

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

IN THE MATTER OF THE CLAIM OF

CLARENCE W. MOORE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2539

Decision No. CU -6235

Counsel for Claimant:

Rufus King, Esq.

Appeal and objections from a Proposed Decision entered June 16, 1971. Oral hearing requested.

Oral testimony and argument August 11, 1971.

FINAL DECISION

This claim, for \$926,100.00, based upon the asserted loss of personal property, oil concessions and business enterprises, was denied in Proposed Decision of June 16, 1971, for failure of proof. Subsequently, claimant's objections were entered to the Proposed Decision accompanied by additional evidence.

On August 11, 1971, an oral hearing was held and evidence was submitted by the claimant and his brother, Carl E. Moore (Claim No. CU-2534), including their testimony, followed by oral argument. Since the hearing, claimant has submitted further evidence, including affidavits, correspondence and other material relating to the properties.

Consideration having been given to the entire record, including objections, testimony, argument and documentation, the Commission finds that claimant owned certain interests in personal property, oil concessions and business enterprises in Cuba, as follows:

<u>Property</u>	<u>Interest</u>
Household furnishings, personal effects	1/1
Editorial Petroleo, S.A.	1/4
Clarence W. Moore Associates	
Office furniture and equipment;	
oil or mining interests in Morro	
Castle, Cruz de Piedras, Yellow	
Lagoon and others	1/1
The Times of Havana Publishing Company, S.A.	
(Cia. Editorial Los Tiempos de la Habana, S.A.)	3/4
Perforadora de las Antillas, S.A.	
Esperanza, Bijabo-Muskegon, Ensign,	
Water, Cienfuego and other groups;	
Bucyrus Erie tool rig and equipment	3/4
Petrolera Bolivia del Sur, S.A.	1/2
Garcia & Navarro	1/2
Motion Picture - T.V. Studio	1/10
Petrolera Michigan del Sur, S.A.	1/2

The rights of claimant in some of the aforesaid properties, including Clarence W. Moore Associates, Editorial Petroleo, S.A., and the Antillas, Bolivia and Michigan companies, were primarily based on oil concessions and exploration for oil. The rights of claimant in these properties were substantially curtailed by the Cuban Government under Law 635, of November 23, 1959. This law effectively cancelled all applications for exploration or exploitation of concessions, regardless of the status thereof. (See Claim of Felix Heyman, Claim No. CU-0412, 1967 FCSC Ann. Rep. 51.) Accordingly, the Commission finds that the rights of claimant with respect to such oil or mining enterprises were effectively nationalized or otherwise taken by the Government of Cuba on November 23, 1959; and that the interests of claimant herein were taken on that date.

With respect to the household furnishings, personal effects, The Times of Havana, Garcia & Navarro and the entertainment studio, the Commission finds that such properties were taken by the Government of Cuba 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 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.

With respect to the value of the properties, subject of this claim, claimant has submitted voluminous data concerning the acquisition and development of the oil concessions. Generally, however, claimant has submitted no balance sheets or evidence with respect to drilling, number of dry holes, production of oil or barrels produced, if any, or value of the concessions at or about the time of nationalization or other taking of the properties in question. The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba but must be guided by the evidence of record pertaining to such matters as value of the property included in each claim, especially at the time of loss.

With respect to the personal property, publishing firms, Garcia & Navarro (tire capping enterprise), entertainment studio for preparation of motion pictures or television productions, the record includes balance sheets for the publishing firms, affidavits, official reports and secondary evidence, as well as extensive testimony concerning the value of claimant's ownership interests at the time of loss. Additionally, the record includes evidence such as affidavits from affiants with personal knowledge as to the going concern value of The Times of Havana, including booklets, secondary publications, a substantial subscription list and material concerning advertising clientele.

