

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

IN THE MATTER OF THE CLAIM OF

THOMAS JOSEPH WILKINSON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3020

Decision No. CU 5532

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 \$95,414.99, was presented by THOMAS JOSEPH 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:

Lot No. 5 - Cardona Farm		\$13,333.33
368-1/2 acres of Ramon de las Yaguas Farm	\$5,600.00	
Improvements	<u>2,000.00</u>	7,600.00
Residential Lot		4,000.00
House in Vibora, Havana	\$6,666.66	
Improvements	<u>2,000.00</u>	8,666.66
House in Diego Palacios, Santiago de Cuba		4,000.00
Various Items of Personal Property		<u>57,815.00</u>
Total		<u>\$95,414.99</u>

Real Property

The record includes a report from abroad, and 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 Five of the Cardona farm in San Luis, Oriente, Cuba; (b) an interest equivalent to 11.20 caballerias of land in property in the district of Ramon de las Yaguas, Caney, Cuba; (c) a lot on Sagarra Street, Santiago de Cuba; (d) a house and lot on San Antonio Street, Vibora, Cuba; and (e) a 1/4 interest in a house and lot on Diego Palacios Street, Santiago de Cuba. Although claimant's mother, a national of the United States at all pertinent times, retained a life estate in the property, this interest 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 confiscated 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, who had left Cuba prior to that date, and that his interests in the said real properties 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.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those appearing in the Deed of Donation. It is noted that the report from abroad indicates that the real property described under item (d) above was subject to a mortgage in the amount of \$6,000.00. The Commission finds that this mortgage had been fully satisfied and that none of the other items of real property herein were encumbered by any lien or mortgage on the date of loss, as stated in the Deed of Donation and recorded with the Cuban land register authorities. Accordingly, the Commission finds that claimant's real properties had the following values on December 6, 1961, the date of loss:

CU-3020

Lot Number Five of the Cardona farm	\$13,333.33
11.20 caballerias of land in the district of Ramon de las Yaguas, having a total area of 45 caballerias and a value of \$666.66 per caballeria	7,466.59
Lot on Sagarra Street, Santiago de Cuba	4,000.00
House and lot on San Antonio Street	6,666.66
1/4 interest in house and lot at 101 Diego Palacios Street	<u>4,000.00</u>
Total	<u>\$35,466.58</u>

A portion of the claim in the amount of \$4,000.00 is based upon asserted improvements to the Ramon de las Yaguas farm and the property on San Antonio Street. In support thereof, claimant has submitted an affidavit, dated August 5, 1966, from a Cuban attorney. Affiant states that he was familiar with claimant's properties; that claimant had improved the said farm by the installation of fences, pipes, etc. at a cost of \$2,000.00; and that claimant had improved the property on San Antonio Street between 1956 and 1958 at a cost of \$2,000.00.

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 this portion of the claim. The evidence is insufficient to warrant favorable action. In the absence of more convincing evidence, the Commission is constrained to deny this portion of the claim, and it is so denied.

Personal Property

Claimant asserts the loss of \$57,815.00 for various items of personal property. The only evidence in support of this portion of the claim is the said affidavit, dated August 5, 1966, from a Cuban attorney. Affiant states

in a three-page affidavit that he was claimant's attorney in Cuba and was familiar with his properties; that to the best of his knowledge, information and belief, claimant owned the personalty listed below, and then lists the properties as having the following values:

2 tractors - 1957 cost	\$ 7,000.00
1 corn harvester - 1957 cost	300.00
1 motor pump and related equipment - 1957 cost	400.00
2 tractor plows - 1957 cost	400.00
Miscellaneous plows and equipment - 1957 cost	450.00
Tools, forge, anvil, etc. - 1956 cost	250.00
Levels and sights - 1957 cost	90.00
2 cane hauling carts - cost	200.00
1/5 interest in heavy duty scales - 1957 cost	400.00
1/5 interest in heavy duty crane - 1957 cost	500.00
1/5 interest in railroad switch - 1957 cost	500.00
Planted sugar cane (1954 and 1955) on 4-1/2 caballerias	13,500.00
About 10,500 tons of sugar cane left on the field for the 1961 crop	21,000.00
New fences and surveying	2,000.00
11 Holstein cows	2,750.00
10 ungraded cows	1,000.00
3 riding horses	240.00
1 mare	150.00
2 young stallions	100.00
5 one-year old calves	125.00
22 head of sheep	220.00
18 pigs	180.00
About 8,000 feet of cut cedar timber	960.00
About 4,000 feet of cut mahogany timber	750.00
About 4,000 feet of cut Algarrobo timber	600.00
About 10,000 feet of cut Ayua timber	750.00
Plastic factory in Santiago de Cuba - 1958 cost	3,000.00

The document however is unsupported by any form of excerpts from books of record, and the like. The Commission finds that claimant has failed to sustain the burden of proof with respect to his claim for the loss of personal property. In the absence of more persuasive evidence, the Commission is constrained to deny this portion of the claim, 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

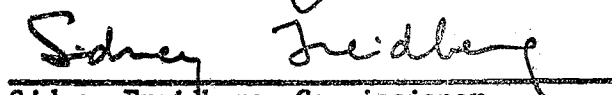
The Commission certifies that THOMAS JOSEPH WILKINSON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-five Thousand Four Hundred Sixty-six Dollars and Fifty-eight Cents (\$35,466.58) with interest thereon 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 Freiberg, 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-3020