

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

IN THE MATTER OF THE CLAIM OF

CARLOS AMIGUET
MARY GENE AMIGUET

Claim No. CU-2531

Decision No. CU -6197

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered May 19, 1971. No hearing requested.

Hearing on the record held September 30, 1971.

FINAL DECISION

In its Proposed Decision the Commission certified a loss to each claimant in the amount of \$116,478.70 for their 1/6 interest in three items of real property and a 1/2 interest in cash. Other items of real property, personal furnishings and an interest in drugstore businesses were denied for failure to meet the burden of proof.

Claimants objected to three items of the Proposed Decision that were denied and submitted additional evidence in support thereof.

The entire record has been reviewed and the Commission now finds as to the parts of the claim to which objections were raised, as follows:

1. 21,000 square meters of undeveloped land

Each claimant was the owner of a 1/6 interest in 21,000 square meters of undeveloped land at the crossing of Carretera of Guanabacoa and Regla which was taken by the Government of Cuba on October 14, 1960 pursuant to the Urban Reform Law. The Commission further finds that at the time of loss the land had a value of \$105,000.00 and each claimant herein suffered a loss in the amount of \$17,500.00.

2. 40,000 square meters of improved farm land

The evidence submitted by claimants is not persuasive in overcoming the ownership of record which reflects title to this property in the brother of claimant CARLOS AMIGUET. The burden of proof has not been met. Accordingly, the denial of this part of the claim is affirmed.

3. Drogueria Amiguét

Each claimant was the owner of a 1/6 interest in a wholesale drug store business located at Animas y Soledad Sts., Havana. In the absence of specific evidence to the contrary this business was taken on June 1, 1961.

Claimants have asserted that at the time of loss the business had a value of \$300,000.00. The Commission finds that the best evidence of value is the amount reflected in the November 30, 1959 Balance Sheet of the Partnership, Amiguét Brothers, in which Drogueria Amiguét is listed as an asset in the amount of \$236,210.00.

Accordingly, at the time of loss each claimant sustained a loss in the amount of \$39,368.33.

Recapitulation

The losses of claimants are restated as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value of Interest</u>
San Lazaro 872	October 14, 1960	(1/6) \$ 54,151.23
Av. Del Rio	October 14, 1960	(1/6) 15,112.97
Animas y Soledad Sts.	October 14, 1960	(1/6) 6,000.00
Undeveloped land	October 14, 1960	(1/6) 17,500.00
Drogueria Amiguét	June 1, 1961	(1/6) 39,368.33
Cash	August 4, 1961	(1/2) <u>41,214.50</u>
Total		<u>\$173,347.03</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 claim it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$ 92,764.20
June 1, 1961	39,368.33
August 4, 1961	<u>41,214.50</u>
Total	<u>\$173,347.03</u>

Accordingly, the Certifications of Loss in the Proposed Decision are set aside; the following Certifications of Loss will be entered, and in all other respects the Proposed Decision, as amended herein, is affirmed.

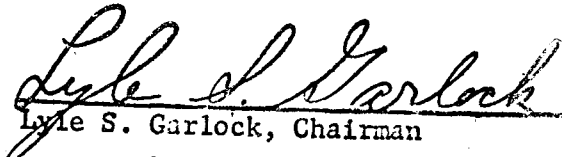
CERTIFICATIONS OF LOSS

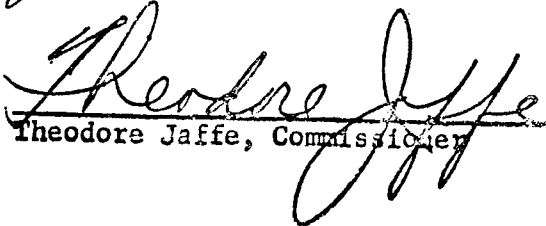
The Commission certifies that CARLOS AMIGUET suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Seventy-three Thousand Three Hundred Forty-seven Dollars and Three Cents (\$173,347.03) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MARY GENE AMIGUET 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 Seventy-three Thousand Three Hundred Forty-seven Dollars and Three Cents (\$173,347.03) 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 Final
Decision of the Commission

SEP 30 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

CARLOS AMIGUET
MARY GENE AMIGUET

Claim No. CU-2531

Decision No. CU - 6197

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim, as amended, against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, was presented by CARLOS AMIGUET for \$442,000.00, based upon the loss of unimproved and improved real property, business interests, cash and other personal property. Inasmuch as pursuant to the community property law of Cuba, MARY GENE AMIGUET has an interest in the property subject of the claim, she is added as claimant herein. Both 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.

