

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

**IN THE MATTER OF THE CLAIM OF**

CHARLES EDWARD SARGENT  
ROSABEL GILBERT SARGENT

**Claim No. CU-2328**

**Decision No. CU - 6308**

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

Counsel for claimants:

Henry T. Downey, 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 \$119,565.00 was presented by CHARLES EDWARD SARGENT and his wife ROSABEL GILBERT SARGENT, based upon the asserted loss of real and personal property. Claimants 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.

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.

Claimants state that they suffered losses based upon the following property:

- (1) An inherited interest in a farm, known as Finca "La Canoa", located near Camaguey, Cuba;
- (2) Land in the suburban section known as Reparto Kohly, Municipality of Marianao, near Havana;
- (3) An interest in two building lots, situated at Santa Amelia, and six building lots situated at Reparto Ermita;
- (4) Equipment, accessories and a bank account belonging to The Phillips School, at Marianao;
- (5) Furniture, furnishings and jewelry located at claimant's residence at No. 2857 Avenida 49, Reparto Kohly, Marianao; and
- (6) Bonds of the Havana Biltmore Yacht and Country Club and of the Grand Lodge of Masons of Cuba.

In support of the claim, claimants submitted affidavits, excerpts from the Cuban Official Gazette, correspondence and other documentation.

The individual items of the claim are discussed under separate headings below.

(1) Finca "La Canoa"

The record shows that Olivia Molina, mother of claimant ROSABEL GILBERT SARGENT owned a one-third interest in land measuring 63 Cuban caballerias (or 2,089.08 acres), located near the town of Magarabomba, province of Camaguey; that Olivia Molina died intestate in 1939 and that ROSABEL GILBERT SARGENT and three other children of the deceased inherited the property of their mother; and that ROSABEL GILBERT SARGENT thus became the owner of a one-twelfth interest in the aforesaid property.

The record further shows that a substantial part of the Finca "La Canoa" was leased to the Florida Industrial Corporation of New York, operator of the Baragua Sugar Mill; and that the corporation together with the Baragua Sugar Mill and with all their appurtenances were nationalized by the Government of Cuba

pursuant to the provisions of Law 851 by Resolution No. 1 published in the Official Gazette of August 6, 1960. The Commission, therefore, finds that the farm Finca "La Canoa" was nationalized by the Government of Cuba on August 6, 1960.

The value of the farm remains to be determined. 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 the standard by giving specific bases of valuation that the Commission shall consider.

The evidence submitted by the claimants shows that approximately 17 caballerias of the Finca "La Canoa" consisted of land cultivated for the production of sugar cane, and approximately 46 caballerias were used as pastures, for cattle raising and hog feed. The Commission has determined in previous claims (see Claim of the Estate of Charles R. Burford, Deceased, Claim No. CU-0092) that farms of this type in the central part of Cuba had the following land values: cane land \$7,000 per caballeria, pasture land \$5,000 per caballeria and undeveloped land \$2,000 per caballeria. The Commission therefore finds that at the time of taking, the land of the Finca "La Canoa" had the following value:

17 caballerias sugar cane land	\$119,000.00
46 caballerias pasture land	<u>230,000.00</u>
Total	\$349,000.00

and that the one-twelfth interest inherited by ROSABEL GILBERT SARGENT was worth \$29,083.33. Accordingly, the Commission concludes that ROSABEL GILBERT SARGENT suffered a loss in that amount.

A claim is also asserted for the loss of additional interests in the farm property assertedly inherited in 1965 from claimant's aunt Julia Olivia and in 1966 from claimant's uncle Roberto Olivia. However, no evidence has been submitted and nothing in the record shows that at the time of the loss Julia Molina and Roberto Molina were nationals of the United States, as required by Section 504 of the Act (supra). In the absence of such evidence the claim for additional losses in excess of the loss of the aforementioned inherited one-twelfth interest must be and it is hereby denied.

(2) Land in Marianao

The record shows that CHARLES EDWARD SARGENT was the record owner of a land parcel described as building lots Nos. 10 and 11 of block No. 3, situated on Bellavista Street in the section known as Reparto Kohly, Municipality of Marianao, Havana, measuring 539.32 square meters, part of which he acquired by purchase in 1953 and part in 1957.

