

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

IN THE MATTER OF THE CLAIM OF

MICHAEL J. McLANEY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3022

Decision No. CU 5830

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 \$929,500.00, was presented by MICHAEL J. McLANEY based upon the asserted loss of certain 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:

100% stock interest in Inmobiliaria Behique, S.A., a Cuban corporation	\$400,000.00
95% stock interest in M & M Securities Corporation, a Panamanian corporation that owned the assets of a Cuban corporation	488,000.00
A 50-foot yacht	26,500.00
Cash	<u>15,000.00</u>
Total	<u>\$929,500.00</u>

Inmobiliaria Behique, S. A.

In support of his claim for \$400,000.00 for his asserted 100% stock interest in Inmobiliaria Behique, S.A., claimant has submitted a copy of a contract, dated July 29, 1960. It appears from that contract that claimant purchased the said 100% stock interest from 2 Cubans for \$35,000.00, of which amount he paid \$10,000.00, the balance of \$25,000.00 being payable with 6% interest on July 29, of 1961, 1962, 1963, 1964 and 1965. The contract also recites that the Cuban corporation owns a four-story building at 42 Reina Street, Havana, Cuba.

In his official claim form, claimant stated that his loss arose since January 1, 1959. Although the Commission suggested, inter alia, the submission of evidence establishing the date his stock interest in Inmobiliaria Behique, S.A. was taken, no such evidence has been filed.

If the corporation was nationalized or otherwise taken prior to July 29, 1960, when claimant acquired the stock interest, his claim would have to be denied because apparently it was not owned by nationals of the United States on the date of loss, a prerequisite for favorable action pursuant to Section 504 of the Act. That section provides as follows:

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.

Moreover, on several occasions the Commission suggested the submission of evidence to establish that claimant's stock interest in the Cuban corporation had a value of \$400,000.00, as asserted by claimant. It was also suggested that claimant submit proof concerning the extent of the unpaid purchase price of \$25,000.00, as set forth in the contract of July 29, 1960. No response has been received from claimant.

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 the portion of the claim based upon a 100% stock interest in Inmobiliaria Behique, S.A.

M & M Securities Corporation

Claimant states that he owned a 95% stock interest in M & M Securities Corporation, a Panamanian corporation, which assertedly owned all of the outstanding capital stock of Wilbur Clark's Casino Internacional of Havana, S.A., a Cuban corporation, and that the Cuban corporation operated a gambling casino in Hotel Nacional in Havana, Cuba.

In support of his claim for this stock interest, claimant submitted a copy of a letter, dated September 11, 1958, from the asserted owners of the said stock interest in the Cuban corporation; an affidavit, dated October 19, 1967, from claimant's former attorney in Cuba; and an extract from claimant's Federal income tax return for 1959.

The letter of September 11, 1958 offers claimant a 100% stock interest in the Cuban corporation that operated the said gambling casino, for the

price of \$425,000.00 plus the excess of the corporation's "Other Assets" over its "Current Liabilities." Claimant was required to deposit \$50,000.00 as evidence of his intention to consummate the purchase. Claimant's former attorney in Cuba states that all of the books and records of the Panamanian corporation and the Cuban corporation were left in his office in Cuba; and he affirms that claimant owned a 95% stock interest in the Panamanian corporation.

Claimant's tax return for 1959 indicates that he claimed a tax deduction of \$488,000.00 on account of the indirect interest in the Cuban corporation. In his original claim form, claimant stated that this asserted tax deduction was still in dispute with the Internal Revenue Service. On several occasions, the Commission suggested the submission of evidence concerning the outcome of the discussions with the Internal Revenue Service and further evidence to support his claim for the stock interest asserted in this claim. Claimant has failed to respond to date.

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of the claim based upon an indirect stock interest in the said Cuban corporation.

#### Yacht

Claimant asserts the loss of a yacht that was docked in a Havana port. He states that he purchased a 50-foot Richardson yacht for which he paid \$25,000.00 and had invested an additional \$1,500.00 in repairs. No evidence whatsoever has been submitted in support of this portion of the claim although suggestions in this respect were made by the Commission on several occasions.

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of the claim based upon a yacht.

#### Cash

Claimant states that in January or February 1959 he flew to Havana with \$15,000.00 in cash on his person. The money, according to claimant in his affidavit of October 19, 1967, was intended for the payroll at the casino in

Cuba which had been closed by Cuban authorities during the first week in January 1959. It is further stated by claimant that he declared the cash when he arrived in Havana, and that said cash was taken from him by the Cuban authorities for which he was given a receipt.

The Commission suggested the submission of the receipt or a copy thereof, but no response has been received from claimant. It is noted, moreover, that in claimant's tax return for 1959 he did not include the cash as a deduction.

No other evidence concerning the asserted loss of cash has been filed with the Commission although suggestions in this respect were made on several occasions.

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of the claim based upon cash in the amount of \$15,000.00.

For the reasons stated above, this claim is denied in its entirety.

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

SEP 9 1970

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