

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

IN THE MATTER OF THE CLAIM OF

ROBERTO J. PESANT

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3081

Decision No. CU-6166

Appeal and objections from a Proposed Decision entered April 21, 1971.  
Oral hearing requested.

Oral testimony and argument August 4, 1971, by the claimant.

FINAL DECISION

Under date of April 21, 1971, the Commission entered its Proposed Decision in this matter certifying a loss to claimant in the amount of \$58,399.75 for his community property interest of one-half in certain real and personal property taken by the Government of Cuba on December 6, 1961, including improved real property in Miramar, Cuba, with furniture and equipment, personalty owned by claimant in connection with an architectural firm, as well as a stock interest in Compania Petrolero Trans-Cuba, S.A., taken by the Government of Cuba on November 23, 1959.

Objections were entered to the Proposed Decision wherein portions of the claim were denied, including the asserted loss of claimant's community property interest (one-half) in a 1/10th ownership interest in a partnership, known as Fernandez & Company, assertedly held by his spouse, Elena F. Pesant, who was not a national of the United States at times pertinent to this claim; and a similar one-half interest in a stock interest of 371 shares in Oriente Industrial & Commercial, S.A., a meat processing firm in Havana, Cuba.

At the oral hearing held on August 4, 1971, evidence was submitted by claimant, including his testimony, followed by oral argument. Since the hearing, claimant has also submitted additional evidence, including statements

of officers and stockholders of the Cuban corporation known as Oriente Industrial & Commercial, S.A., as well as architectural drawings of that plant and similar industrial buildings in other areas.

Consideration having been given to the entire record, including testimony, argument and other evidence presented prior to, during and subsequent to the oral hearing, the Commission finds that claimant did acquire a one-half community property interest in 371 shares of stock of Oriente Industrial & Commercial, S.A., which claimant owned at the time of nationalization by the Government of Cuba, which was established by claimant as being March 28, 1960.

The Commission further finds, based on all the evidence now of record, that the 371 shares had a value of \$185,500 and further that claimant thus suffered a loss within the meaning of Title V of the Act in the amount of \$92,750.00 for his one-half interest in the stock of this Cuban enterprise.

With respect to the asserted interest of claimant in the partnership known as Fernandez & Company, the Commission finds that the record does not warrant a favorable determination on this item, and accordingly, the denial of this portion of the claim is affirmed.

Claimant's losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Improved realty	December 6, 1961	49,750 (1/2)
Furniture and furnishings	December 6, 1961	6,000 (1/2)
Assets of architectural firm	December 6, 1961	2,500 (1/2)
Trans-Cuba stock	November 23, 1959	149.75(1/2)
Oriente Industrial	March 28, 1960	92,750 (1/2)

The Commission reaffirms its holding that interest should be allowed, and it will be included, as follows:

<u>FROM</u>	<u>ON</u>
November 23, 1959	\$ 149.75
March 28, 1960	92,750.00
December 6, 1961	<u>58,250.00</u>
Total	\$151,149.75

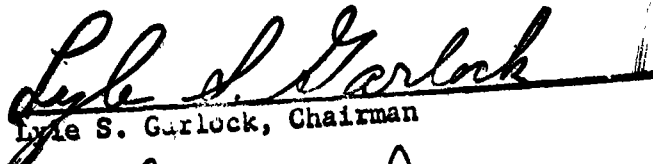
Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification of Loss will be entered, and the remainder of the Proposed Decision, as amended herein, is affirmed.

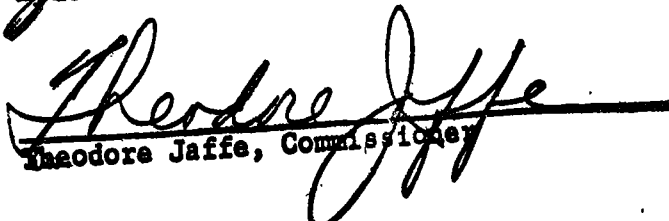
CERTIFICATION OF LOSS

The Commission certifies that ROBERTO J. PESANT 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 One Hundred Fifty-One Thousand One Hundred Forty-Nine Dollars and Seventy-Five Cents (\$151,149.75) 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

  
Lytle 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

ROBERTO J. PESANT

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3081

Decision No. CU 6166

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 ROBERTO J. PESANT, in the total amount of \$136,975.00, based upon the asserted ownership and loss of real and personal property in Cuba, including interests in enterprises doing business in that country. 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 stated that in December 1946 he married Elena F. Pesant, a Cuban national, in Havana, Cuba; and that they resided in Cuba until departure in 1960. Claimant stated that he jointly acquired and owned interests in real property in Miramar, Havana, Cuba; that when leaving Cuba he also owned an interest in household furnishings, a library, office furniture and equipment and a bank account. Further he stated that he and his wife also held stock interests or shares in Cuban corporations or business enterprises in Havana and Oriente Provinces of Cuba.

According to the community property laws of Cuba, the properties acquired by one or both spouses during the marriage with money of the marriage partnership or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal parts to both spouses (see Claim of Robert L. Cheaney, et ux., Claim No. CU-0915). Accordingly, the property discussed below will be deemed as having been owned by the claimant and his wife, since no evidence has been submitted to establish that such property was acquired by the claimant prior to the marriage, or by gift or inheritance. Inasmuch as there is no evidence that claimant's wife was a national of the United States at any time pertinent to this claim and no claim has been filed by her or on her behalf, her interests in the properties will not be considered here.

