

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

IN THE MATTER OF THE CLAIM OF

BESSIE L. LODUSKA CASAS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2341

Decision No. CU -6046

Counsel for claimant:

Rufus King, 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 BESSIE L. LODUSKA CASAS for \$278,300 based upon the asserted ownership and loss of real and personal property in Cuba. 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.

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).)

Under the laws of Cuba, inherited property, property acquired prior to marriage and property acquired from the separate funds of one spouse, are not subject to Cuban community property laws. The record reflects the nationality of claimant's spouse as Cuban.

Claimant has described her losses as follows:

Farm

- | | |
|---|-----------|
| (1) Finca Yumuri, 2500 acres, in Camaguey,
1/2 of 1/3 interest | \$ 58,300 |
| (2) 1/2 of additional farm equipment,
building and machinery | 6,500 |

Residence

- | | |
|--|-----------|
| (3) 1/2 residential lot | 14,000 |
| (4) two automobiles | 3,000 |
| (5) Furnishings | 10,100 |
| <u>Furniture Stores:</u> 1/2 of 1/3 | 85,000 |
| <u>Accounts Receivable:</u> 1/2 of 1/3 | 115,000 |
| (6) "Muebleria La Complaciente"
57 Angeles St., Havana - 40%
Accounts Receivable - | \$130,000 |
| (7) "Mueblicentro"
Neptuno St., Havana - 30%
Accounts Receivable - | \$100,000 |
| (8) Muebleria "Las Casas Lopez"
Belascoain 560, Havana - 55%
Accounts Receivable - | \$240,000 |
| (9) "Muebleria Ultra"
64 Angeles St., Havana - 35%
Accounts Receivable - | \$100,000 |
| (10) "Le Palais Royal"
54 Angeles St., Havana - 40%
Accounts Receivable - | \$50,000 |
| (11) "Muebleria Packard" (or El Hogar)
Calle Monte, Havana - 35%
Accounts Receivable - | \$120,000 |

Claimant has contended that her husband, Oscar R. Casas, Cuban citizen, owned half of all interests lost, as community property; that the farm was

held by the spouses in equal one-thirds with the husband's two brothers; and that the properties were intervened and confiscated in 1960 and 1961. In 1964 a tax loss of \$261,091.66 was claimed and was allowed to the spouses. The breakdown of the allowance has been set out by A. M. Pullen & Company, Certified Public Accountants, and is discussed under the pertinent items of claim.

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.

- (1) Finca Yumuri
- (2) Buildings, Equipment and Machinery

Claimant has described this as 2700 acres of land, 600 being planted with sugar cane and 2100 acres for cattle, with over 1,000 head of pure bred Brahmas; with farm machinery; a house for the owner and 20 houses for workers,

She stated this was partly inherited property and that she and her husband held it in equal thirds with his two brothers. She has also described this as a leasehold acquired by her husband and his brothers Jose Alberto Casas and Tomas M. Casas upon the death of their father, Alberto Casas in 1954. Further, she stated that all improvements, farm machinery, pure bred cattle herds were financed with money from the furniture stores.

In support claimant has submitted several affidavits indicating that she and her husband and his brothers owned this property, the affiants,

however, not describing any basis for their opinions, other than general beliefs. One affiant, in the banking business, refers to the brothers as the owners, basing his knowledge on financing activities.

The Commission finds that whereas Oscar R. Casas may have inherited a one-third interest in this farm, claimant would have no interest therein under the community property laws of Cuba. Accordingly, her claim as an interest in the farm or the lease thereof, is denied.

Claimant has stated that her husband's father was a sugar planter and did not raise cattle; that the option to the leased land consisted of 1,200 acres; that after the father's death, the three brothers acquired over 1,500 additional acres; that the profits of the furniture stores were used to buy equipment, clear and develop the land, and stock with cattle. The Commission finds, based on this record and the holding of the Internal Revenue Service, that claimant and her spouse had an interest in the cattle and sugar cane of the farm.

The Commission further finds that the farm was intervened in 1960 and in the absence of evidence to the contrary, that it was intervened on September 1, 1960, subsequent to claimant's departure from Cuba.

On the basis of the record, including the holding of the Internal Revenue Service, the Commission finds that the interest of the claimant and her spouse was \$88,166.66 (equivalent to 33 per cent of \$264,500) and accordingly, the Commission holds that claimant suffered a loss of \$44,083.33 within the meaning of Title V of the Act.