Under the community property law in Cuba, property acquired during marriage by one or both spouses from the funds of marriage partnership, or from the industry, salary or work of either of the spouses, or the fruits thereof (but not property acquired by inheritance) belongs in equal parts to both spouses. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915). The Commission, therefore, concludes, that the above land in Marianao was owned jointly by CHARLES EDWARD SARGENT and ROSABEL GILBERT SARGENT in equal shares.

This land was subject to Cuban Law 989 published in the Official Gazette of December 6, 1961, which effected confiscation of all goods, chattels, real estate, rights, shares, stock, bonds, securities, and other property of persons who left Cuba. Claimants left Cuba in 1960 and the Commission concludes that the land parcel in question was taken by the Government of Cuba on December 6, 1961.

The evidence before the Commission shows that at the time of taking vacant land in the section known as Reparto Kohly had an average value of \$25.00 per square meter. Accordingly, the Commission finds that at the time of taking claimants' land was worth \$13,483.00 and that each claimant suffered a loss in the amount of \$6,741.50.

(3) Building Lots at Santa Amelia and Reparto Ermita

Claimants state that they owned certain land sold by the Compania Territorial Santa Amelia S.A. consisting of two building lots. The evidence submitted by the claimants shows that claimants had purchased these lots on an instalment plan, and that they had paid on account \$5,621.28. After having left Cuba, they discontinued further payments, and the Commission finds that claimants' interest in these two lots was taken by the Government of Cuba under the provisions of Law 989 on December 6, 1961.

Since claimants owned the said building lots jointly, each of them suffered a loss of \$2,810.64.

Claimants further state that they owned six building lots situated at the Reparto Ermita. No evidence whatsoever has been submitted in support of this portion of the claim and nothing in the file indicates that claimants, in fact, owned these six building lots.

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 claimants have not met the burden of proof with respect to the claim based upon the six building lots at Reparto Ermita and this portion of the claim is therefore denied.

(4) The Phillips School

The record shows that claimants were the owners of a private educational institution known as The Phillips School (Colegio Phillips), located at No. 2842 Avenida 49, Reparto Kohly, Marianao. It consisted of an elementary (grammar) and secondary (high school) division. Claimants state that the equipment for approximately 1,000 students consisted of desks, lab facilities, classroom equipment, dining room facilities, air conditioning machinery, filing cabinets, typewriters, adding machines, an intercom system, musical equipment (three pianos), instruments for a school band, sport equipment for baseball, basketball and other sport activities, a large library and the like. Claimants further

state that the school had a bank account at the Trust Company of Cuba, Almendares branch office, with a balance of \$11,000 at the time of nationalization of the school.

On June 6, 1961, the Government of Cuba published a Law in its Official Gazette which nationalized as of that date all centers of instruction operated by private entities, as well as all properties, rights and interests therein. Accordingly, the Commission finds that The Phillips School was nationalized by the Government of Cuba on June 6, 1961.

Claimants state that the equipment of the school represented an investment of \$36,000.00. The Commission finds that this sum represents the original cost of the school equipment and material acquired from 1948 to 1959, and that at the time of nationalization the value of the equipment and material had depreciated by 25% or \$9,000, resulting in a value of \$27,000 to which is added a bank account of \$11,000.00 an aggregate value of \$38,000.00.

Accordingly, each claimant suffered a loss, as a result of actions of the Cuban Government in the amount of \$19,000.00.

#### (5) Home Furniture and Furnishings

Claimants state that they owned furniture and furnishings, as well as jewelry located at No. 2837 Avenida 49, Reparto Kohly, Marianao. The furniture and furnishings consisted of a dining room, living room, bedroom and accessories.

The Commission finds that this property was taken by the Government of Cuba under the provisions of Law 989 (supra) on December 6, 1961.

Claimants submitted a detailed list of the personal property indicating that the value of the furniture, furnishings and personal effects was \$13,000 and the value of jewelry \$2,000.