The claimant asserted that the real and personal property, subject of the claim, includes the following:

1. Improved real property, with house located on a lot of 900M <sup>2</sup> , and other improvements to the land, located at 505 28th Street, Miramar, Havana	\$ 74,000.00
2. Furniture and equipment, including library, at the above location	12,000.00
3. House situated on a lot of 200M <sup>2</sup> , with landscaping, located at 6203 - 5th Avenue 5A No., Miramar	25,500.00
4. Furniture, equipment and bank account maintained in an architectural firm known as "Roberto Pesant - Arquitecto"	5,000.00
5. 2500 shares of common stock of Compania Petrolera Trans-Cuba, S.A.	1,875.00
6. 77-3/7 shares of stock in the Caribbean Gold Mines, Ltd.	50.00
7. 371 shares of stock in Oriente Industrial & Commercial, S.A.	18,550.00
8. 1/10th interest in a partnership known as Fernandez & Company	Not stated
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Total	\$136,975.00

The claimant submitted several affidavits of persons who were former residents of Cuba with personal knowledge of his ownership interest in the claimed real and personal property in the residences at Miramar and the architectural firm. The affiants include a former tenant of the claimant, who was employed with the American Embassy in Havana, Cuba. Additionally, claimant has submitted evidence concerning actions taken toward nationalization or other taking of the properties by the Government of Cuba.

The claimant has also submitted photographs of some of the improvements on land at the aforesaid locations, newspaper clippings of events relating to claimant and his family in Cuba and his own statements in support of the claim. On the basis of the entire record, the Commission finds that under the community property laws of Cuba claimant herein, ROBERTO J. PESANT, owned a one-half interest in the aforesaid real and personal property,

including the residences in Miramar with personal property and the personalty in the architectural firm, including a bank account.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, shares, stocks, bonds and securities of persons who had left the country. As stated, the record reflects that claimant and his wife left Cuba in 1960.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property and the bank account were taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]; and Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [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.

The claimant has submitted a detailed description of the real property, with photographs, affidavits and other material concerning the value of such property. Additionally the record includes affidavits, correspondence and a list itemizing the office and household furnishings,

equipment and machinery. This list includes the location, purchase prices of certain items and approximate dates of purchase. With respect to the bank account maintained in his architectural business, claimant has submitted his affidavit and that of a former official of Banco Gelats of Cuba where the account was recorded in claimant's name.

Based upon the entire record, including evidence available to the Commission concerning the value of similar properties in Cuba, the Commission finds that the evaluation most appropriate to the improved real properties, with personalty, as well as the assets of the architectural business, subject of this claim, is that evaluation given by claimant and the affiants with personal knowledge of the properties in question; and that such evaluation is fair and reasonable, and is consistent with the evaluation of like properties in Miramar and other areas of Cuba.

Accordingly, the Commission finds that on the date of loss the real and personal property including the bank account discussed above and subject of this claim, had a value of \$116,500.00 and concludes that claimant, pursuant to the community property laws of Cuba, suffered a loss in the amount of \$58,250.00 within the meaning of Title V of the Act.

Claimant has also submitted evidence to establish the loss of a one-half interest in 2500 shares of stock of Compania Petrolera Trans-Cuba, S.A., or the Trans-Cuba Oil Company, which claimant and his wife also owned as community property. In our decision entitled Claim of D. R. Wimberly, Claim No. CU-3417, which we incorporate herein by reference, we held that the property owned by this company was nationalized or otherwise taken by the Government of Cuba on November 23, 1959, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of Trans-Cuba as \$0.1198.

On the basis of evidence in the record in the instant claim, the Commission finds that ROBERTO J. PESANT comes within the terms of the Wimberly decision; that he was an American national at the requisite date; that the



value of his one-half interest in the shares in question, taken on November 23, 1959, is in the amount of \$149.75 and that he suffered a loss in that amount within the meaning of Title V of the Act.

With respect to the remaining portions of this claim, including stock interests or shares of Caribbean Gold Mines, Ltd.; Oriente Industrial & Comercial, S.A. and Fernandez & Company, stated to have been owned by Elena F. Pesant, wife of claimant, the Commission made suggestions in several letters to claimant as to the type of evidence proper for submission to establish such portions of the claim. While claimant has responded in part to the Commission correspondence, he has not submitted evidence of probative value which would establish how and when the interests were acquired, the value of such property or that he acquired an ownership interest in such properties which were taken by the Government of Cuba within the meaning of Title V of the Act.

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 also 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 such business property which was nationalized, expropriated or otherwise taken, by the Government of Cuba. Accordingly, these portions of the claim are hereby denied for the reasons stated. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

The Commission has decided that in certifications 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.

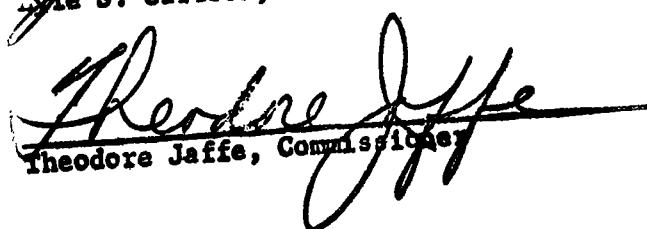
CERTIFICATION OF LOSS

The Commission certifies that ROBERTO J. PESANT 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 Fifty-Eight Thousand Three Hundred Ninety-Nine Dollars and Seventy-Five Cents (\$58,399.75) 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 Proposed  
Decision of the Commission

APR 21 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.

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 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).)