- (3) 1/2 Residential Lot
- (4) Two Automobiles
- (5) Household Furnishings

It appears from the record that claimant and her husband resided at Calle 20 No. 104 between First and Third Avenues in Miramar for several years until they left Cuba during 1960. The record, however, contains no evidence that they owned their residence, nor a residential lot. Accordingly, this item of claim is denied.

Based on the record, including affidavits of observers, the Commission finds that claimant and her husband owned a 1954 Oldsmobile and a 1959 Fiat;

valued by them at \$1,500 each; and further that they owned household furnishings, listed by claimant with estimated values at the time of confiscation in the aggregate value of \$11,414.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated assets, personal property and real estate and other interests of persons who had left the country. The Commission finds that this law was applicable to claimants and finds that their personal property, consisting of two automobiles and certain household furnishings were taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of 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 on the date of loss the 1954 Oldsmobile had a value of \$375.00 and the 1959 Fiat had a value of \$880.00. These values are based on the 1961 Guide of the National Automobile Dealers Association.

With respect to the remainder of the personalty, the Commission finds that the asserted value of \$11,414 is fair and reasonable, in comparison with values of similar properties in Cuba.

Accordingly, the Commission concludes that claimant sustained a loss in the amount of \$6,334.50 within the meaning of Title V of the Act for her one-half interest in the automobiles and household personalty on the date of loss.

Furniture Stores

Claimant first indicated on her claim form that she was the owner of 1/2 of 1/3 of the furniture store business. Later varying percentages were asserted. It is noted that the whole value of these businesses has been based on \$1,200,000 of which \$510,000 is allotted to the stores and stock, and \$690,000 is asserted as accounts receivable. Claimant has stated that the furniture business was started when she and her husband bought a one-fourth interest in the Palais Royal, from which they developed the chain of stores. In support of the asserted ownership, claimant has submitted several affidavits.

Raul S. Villa, banker by profession, states that the three Casas brothers owned several furniture stores in Havana, were clients of the bank, and affiant watched the growth and development of the furniture business for several years. He further estimates the value of the stores as several hundred thousand pesos adding that they had a credit with the bank of \$100,000.

Charles W. Kepner states that to the best of his knowledge Oscar Casas individually or jointly with his wife and brothers owned and operated several retail furniture stores. He understood from Oscar Casas that the investment in these stores totalled hundreds of thousands of dollars.

Paul Mendoza, banker and former president of Banco Hipotecario Mendoza, has made an affidavit for the three brothers to be employed in applications for adjustments of income taxes, and states that he recalls the three brothers were the sole owners of three furniture stores in Havana, that sales were largely on the installment basis; that around 1960 the Casas' balance sheet showed receivables resulting from time sales of half a million dollars, that other assets, mainly furniture stock, were between \$50,000 and \$80,000 which justified extending a credit line of \$100,000.

The Internal Revenue Service found certain ownership interests established in the furniture business. These are further discussed below.

(6) Muebleria La Complaciente
57 Angeles Street

Claimant, in requesting assistance in obtaining evidence as to this property, indicated it was acquired in March 1946 from the Sucesion de Portas, and asserted 40% ownership. It is asserted that the store covered 12,000 square feet, was stocked and had accounts receivable of \$130,000.

Evidence of record establishes that this store, listed as Oscar R. Casas y Cia. S. en Co. was expropriated by publication in the Cuban Official Gazette on August 8, 1961.

The Commission finds, based on a holding of the Internal Revenue Service, that claimant and her spouse had an interest in this item of claim of \$42,000 (equivalent to 40 per cent of \$105,000) and accordingly, the Commission holds that claimant suffered a loss of \$21,000 in this connection, within the scope of Title V of the Act, on August 8, 1961.

(7) Mueblicentro
Neptuno Street

Claimant describes this store as covering 20,000 square feet, stocked with furniture, having about \$100,000 in accounts receivables, and asserts 30% ownership. She also stated it was opened in March 1955.

This property, listed as Hermanos Casas S. en C. was expropriated by the Government of Cuba by publication in its Official Gazette on August 8, 1961.

The Commission finds, based on a holding of the Internal Revenue Service, that claimant and her spouse had an interest in this item of claim of \$30,000 (equivalent to 30 per cent of \$100,000) and accordingly, the Commission holds that claimant suffered a loss of \$15,000 in this connection, within the scope of Title V of the Act, on August 8, 1961.