The loss is described as follows:

An asserted 1/3 interest:

1. 21,000 square meters of undeveloped land
2. 40,000 square meters of farm land improved with buildings
3. Apartment building with twenty-two units at San Lazaro
4. Apartment building with three units and marina facilities at Alturas de Miramar
5. Warehouse building with offices
6. A wholesale drugstore business, Cia. Farmaceutica Sitios.
7. Three drugstores

	1/3 interest	<u>\$352,000.00</u>
An asserted 100% interest:		
8. Household furniture		7,000.00
9. Cash		<u>83,000.00</u>
	Total	<u>\$442,000.00</u>

The evidence of record consists of a balance sheet dated November 30, 1959 with no attached schedules, descriptions of the property, receipts and a report from abroad. On the basis thereof, the Commission finds that claimant owned certain items of real and personal property in Cuba. Pursuant to the community property laws of Cuba, all property acquired by either spouse during coverture is owned in equal shares by both spouses, except property acquired by gift or inheritance. (See Claim of Robert L. Cheaney, et ux, Claim No. CU-0915.) Based upon the evidence of record, the Commission finds that claimant and his wife each owned a one-sixth interest in certain of the real properties subject of this claim and a one-half interest each in certain cash on deposit as indicated hereafter.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). Moreover, Article 30 provided for the cancellation of mortgages.

Based on the foregoing and evidence of record, the Commission finds that the properties in Items 3, 4 and 5 above listed were taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

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.

Item 3 - San Lazar 872, Havana

This property is described as a five-story apartment building constructed on 711 square meters of land. The building had a basement, main floor, mezzanine and four stories of apartments, 22 in all. The structure was built in 1951 and acquired by claimants in 1953. A report from abroad stated its value as \$392,361.50 and the Commission finds said value is fair and reasonable. The property was encumbered in the amount of \$67,454.10. This mortgage must be deducted to determine claimants' equity. Accordingly, upon the deduction of the mortgage, the Commission finds that, at the time of loss, the value of the one-sixth interest of each claimant was \$54,151.23.

Item 4 - Av. Del Rio, Miramar

This property was a three-story apartment house overlooking the Almendares River with three sheltered docks for yachts. Claimant and his two

brothers each resided there, occupying one entire floor each as a residence. The apartments were described as three bedroom apartments with three baths and terrace. The land was acquired in 1954 and the building erected in 1957. A report from abroad indicates the property had a value of approximately \$85,000. Claimants state that this figure is an appraisal value for the purpose of the mortgage thereon. Claimants asserted a land value of \$25,000 and a building cost of \$125,000. Considering the appreciation factor for this relatively new property, and by comparison with other properties the Commission finds that at the time of loss this property had a value of \$125,000.

Since this property was mortgaged in the amount of \$34,322.18 the Commission finds that the value of a one-sixth equity in the property was \$15,112.97.

Item 5 - Animas y Soledad Sts., Havana

This property is described as a warehouse and office building constructed in 1960 on 760 square meters of land. A report from abroad stated that the property was appraised at \$71,000.00 and that there was a mortgage thereon in the amount of \$35,000.00. The Commission finds that at the time of loss the value of each claimant's one-sixth equity in the property was \$6,000.00.

Item 2 - 40,000 square meters of improved farm land

Claimants assert a one-sixth interest in a farm at Caimito del Guayabal consisting of 40,000 square meters of land, a large home, guest house and road improvements valued at \$75,000.

A report from abroad reflects that title to this property is in claimant CARLOS AMIGUET's brother, Jose. When apprised of this fact claimants stated that said recordation of title was a convenience for the purpose of the brothers' businesses. No probative evidence has been submitted to substantiate any equitable title interest in claimants in this property. Accordingly, this part of the claim is denied.

