

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

IN THE MATTER OF THE CLAIM OF

ANNE RUTH CARITY
GAYLE CARITY AND
BRENDA CARITY

Claim No. CU - 2362

Decision No. CU - 4515

Under the International Claims Settlement
Act of 1949, as amended

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 \$256,939.00, was presented originally by ANNE RUTH CARITY based upon the asserted loss of interests in certain real and personal property in Cuba, including bank accounts belonging to her two then minor daughters. The two daughters having attained the age of majority, they have been added as party claimants. All of the three 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.

REAL PROPERTY

The Commission finds on the basis of the evidence of record, including copies of deeds and statements to the Internal Revenue Service, that ANNE RUTH CARITY and her husband, a nonnational of the United States, each owned a one-half interest in four pieces of real property pursuant to the community property laws of Cuba. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) These four pieces of real property, discussed in detail below, were situated in Havana and a nearby urban area.

The Commission finds that three improved real properties were within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that these three of the abovementioned urban properties were taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected the confiscation of all goods and chattels, rights, shares, stocks, bonds, and other securities, as well as bank accounts of persons who left Cuba. The Commission finds that this law applied to claimants who had left Cuba prior to December 6, 1961.

Accordingly the Commission concludes that an unimproved lot in Marianao was taken by the Government of Cuba on December 6, 1961. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The four pieces of real property included:

- (a) A lot improved by a brick apartment house in Marianao, Cuba.
- (b) A lot improved by a two-story house in Marianao, Cuba, which claimant and her husband had used as their residence, and had improved during their occupancy.

(c) A vacant lot in Marianao, Cuba.

(d) A lot and building in Havana, Cuba, which claimant and her husband used in their necktie manufacturing business, discussed hereafter.

Upon consideration of the entire record, including the purchase prices of these four pieces of real property and Mrs. Carity's statements to the Internal Revenue Service in connection with her tax deductions for these Cuban losses, the Commission finds that the values of the four items of real property on the respective dates of loss were \$80,000.00, \$20,000.00, \$11,378.00, and \$29,700.00. Therefore, Mrs. Carity's one-half interests therein had values of \$40,000.00, \$10,000.00, \$5,689.00, and \$14,850.00, respectively.

NECKTIE BUSINESS

The evidence establishes and the Commission finds that Mr. and Mrs. Carity conducted a necktie manufacturing business in the above-mentioned building in Havana, Cuba. The record includes numerous letters and statements from suppliers and business associates, as well as copies of invoices, establishing the extent of the business conducted by Mr. and Mrs. Carity in Cuba. Similar evidence was submitted by them to the Internal Revenue Service. In connection with this business, Mr. and Mrs. Carity jointly owned certain inventories of raw and finished materials as well as goods in process, and a business account at the First National City Bank of New York, Havana Branch.

The Commission finds that upon the taking by the Government of Cuba of the factory building in Havana on October 14, 1960, the assets of the business, inventories and bank account, were also taken by Cuba. Upon consideration of the entire record, the Commission finds that on October 14, 1960, the date of loss, the values of the inventories and bank account were \$250,000.00 and \$98,000.00, respectively. Therefore, Mrs. Carity's one-half interests therein had the values of \$125,000.00 and \$49,000.00, respectively.

PERSONAL BELONGINGS

The evidence establishes and the Commission finds that Mr. and Mrs. Carity owned furniture, clothing and various items of other personal property at their residence in Havana, including a 1960 Studebaker automobile. The Commission further finds that upon the taking of the residence by the Government of Cuba on October 14, 1960, the personal property situated therein, including the automobile, were also taken by Cuba.

Mrs. Carity has asserted a loss of \$12,200.00 for her one-half interest in the home furniture and furnishings and the automobile, based on her costs. In determining the value of said property, the Commission took into consideration the cost thereof and the fact that a substantial part of the home furniture and furnishings had been acquired between 1946 and 1950, as indicated in a detailed list submitted by Mrs. Carity. The Commission also considered that said property was subject to depreciation.

On the basis of the entire record, the Commission finds that the aggregate value of the home furniture and furnishings, including the automobile, was \$19,450.00 on October 14, 1960, the date of loss. Therefore, Mrs. Carity's one-half interest therein had a value of \$9,725.00.

BANK ACCOUNTS

The Commission finds that GAYLE CARITY and BRENDA CARITY each owned a bank account in a Cuban bank with a value of \$100.00.

The Commission concludes that these claimants' bank accounts, having an aggregate value of \$200.00, were taken by the Government of Cuba on December 6, 1961, pursuant to Law 969 (supra.) as a result of which claimants sustained losses within the meaning of Title V of the Act. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

INSURANCE CLAIM

Mrs. Carity has stated in a document accompanying her official claim form that she also has a claim against an insurance company, Sol de Canada, but that the value thereof was not determined. Her official claim form

CU-2362

contained no reference to this claim and no amount was requested on account thereof. Moreover, claimant has submitted no evidence to indicate the nature of this claim or establish its validity under Title V of the Act. Similarly, the statements made to the Internal Revenue Service by Mrs. Carity concerning her Cuban losses included no reference to any claim against an insurance company.

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).)

The Commission finds that ANNE RUTH CARITY has failed to sustain the burden of proof with respect to the portion of her claim based upon a claim against an insurance company. Accordingly, this portion of the claim is denied.

Claimants' losses may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>ANNE RUTH CARITY</u>		
Apartment house and lot	October 14, 1960	\$ 40,000.00
Residence and lot	October 14, 1960	10,000.00
Vacant lot	December 6, 1961	5,689.00
Factory building and lot	October 14, 1960	14,850.00
Business inventories	October 14, 1960	125,000.00
Business bank account	October 14, 1960	49,000.00
Personal belongings, including automobile	October 14, 1960	9,725.00
	Total	<u>\$254,264.00</u>
<u>GAYLE CARITY</u>		
Bank Account	December 6, 1961	<u>\$ 100.00</u>
<u>BRENDA CARITY</u>		
Bank Account	December 6, 1961	<u>\$ 100.00</u>

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 case it is so ordered as follows:

	<u>FROM</u>	<u>ON</u>
ANNE RUTH CARITY	The respective dates of loss, aforesaid	<u>\$254,264.00</u>
GAYLE CARITY	December 6, 1961	<u>\$.....100.00</u>
BRENDA CARITY	December 6, 1961	<u>\$ 100.00</u>

CERTIFICATIONS OF LOSS

The Commission certifies that ANNE RUTH CARITY 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 Two Hundred Fifty-Four Thousand Two Hundred Sixty-Four Dollars (\$254,264.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

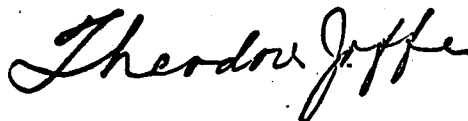
The Commission certifies that GAYLE CARITY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Dollars (\$100.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

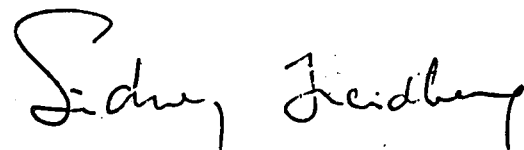
The Commission certifies that BRENDA CARITY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Dollars (\$100.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

MAR 4 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 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).)