

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

IN THE MATTER OF THE CLAIM OF

ELIZABETH T. YOH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2125

Decision No. CU 6125

Counsel for claimant:

Rosoff & Rosoff
By Morris Rosoff, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ELIZABETH T. YOH in the amount of \$9,930.13, based on losses of real and personal property, securities and proceeds from insurance policies. 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 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.

Claimant states that she has been married to Raymond Yoh, not a national of the United States, since May 20, 1944; that under the community property laws of Cuba claimant and her husband jointly acquired (1) vacant land; (2) personal property including an automobile; (3) shares of stock in four corporations; and (4) three endowment policies upon the life of Raymond Shong Dso Yoh; and that all of this property was taken by the Government of Cuba upon claimant's departure from that country in September, 1960.

The aspects of the individual items of the claim and value of the property will be discussed under separate headings below.

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 pertinent circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would usually prevail in the valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

On December 6, 1961 the Cuban Government published in the Official Gazette Law 989 which effectively confiscated all assets, real and personal

property, rights, shares, stocks, bonds and securities of those who left the country. Claimant and her husband left Cuba for the United States on September 12, 1960. In the absence of evidence to the contrary, the Commission finds that all of the property in Cuba owned by claimant and her husband, was taken 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 record includes supporting evidence to which reference is made under the heading of the property item to which it refers.

(1) Vacant Land

The record shows that by Agreement of April 8, 1957 and Amended Agreement of August 26, 1960, Raymond S. D. Yoh purchased vacant land measuring 10,201.75 square meters, situated in the locality known as "Santa Amalia", Municipality of Managua, District of San Jose de las Lajas, Province of Havana, for a price of \$5,674.62, payable in instalments. The record further shows that on August 26, 1960, Raymond S. D. Yoh still owed to the sellers the sum of \$4,105.78 and that by the end of August of 1960 he paid an additional instalment of \$44.79, thereby reducing his indebtedness to \$4,060.99. Thus, on September 1, 1960 his equity in the land was \$1,613.63.

The Commission finds that under the community property law of Cuba, claimant ELIZABETH T. YOH had a one-half interest in all property of her husband acquired during marriage with funds from the marriage partnership, or by his industry, salary and work, or from the fruits thereof. Accordingly, the Commission finds that claimant had an interest of \$806.81 in the vacant land described in the preceding paragraph, and concludes that she suffered a loss in that amount as a result of the taking of the vacant land by the Government of Cuba.

(2) Personal Property

The evidence before the Commission shows that on October 1, 1959 Raymond Yoh purchased from a local Havana automobile dealer a 1958 Studebaker 4-door "Commander" passenger automobile for \$2,396.64.

Claimant owned, for the reasons stated above, a one-half interest in that automobile. The Commission finds that at the time of taking in December 1961 the automobile had a market value of \$1,680.00 and that claimant suffered a loss with respect to this car in the amount of \$840.00.

Claimant submitted a detailed list of the furniture, household goods and personal effects located in her home at No. 418 Calle Amistad in Havana. According to claimant's assertions the furniture and household goods were purchased between 1953 and 1960 at a cost of \$13,859.00. Assuming that these goods were on the average 5 years old, when they were taken by the Cuban Government, the Commission finds that after deduction of 25% for wear and tear, the value of this property was \$10,394.25 and claimant's one-half interest therein \$5,197.12.

Accordingly, the Commission concludes that claimant suffered a loss of personal property in the aggregate amount of \$6,037.12.

(3) Shares of Stock

Claimant states that she owned jointly with her husband 100 shares of the Seaboard Drug Company, Inc., a corporation organized under the laws of the State of Delaware.

Section 505(a) of the Act prescribes: "A claim under Section 503(a) of this title based upon an ownership interest in any corporation, association or other entity which is a national of the United States shall not be considered". Section 502(1)(B) of the Act defines a national of the United States as a corporation which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation.

Claimant has not established that Seaboard Drug Company, Inc. is not a United States national under the above definition. Accordingly, the Commission finds that it cannot consider the claim based upon this stock and the same is hereby denied.

