

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

IN THE MATTER OF THE CLAIM OF

MABEL L. WILKINSON

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3012

Decision No. CU 5410

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 amount of \$68,968.26, was presented by MABEL L. WILKINSON based upon the asserted loss of certain 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.

Claimant asserts the following losses:

Cardona Lot No. 3	\$16,000.00
Santa Maria and San Prudencio	4,799.95
<b>Buildings:</b>	
No. 709 Estrada Palma	\$8,533.33
No. 17 Calle 2	1,066.66
No. 186 Trocha	2,533.33
No. 110 Cornelio Robert	6,666.66
No. 4 Castillo Duany	<u>3,333.33</u>
	22,133.31
Various items of personal property	<u>26,035.00</u>
	<u>\$68,968.26</u>

Real Property

The record includes a copy of a Deed of Donation executed by claimant's mother on March 14, 1953 and filed with the land register authorities in Santiago de Cuba, Oriente Province, Cuba. On the basis of the foregoing, the Commission finds that claimant acquired on March 14, 1953: (a) certain land, having an area of 6.270 caballerias, known as Lot Number Three of the Cardona farm in San Luis, Oriente, Cuba; (b) an interest equivalent to 7.20 caballerias of land representing an interest in property known as Santa Maria and San Prudencio in Caney, Oriente, Cuba; (c) a 1/2 interest in a house and lot on Estrada Palma Street, Santiago de Cuba; (d) a 1/2 interest in a house and lot at 17 Second Street (Calle 2) in Santiago de Cuba; (e) a 1/2 interest in a house and lot on Trocha Street, Santiago de Cuba; (f) a house and lot at 110 Cornelio Robert Street, Santiago de Cuba; and (g) a house and lot on Castillo Duany Street, Santiago de Cuba. Although claimant's mother, a national of the United States at all pertinent times, retained a life estate in the above properties, her interests were terminated upon her death on July 25, 1961, prior to the date of loss.

On December 6, 1961, the Cuban Government published Law 989, which effected confiscation of all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left

the country. The Commission finds that this law applied to claimant, and that her interests in the properties herein were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The Commission further finds that as a result of said action claimant sustained a loss of property within the meaning of Title V of the Act. (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.

In support of her asserted valuations, claimant has submitted the Deed of Donation in which valuations are set forth and certain documents in Spanish which are untranslated. On two occasions the Commission suggested the submission of translations of these documents but no translations have been submitted to date. Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the real properties and equitable to the claimant are those appearing in the Deed of Donation. Accordingly, the Commission finds that claimant's properties had the following values on December 6, 1961, the date of loss:

Lot Number Three of the Cardona farm	\$16,000.00
7.20 caballerias of land in the Santa Maria and San Prudencio property, having a total area of 45 caballerias and a total value of \$666.66 per caballeria	4,799.95

CU-3012

1/2 interest in house and lot at Estrada Palma Street	\$ 5,333.33
1/2 interest in house and lot at 17 Calle 2	666.66
1/2 interest in house and lot at Trocha Street	1,333.33
House and lot at 110 Cornelio Robert Street	6,666.66
House and lot at Castillo Duany Street	<u>3,333.33</u>
Total	<u>\$38,133.26</u>

Personal Property

Claimant asserts the loss of \$26,035.00 for various items of personal property. The only evidence in support of this portion of the claim is an affidavit, dated April 28, 1967, from a Cuban attorney. Affiant states in a two-page affidavit that he was claimant's attorney in Cuba and was familiar with her properties; and then lists the properties as having the following values:

2 large hauling carts	\$ 200.00
1/5 interest in a heavy duty crane	500.00
1/5 interest in a railroad siding switch	500.00
About 84 acres of planted sugar cane	7,500.00
About 4,500 tons of sugar cane left on the field for 1961 crop	9,000.00
New fences and surveying	1,500.00
14 cows	2,800.00
5 riding horses	500.00
5 one-year old calves	125.00
6 head of sheep	60.00
4,000 feet of mahogany timber	750.00
Other timber	2,600.00

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).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to her claim for the loss of personal property. In the absence of more probative evidence, the Commission is constrained to deny the portion of the claim based on personal property, and it is so denied.

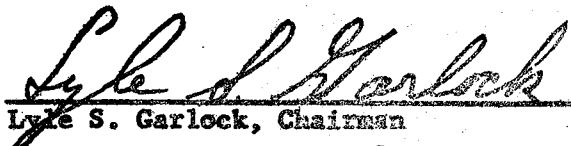
The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

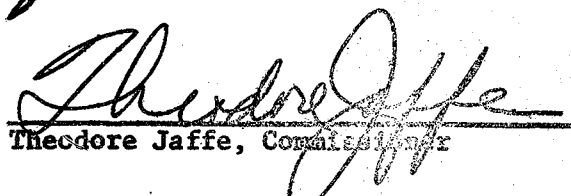
CERTIFICATION OF LOSS

The Commission certifies that MABEL L. WILKINSON 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-eight Thousand One Hundred Thirty-three Dollars and Twenty-six Cents (\$38,133.26) 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

JUL 29 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).)

CU-3012