(8) Muebleria "Las Casas Lopez"
Belascoain 560

This store is described as covering 30,000 square feet, being stocked with furniture, having about \$240,000 in accounts receivable. Ownership of 55% is asserted, stating it was purchased in January 1950 from Jesus Lopez.

This property was intervened by the Government of Cuba, by publication in its Official Gazette on September 12, 1961.

The Commission finds, based on a holding of the Internal Revenue Service, that claimant and her spouse had an interest in this item of claim of \$100,925, (equivalent to 55 per cent of \$183,500) and accordingly, the Commission holds that claimant suffered a loss of \$50,462,50 in this connection, within the scope of Title V of the Act, on September 12, 1961.

(9) Muebleria Ultra
64 Angeles Street

In requesting assistance in obtaining evidence as to this item, claimant indicated that it was purchased in 1949 from Eusebio Lopez and asserted 35% ownership. It is asserted that this store covered 6,000 square feet, was stocked and had accounts receivable of \$100,000.

The record establishes that this store was taken by the Government of Cuba by publication in the Official Gazette on September 15, 1961.

A report received from abroad in this matter reflects that in the

Mercantile Registry there is incirbed the establishment "Ultra" at 64 Angeles, in the name of Tomas Casas Albadalejo, bachelor, acquired on January 20, 1949.

(10) Le Palais Royal
54 Angeles Street

Claimant has asserted that this property was purchased in September 1944 from Sixto Noste y Cia.; that the store covered 8,000 square feet, was stocked with furniture, and had about \$50,000 in accounts receivable. She asserted 40% ownership. Under date of May 22, 1970, claimant stated that to the best of her knowledge this partnership was owned by her and her husband 50%, by Alberto Casas 30% and Josefa Noste 20%.

The record reflects that this property, listed as Casas S. en C. was expropriated by the Government of Cuba by publication in its Official Gazette on August 8, 1961.

A report received from abroad in this matter reflects that this property is inscribed in the Mercantile Registry in the name of the partnership Casas S. en C., December 6, 1948.

(11) Muebleria Packard (or El Hogar)
Calle Monte

Claimant asserts that this store was purchased in 1948, that it covered 8,000 square feet and had accounts receivable of \$120,000. Claimant asserted 35% ownership.

A report received from abroad in this matter reflects that in the Mercantile Registry is inscribed a silent partnership "Sixto Noste y Cia. S. en C.", comprised of Oscar M. Casas Albadalejo, Sixto Rafael Alfonso de las Nieves Noste Pitaluga and Alberto Casas Albadalejo, located at 935 Monte Street, created October 17, 1949.

The Commission finds, with respect to Items (9), (10) and (11) above, that claimant has not established that she had any ownership interest therein on the date of any taking by the Government of Cuba, apparently in 1961. Such property was not included in the losses determined by the Internal Revenue Service. Accordingly, so much of the claim as pertains to (9), (10) and (11) herein is denied.

Recapitulation

Claimant's losses within the scope of Title V of the Act are summarized:

<u>Item of Claim</u>	<u>Date of Loss</u>	<u>Value</u>
Cattle and Sugar Cane	September 1, 1960	\$ 44,083.33
Household furnishings and automobiles	December 6, 1961	6,334.50
Muebleria La Complaciente	August 8, 1961	21,000.00
Mueblicentro	August 8, 1961	15,000.00
Muebleria "Las Casas Lopez"	September 12, 1961	50,462.50
		<u>\$136,880.33</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>
September 1, 1960	\$ 44,083.33
August 8, 1961	36,000.00
September 12, 1961	50,462.50
December 6, 1961	6,334.50
	<u>\$136,880.33</u>

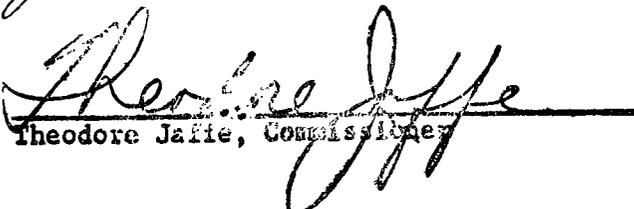
CERTIFICATION OF LOSS

The Commission certifies that BESSIE L. LODUSKA CASAS 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 One Hundred Thirty-Six Thousand Eight Hundred Eighty Dollars and Thirty-Three Cents (\$136,880.33) 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

FEB 3 1971


Lyle B. Garlock, Chairman


Theodore Jaffe, 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 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).)