Claimant further states that she owned jointly with her husband, 200 shares of stock in Salomon Oil Enterprise, S.A., a corporation organized under the laws of Cuba. This corporation does not qualify as a corporate "national of the United States" as defined above. In this type of situation, it has been held that a stockholder in such a corporation is entitled to file a claim based upon the stock which represents an ownership interest in the enterprise. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission records disclose that the stockholders' interests in oil drilling companies, such as Salomon Oil Enterprise, S.A. were taken by the Government of Cuba on November 29, 1959, pursuant to Law 635. The records, however, do not reveal that the shares of stock of this corporation at the time of taking had any market value, and the par value of 20 cents per share is no indication of such value. Absent any evidence of value, the Commission is unable to determine the value of the stock, and this portion of the claim is therefore also denied.

Claimant further states that she owned, jointly with her husband, 300 shares in the capital stock of Inversiones Petroleras Versailles, S.A., a corporation organized under the laws of Cuba. The stock certificates reflect an authorized capital of \$5,000,000, each share having a par value of 20 cents. The Commission's records disclose that this corporation had a very narrow stock distribution within Havana and, after having disposed of its capital stock, had obtained oil leases, but never commenced drilling for oil. No stockholders' meetings were held and no balance sheets or other evidence to establish the net worth of the corporation were brought to the attention of the Commission. On the basis of this record the Commission finds that claimant has not established that the stock had any value at the time of taking, and this portion of the claim also is denied.

Claimant further states that she owned jointly with her husband 500 shares at the par value of 10 cents each in the capital stock of Perforaciones Oro Negro, S.A. (Black Gold Drilling Company, Inc.) a Cuban corporation. The Commission has held that the stockholders' interests in this corporation were taken by the Government of Cuba on November 29, 1959 pursuant to Law 635, and that at the time of taking one share in the capital stock of this company was worth \$.11. (See Claim of Henry H. Weldon, Claim No. CU-3416.) Thus, the value of the 500 shares subject of this claim had a value of \$55.00, and claimant suffered a loss of her one-half interest in the amount of \$27.50.

(4) Insurance Policies

Claimant submitted copies of insurance policies Nos. 1,019,271 and 1,019,272 in the aggregate amount of \$4,000.00 on the life of Raymond S.D. Yoh, issued by the Confederation of Canada Life Insurance Companies, and an insurance policy No. 4651 in the amount of \$2,500.00 on the life of Raymond S. D. Yoh, issued by the American International Life Insurance Company. In all three policies claimant is the beneficiary in case her husband should die during the 10-year period of time of the life insurance policies, but after expiration of the policies the proceeds were payable to the husband only. It is noted that the last policy expired on June 10, 1965; that the husband was alive at that time; and that he was then domiciled in the United States.

The Commission finds that claimant has failed to establish the actual seizure or confiscation of the life insurance policies by the Government of Cuba. It further appears that claimant's husband, having survived the ten-year period of the insurance policies, was the sole owner of any claim against the insurance companies. Accordingly this portion of the claim is also denied.

SUMMARY

Claimant's losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount of Loss</u>
Vacant land	December 6, 1961	\$ 806.81
Personal property	December 6, 1961	6,037.12
Shares of stock	November 29, 1959	<u>27.50</u>
		\$ 6,871.43

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 ordered as follows:

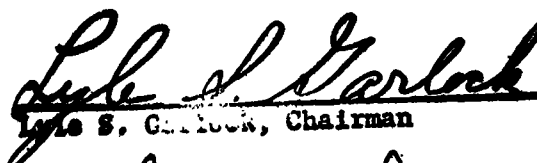
<u>FROM</u>	<u>ON</u>
December 6, 1961	\$ 6,843.93
November 29, 1959	27.50

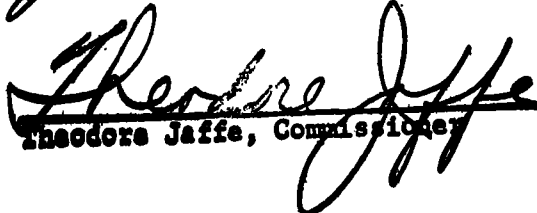
CERTIFICATION OF LOSS

The Commission certifies that ELIZABETH T. YOH 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 Six Thousand Eight Hundred Seventy-one Dollars and Forty-three Cents (\$6,871.43) with interest thereon from the respective dates of the loss to the date of settlement.

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

MAK 24 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 claimant establishes 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).)