

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

IN THE MATTER OF THE CLAIM OF

MARCELINO GARCIA

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2040

Decision No. CU -916

Counsel for claimant:

Bigham, Englar, Jones & Houston  
By John L. Quinlan, Esquire

AMENDED PROPOSED DECISION

Under date of January 3, 1968, the Commission issued its Proposed Decision on this claim, denying it for failure to sustain the burden of proof. Subsequently claimant submitted additional supporting evidence.

Upon consideration of the new evidence in light of the entire record, it is

ORDERED the Proposed Decision be and it is hereby amended.

The Commission finds that claimant was the owner of various items of personal property; namely, home furnishings and clothing generally suited to a person of his status in Cuba, corroborated by persons familiar with claimant and his residence in Cuba.

On December 6, 1961, the Cuban Government published in its Official Gazette its Law 989, which effected the confiscation of all assets, personal property and other rights of persons who had left the country. The Commission finds that this law applied to claimant who had left Cuba prior to that date, and that said items of property were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The Commission concludes that as a result of said action claimant sustained a loss within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semian. Rep. 53 [July-Dec. 1966].)

On the basis of the evidence of record, including an itemized list of the various items of personal property, the Commission finds that the aggregate value of the personal property on December 6, 1961 was \$24,077.33.

The Commission finds that claimant was a creditor of Agencia Maritima Garcia & Diaz, Ltda., a Cuban corporation, to the extent of \$8,802.38. The Commission has held that debts of nationalized or intervened Cuban corporations 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].)

In the Claim of Garcia & Diaz, Inc., Claim No. CU-0940, the Commission found that Agencia Maritima Garcia & Diaz, Ltda. was taken by Cuba on February 17, 1959. The Commission therefore finds that claimant sustained a loss in the amount of \$8,802.38 on February 17, 1959.

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 claim it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
February 17, 1959	\$ 8,802.38
December 6, 1961	<u>24,077.30</u>
Total	<u>\$32,879.68</u>

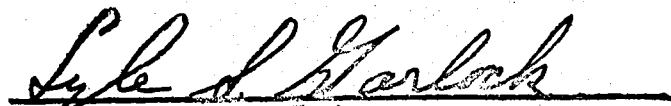
Accordingly, the following certification of loss will be entered, and in all other respects the Proposed Decision is affirmed.


CERTIFICATION OF LOSS

The Commission certifies that MARCELINO GARCIA 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-two Thousand Eight Hundred Seventy-nine Dollars and Sixty-eight Cents (\$32,879.68) with interest at 6% per annum on \$8,802.38 from February 17, 1959, and on \$24,077.30 from December 6, 1961, to the date of settlement.

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

**MAR 25 1970**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
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 Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

MARCELINO GARCIA

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2040

Decision No. CU

916

Counsel for claimant:

Bigham, Englar, Jones  
and Houston

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 \$33,996.38, was presented by MARCELINO GARCIA and is based upon the asserted loss of personalty and money owing to him. Claimant has been a national of the United States since his naturalization in 1938.

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

Claimant has failed to submit evidence to substantiate his claim.

By Commission letter of July 10, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Claimant submitted information pertaining to his United States nationality and an itemized list of the personalty claimed. Thereafter the Commission on August 22, 1967 granted claimant a thirty day time extension to enable him to submit the balance of the evidence suggested. No evidence was received during this extended period.


CU-2040

On September 27, 1967, counsel was invited to submit any evidence available to him 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 existing record. An additional 15 days was given to the claimant by the Commission letter of November 29, 1967, and the suggested evidence was again outlined. However, no evidence or correspondence has since been received.

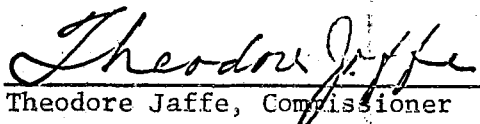
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

3 JAN 1968



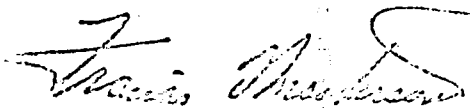
Edward D. Re, Chairman



Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on \_\_\_\_\_



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).)