Based upon the entire record, including evidence available to the Commission concerning the value of similar properties in Cuba, the Commission finds that claimant suffered a loss in the total amount of \$566,331.19 within the meaning of Title V of the Act for loss of his interests, as follows:

<u>Property</u>	<u>Ownership</u>	<u>Value</u>
Household furnishings, effects	1/1	\$ 4,100.00
Editorial Petroleo, S.A.	1/4	5,000.00
Clarence W. Moore Associates		
Office furniture and equipment		6,000.00
Oil or mining interests, as above	1/1	121,455.50
The Times of Havana Publishing Co., S.A.	3/4	167,588.19
Perforadora de las Antillas, S.A.	3/4	147,937.50
Petrolera Bolivia del Sur, S.A.	1/2	17,625.00
Garcia & Navarro	1/2	75,000.00
Motion Picture - T.V. Studio	1/10	15,000.00
Petrolera Michigan del Sur, S.A.	1/2	<u>6,625.00</u>
TOTAL		\$566,331.19

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>
November 23, 1959	\$304,643.00
December 6, 1961	<u>261,688.19</u>
	\$566,331.19


Accordingly, the following Certification of Loss will be entered, and the remainder of the Proposed Decision, as amended herein, is affirmed.

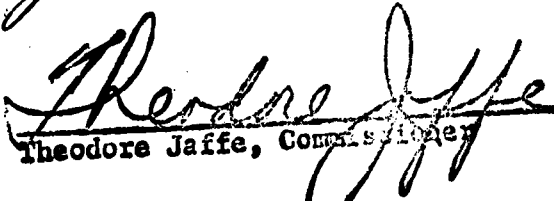
CERTIFICATION OF LOSS

The Commission certifies that CLARENCE W. MOORE 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 Five Hundred Sixty-Six Thousand Three Hundred Thirty-One Dollars and Nineteen Cents (\$566,331.19) with interest thereon 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

OCT 20 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.

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

IN THE MATTER OF THE CLAIM OF

CLARENCE W. MOORE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2539

Decision No. CU 6235

Counsel for claimant:

Rufus King, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the total amount of \$926,100.00, was presented by CLARENCE W. MOORE based upon the asserted loss of personal property, oil and mining concessions, and interests in business enterprises 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.

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.

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).)

Claimant asserts the following losses:

<u>Property</u>	<u>Ownership Interest</u>	<u>Claimed Amount</u>
1. Household furnishings in Havana, Cuba	1/1	\$ 4,100.00
2. Petroleum concessions and mining claims in Pinar del Rio and other provinces	1/1	228,000.00
3. Editorial Petroleo, S.A.	1/2	10,000.00
4. Times of Havana Publishing Co., S.A.	3/4	375,000.00
5. Cia. Perforadora de las Antillas, S.A.	1/2	166,500.00
6. Cia. Petrolera Bolivia del Sur, S.A.	1/2	37,500.00
7. Garcia Navarro y Cia	1/2	75,000.00
8. King Pictures, S.A.	1/10	15,000.00
9. Cia. Petrolera Michigan del Sur, S.A.	1/2	<u>15,000.00</u>
	Total	\$926,100.00

In Commission letters dated from 1967 to 1970, claimant was advised, through counsel, as to the type of evidence appropriate for submission under the Act to establish the claim.

Further, by Commission letters of July 21, 1967 and February 3, 1970, claimant was invited to submit any evidence available to him within 45 days from

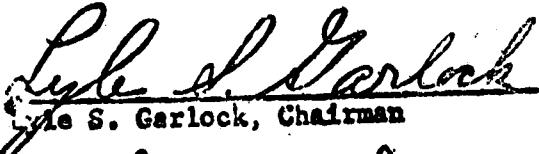
such dates, and he was informed that, absent such evidence, it might become necessary to determine this claim on the basis of the existing record.

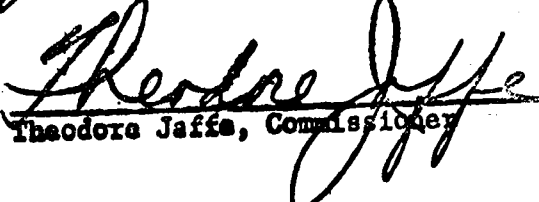
Claimant has responded in part to the Commission correspondence but has not submitted evidence of probative value to establish that he owned the aforesaid properties, subject of this claim or how and when he acquired interests in any enterprises which may have been taken by the Government of Cuba within the meaning of Title V of the Act. Moreover, claimant has not submitted evidence to establish shares outstanding of the subject enterprises, balance sheets, quotations or other evidence, such as the value of oil concessions or mining claims, which would enable the Commission to determine the value of the interests on the asserted date or dates of loss.

The Commission appreciates the difficulties encountered by the claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. The Commission is constrained to find that claimant herein has not met the burden of proof in that he has failed to establish the ownership and value of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied for the reasons stated. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

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

JUN 16 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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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