The Commission finds that \$13,000 represents the cost of furniture, furnishings and personal effects and that at the time of taking its value had depreciated by 25%, resulting in a net value of \$9,750.00. The value of the jewelry in the amount of \$2,000 is not affected by depreciation. The Commission, therefore, concludes, that the total value of the property discussed under this heading was \$11,750.00 and that each claimant suffered a loss of \$5,875.00.

(6) Bonds

Claimants state that CHARLES EDWARD SARGENT owned a \$2,000 Series B bond of the Havana Biltmore Yacht and Country Club and \$500.00 5% bonds of the Grand Lodge of Masons of Cuba.

The record shows that CHARLES EDWARD SARGENT was a member in good standing of the Havana Biltmore and Yacht Club. The Commission records, however, do not show that this Club ever issued bonds designated Series B. On the other hand, the records indicate that the Club issued stock certificates designated Series B, the ownership of which was coupled with the right of membership in the Club, but with no rights in the physical assets of the Club. The Commission has held that the membership right also constitutes property within the meaning of Section 502(3) of the Act and that upon intervention of the Club by the Government of Cuba on March 19, 1960, such members, if otherwise qualified, suffered a loss within the meaning of the Act (see Claim of Robert J. Macaulay and Maria Agnes Macaulay, Claim No. CU-0311). The Commission has further held that the value of such membership at the time of intervention was the cost of the membership. In the absence of evidence as to such cost in the instant claim, the Commission finds that the value of the membership was \$500.00 and that each claimant suffered a loss in the amount of \$250.00.

The claim based upon the 5% bonds of the Grand Lodge of Masons of Cuba is a creditor's claim against a Cuban entity. The record does not show that the Grand Lodge of Masons of Cuba was nationalized, expropriated, intervened or taken by the Government of Cuba; nor that the bonds were a charge upon property which has been nationalized, expropriated, intervened or taken by the Government of Cuba. In the absence of such evidence, this portion of the claim cannot be considered and it is hereby denied.

Recapitulation

The losses are summarized as follows:

<u>Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>CHARLES EDWARD SARGENT</u>		
Land in Marianao	December 6, 1961	\$ 6,741.50
Land Santa Amelia	December 6, 1961	2,810.64
The Phillips School	June 6, 1961	19,000.00
Household goods & jewelry	December 6, 1961	5,875.00
Biltmore Club membership	March 19, 1960	250.00
	Total	<u>\$34,677.14</u>
<u>ROSABEL GILBERT SARGENT</u>		
Finca "La Canoa"	August 6, 1960	\$29,083.33
Land in Marianao	December 6, 1961	6,741.50
Land Santa Amelia	December 6, 1961	2,810.64
The Phillips School	June 6, 1961	19,000.00
Household goods & jewelry	December 6, 1961	5,875.00
Biltmore Club membership	March 19, 1960	250.00
	Total	<u>\$63,760.47</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 this case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
<u>CHARLES EDWARD SARGENT</u>	
March 19, 1960	\$ 250.00
June 6, 1961	19,000.00
December 6, 1961	<u>15,427.14</u>
	<u>\$34,677.14</u>
<u>ROSABEL GILBERT SARGENT</u>	
March 19, 1960	\$ 250.00
August 6, 1960	29,083.33
June 6, 1961	19,000.00
December 6, 1961	<u>15,427.14</u>
	<u>\$63,760.47</u>


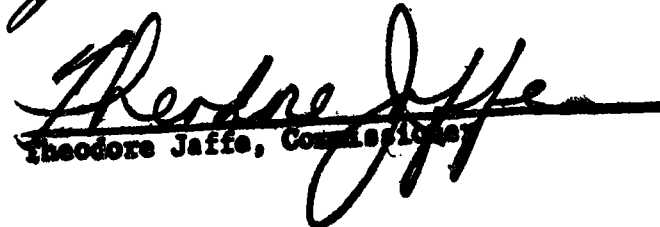
CERTIFICATION OF LOSS

The Commission certifies that CHARLES EDWARD SARGENT 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-Four Thousand Six Hundred Seventy-Seven Dollars and Fourteen Cents (\$34,677.14) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that ROSABEL GILBERT SARGENT 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 Sixty-Three Thousand Seven Hundred Sixty Dollars and Forty-Seven Cents (\$63,760.47) with interest 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 8 1971

  
Lytle 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).)