

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

IN THE MATTER OF THE CLAIM OF

FELIPE A. CASALDUC

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

Claim No. CU -2818

Decision No. CU-5849

Petition to reopen; Proposed Decision entered on September 16, 1970; Final Decision entered on October 21, 1970.

AMENDED FINAL DECISION

Under date of September 16, 1970, the Commission entered a Proposed Decision finding that pursuant to the community property laws of Cuba claimant and his wife, a nonnational of the United States, each owned one-half interests in certain properties located at Alquizar, San Antonio de los Banos, Havana, which were taken by the Government of Cuba on January 13, 1962, and other property, located at Marianao, Havana, taken by that Government on June 22, 1963. The decision was entered as final on October 21, 1970.

The said properties were as listed below, the claimant having suffered a loss of \$36,297.26 for his one-half interest therein:

Farm and improvements	\$15,515.25	
Buildings, depreciated	20,060.00	
Equipment, depreciated	9,036.04	
Power line installation	900.00	
Hens	20,593.00	
Cattle, 6 head	1,200.00	
Furniture at the farm	1,400.00	
Bank account	257.73	
1955 Chevrolet (according to National Association of Automobile Dealers)	840.00	
		\$69,802.02
Less amount due on mortgage		1,500.00
Taken on January 13, 1962		\$68,302.02
Personalty in Marianao		
Taken on June 22, 1963		\$ 4,292.50
	Total	\$72,594.52

The Commission had also determined in the Proposed Decision that the record failed to substantiate other items of claim, including an asserted loss of \$1,600.00, described as the proceeds from the sale of beef cattle, which claimant's sister-in-law, Marta Garcia Riano, was compelled to turn over to the National Institute of Agrarian Reform (INRA), a Cuban governmental agency, in Wajay, Havana, Cuba. However, subsequent to the entry of the Final Decision in this matter, the claimant submitted new evidence, which submission is treated as a petition to reopen the claim.

Upon consideration of the new evidence which includes an official receipt from the governmental agency INRA, dated January 19, 1961, the Commission amends the decision in this matter, as follows:

The Commission finds that pursuant to the community property laws of Cuba, claimant and his wife, a nonnational of the United States, each owned a one-half interest in certain funds taken by INRA on January 19, 1961, in the total amount of \$1,580.00, as stated in the official receipt; and that claimant thus suffered a loss within the scope of Title V of the Act in the amount of \$790.00 for his one-half interest in such funds.

Based on the entire record, the Commission finds that claimant's losses are summarized as follows:

<u>Location of property</u>	<u>Amount of Loss</u>
Wajay	\$ 790.00
Alquizar	34,151.01
Marianao	<u>2,146.25</u>
	\$37,087.26

The Commission reiterates its determination that interest should be included in the loss, and in the instant case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
January 19, 1961	\$ 790.00
January 13, 1962	34,151.01
June 22, 1963	<u>2,146.25</u>
	\$37,087.26

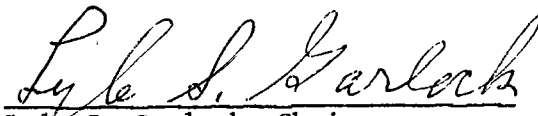
Accordingly, the Certification of Loss in the Proposed and Final Decision is set aside and the following Certification of Loss will be entered.

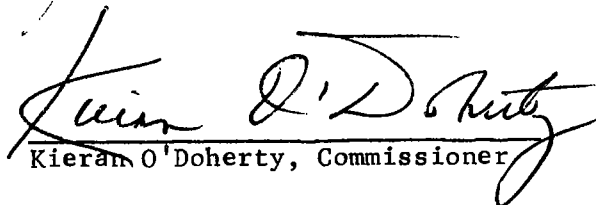
CERTIFICATION OF LOSS

The Commission certifies that FELIPE A. CASALDUC 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-Seven Thousand Eighty-Seven Dollars and Twenty-Six Cents (\$37,087.26) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement.

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

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, Commissioner

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

IN THE MATTER OF THE CLAIM OF

FELIPE A. CASALDUC

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2818

Decision No. CU 5849

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 FELIPE A. CASALDUC originally for \$85,224.68 based upon the asserted ownership and loss of real and personal property in Cuba. The claim later was amended to one-half that amount. 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) (1969).)