Item 6 - A wholesale drugstore business, Cia. Farmaceutica Sitios

Claimant CARLOS AMIGUET states that he and his two brothers owned a wholesale drugstore business which was established in 1946 with yearly

sales of \$1,000,000 and which employed 25 persons. Claimant was advised that a report from abroad evidenced that claimant CARLOS AMIGUET'S parents, who are alive, were the majority stockholders and no interest was held by claimants. Claimant CARLOS AMIGUET states that under a private arrangement the business was managed by the three sons and for all practical purposes was owned by the three sons. The Commission finds that the evidence of record is not persuasive in establishing that claimants had any ownership interest in this business and, accordingly, this part of the claim is denied.

Item 1 - 21,000 square meters of undeveloped land

Item 7 - three drugstores

Item 8 - household furniture and personal effects

1 - Claimants state that they each had a one-sixth interest in 21,000 square meters of undeveloped land at the crossing of Carretera of Guanabacoa and Regla, bought from Sinclair Oil Company in 1955 and having a value of \$147,000.00.

The Commission has been unable to obtain evidence in support of this and claimants have failed to substantiate this part of the claim with any probative evidence.

7 - Claimants assert a one-sixth interest in three drugstores which he values at \$100,000. No evidence has been submitted in support of this part of the claim.

8 - Part of the claim in the amount of \$7,000 is asserted for the loss of household furniture and personal effects in claimants' apartment at Avenue Del Rio. On several occasions the Commission suggested to claimants the type of evidence they might submit in support of this part of the claim. No such evidence has been submitted to date.

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 failed to sustain the burden of proof with respect to items 1, 7 and 8 of the claim and the same are hereby denied.

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Item 9 - Cash

Part of the claim is based on the asserted loss of Cuban pesos. The record shows that these peso notes, in a total amount of 82,429 were placed with a private depository in June and July 1961. On August 4, 1961, there was published in the Official Gazette Law 963 which ordered a currency exchange to be carried out on August 6 and 7, 1961. The law provided that after August 7, 1961, old currency was to be null and of no value. Article XI of Law 963 declared that all currency which, at the time of promulgation, was outside the territory under the jurisdiction of the Cuban State, was to be null and of no legal force.

The aforementioned depository being outside the jurisdiction of the Cuban State, the Commission holds that the 82,429 pesos (the peso being on a par with the dollar) became automatically null and of no legal effect on August 4, 1961, the date of the promulgation of Law 963 (see Claim of Betty G. Boyle, Claim No. CU-3473, 1968 FCSC Ann. Rep. 30.)

Accordingly the Commission concludes that claimants sustained a loss within the meaning of Section 503(a) of the Act, each in the amount of \$41,214.50 for their one-half interest therein.

Recapitulation

The losses of claimants are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value of Interest</u>
3. San Lazaro 872	October 14, 1960	(1/6) \$ 54,151.23
4. Av. Del Rio	October 14, 1960	(1/6) 15,112.97
5. Animas y Soledad Sts.	October 14, 1960	(1/6) 6,000.00
9. Cash	August 4, 1961	(1/2) 41,214.50
		<u>\$116,478.70</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 claim it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$ 75,264.20
August 4, 1961	<u>41,214.50</u>
	<u>\$116,478.70</u>

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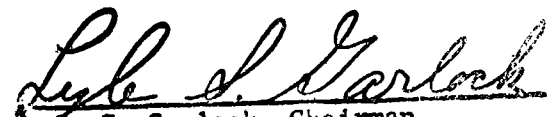
CERTIFICATION OF LOSS

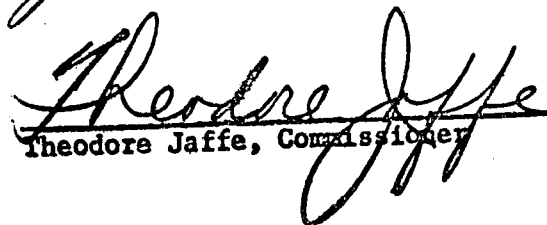
The Commission certifies that CARLOS AMIGUET suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Sixteen Thousand Four Hundred Seventy-Eight Dollars and Seventy Cents (\$116,478.70) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MARY GENE AMIGUET 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 Sixteen Thousand Four Hundred Seventy-Eight Dollars and Seventy Cents (\$116,478.70) 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

MAY 19 1971


Lyle S. 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).)

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