Insurance Policy

Claimant asserts the loss of \$25,000.00 based upon a life insurance policy issued by Confederation Life Association, a Canadian carrier. It appears from the evidence of record (Exhibit 22) that the policy covered the life of Thomas F. Turull and that his daughter, claimant's late wife, was the beneficiary. Upon the death of the insured on March 14, 1961, the beneficiary filed a claim with the insurance carrier.

The reply of the carrier (Exhibit 22) indicates that the policy was issued in United States currency, but was payable in Havana, Cuba; and that pursuant to the laws of Cuba the policy was payable in Cuban pesos on a par with the amount of the policy in United States dollars. On that basis, the carrier tendered payment in Cuban pesos in Cuba.

The Commission finds that claimant has failed to meet the burden of proof with respect to the portion of the claim based on the life insurance policy in that the evidence of record does not establish that any proceeds of the policy were taken by the Government of Cuba. Accordingly, this item of claim is denied.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Turull-stock interest	July 21, 1961	\$495,680.07
Alkali-stock interest	August 10, 1961	58,811.31
Agro-stock interest	August 10, 1961	85,126.12
La Pinta-stock interest	December 6, 1961	184,475.00
Personal belongings	December 6, 1961	21,000.00
Gravi-stock interest	June 29, 1961	3,300.00
Bagasse-stock interest	August 3, 1960	1,716.42
Perlite-stock interest	October 24, 1960	11,000.00
La Torre-stock interest	December 6, 1961	1,000.00
Republic of Cuba bonds	December 31, 1960	32,395.00
Checks-drafts	December 6, 1961	15,000.00
Checks-drafts, inherited	December 6, 1961	<u>5,333.33</u>
	Total	<u>\$914,837.25</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 as follows:

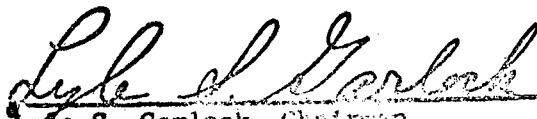
<u>FROM</u>	<u>ON</u>
August 3, 1960	\$ 1,716.42
October 24, 1960	11,000.00
December 31, 1960	32,395.00
June 29, 1961	3,300.00
July 21, 1961	495,680.07
August 10, 1961	143,937.43
December 6, 1961	<u>226,808.33</u>
Total	<u>\$914,837.25</u>

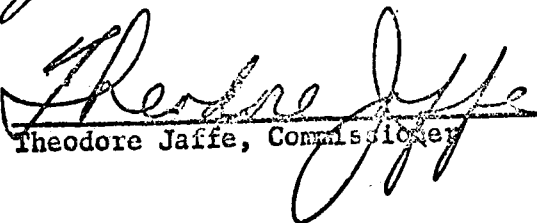
CERTIFICATION OF LOSS

The Commission certifies that HARRY T. JOHANSEN, JR. succeeded to and 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 Nine Hundred Fourteen Thousand Eight Hundred Thirty-Seven Dollars and Twenty-Five Cents (\$914,837.25) 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

JUN 8 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimants establish retention of the securities or the loss here certified.

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 (1970).)

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