Claimant describes his losses as follows:

Checking account	\$ 257.73
Proceeds of cattle sale	1,600.00
Eggs delivered to Cuban Government	8,870.16
Cost of farm and improvements	15,515.25
Installation of power line	900.00
Various buildings, depreciated	20,060.00
Equipment, depreciated	9,036.04
1955 Chevrolet, depreciated	1,500.00
Furniture and household goods, depreciated	1,400.00
Hens	20,593.00
Cattle - 6 head	<u>1,200.00</u>
Assertedly taken January 21, 1961	\$80,932.18
Personalty, depreciated taken June 22, 1963	<u>4,292.50</u>
	\$85,224.68

Evidence of record includes claimant's letter of January 13, 1962 to the Department of State describing the details of the poultry farm and the asserted losses in connection therewith; a copy of the deed to the farm of March 9, 1955; land plat showing same; copy of a chattel mortgage of March 1, 1960 for a loan of \$5,000 (to purchase hens) reciting an appraisal of the farm personalty at \$74,879.40, of which \$73,729.40 related to the poultry flock; copies of two documents of September 29, 1960 and October 3, 1960, from National Institute of Agrarian Reform, setting out a classification of eggs received from claimant's ranch; and additionally a list of the personalty taken from claimant's home in Marianao.

On the basis of the entire record, the Commission finds that claimant owned a poultry farm at Alquizar, San Antonio de los Banos, Havana, and various appurtenances thereto, further described below, taken by the Government of Cuba on January 13, 1962; and personalty in his home at Marianao, taken by the Government of Cuba on June 22, 1963.

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 Commission has considered the evidence of record, including claimant's description of the farm, the detailed description of the buildings and water tanks, similar detail of the equipment, as well as the detail of evaluation of the flock and his statement that the buildings were insured for \$25,000.00 and the hens for \$20,000.00; as well as the itemization of the personalty in Marianao. Accordingly, the Commission finds that claimant suffered the following losses:

Farm and improvements	\$15,515.25	
Buildings, depreciated	20,060.00	
Equipment, depreciated	9,036.04	
Power line installation	900.00	
Hens	20,593.00	
Cattle, 6 head	1,200.00	
Furniture at the farm	1,400.00	
Bank account	257.73	
1955 Chevrolet (according to National Association of Automobile Dealers)	<u>840.00</u>	
		\$69,802.02
Less amount due on mortgage		<u>1,500.00</u>
		\$68,402.02
Personalty in Marianao		
Taken on June 22, 1963		<u>\$ 4,292.50</u>
		\$72,594.52
Total		

Pursuant to the community property law of Cuba, claimant's spouse had a one-half interest in these properties. However, she was not a national of the United States on the dates of loss and her interest does not come within the scope of Title V of the Act. Claimant has deleted this interest from his claim.

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$36,297.26 within the meaning of Title V of the Act, as the result of the taking of his property by the Government of Cuba, \$34,151.01 on January 13, 1962 and \$2,146.25 on June 22, 1963.

Claim has also been made for \$1,600.00, described as the proceeds from sale of beef cattle, which claimant's sister-in-law was compelled to turn over to INRA in Wajay, Havana, and that she has a receipt for this. The record does not establish, however, that such receipt, if available, would reflect that INRA recognized that claimant had an interest in such funds.

Another item of claim was for \$8,870.16 representing eggs delivered to INRA from December 1, 1960 to January 21, 1961, a period of 52 days. Claimant stated that he has no way of knowing the exact production delivered but has calculated it from the two receipts of record dated September 29, 1960 and October 3, 1960. Nevertheless, the record does not establish that eggs were in fact delivered in particular quantity with any regularity, nor that payment was not made for such debt.

The Commission appreciates the difficulties encountered by some 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. Thus, the Commission finds that claimant has not met the burden of proof in that he has failed to establish by probative evidence, these items of claim. Accordingly, the Commission is constrained to deny these portions of the instant claim and they are hereby denied.


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.

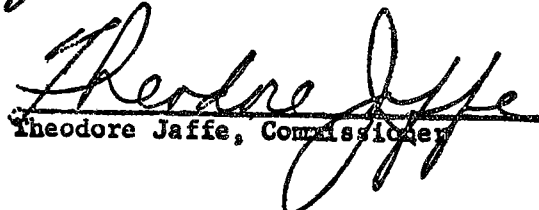
CERTIFICATION OF LOSS

The Commission certifies that FELIPE A. CASALDUC 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-six Thousand Two Hundred Ninety-seven Dollars and Twenty-six Cents (\$36,297.26) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement.

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

SEP 16 1970


Felix 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, 32 Fed. Reg. 412-13 (1967).)