

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

IN THE MATTER OF THE CLAIM OF

VICTOR L. BAROTHY
and
ELIZABETH C. BAROTHY

Claim No. CU-3115

Decision No. CU- **5967**

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Batchelor, Brodnax, Guthrie & Kindred
By Douglas D. Batchelor, Esq.

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 VICTOR L. BAROTHY for \$173,535.45 based upon the asserted ownership and loss of real and personal property in Cuba. ELIZABETH C. BAROTHY, having an interest in the properties subject of this claim, pursuant to the community property law of Cuba, is joined as claimant herein. Claimants have been nationals 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.

Claimants have described their losses as approximately 42 acres of land (\$65,000) with lodge and cottages comprising 7 buildings (\$68,832) about 5 miles from Santa Fe, Isle of Pines, the buildings being furnished in hotel style. The personalty asserted by claimants (\$39,703.45) included nine fishing houseboats and various skiffs, outboard motors and other fishing equipment, as well as a Ford station wagon and a Volkswagen truck.

On the basis of the entire record, including claimant's 1960 report, his current affidavit, and that of his accountant, the Commission finds that claimants owned equal interests in certain real and personal property on the Isle of Pines which was used as a tourist fishing facility.

Further, the Commission finds that this property was taken by the Government of Cuba on November 19, 1960, except for two boats which the claimant had formerly removed, and one boat which was confiscated on January 2, 1959.

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 record includes the abovementioned report of claimant to the American Embassy, made in 1960, his current affidavit and the affidavit of his accountant who has offered the depreciation schedule used for the improvements and personalty.

On the basis of this record, the Commission finds that the 18 acres had a value of \$5,512.71 and the improvements thereon had a value of \$55,127.15 at the time of loss. The personalty, not including

the two boats claimant had removed an earlier date, had a value of \$28,194.68. This includes one boat which claimant has stated was taken on January 2, 1959. Although he had asserted a loss of \$18,000 to Internal Revenue Service, it appears that no audit was made of this return. Based on the record before the Commission, it is found that this boat had a value of \$9,000.

The Commission finds that the record does not establish ownership of the asserted 25 acres of swampland, and accordingly this item of claim is denied.

RECAPITULATION

The losses suffered by claimants within the scope of Title V of the Act may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
VICTOR L. BAROTHY		
Land	November 19, 1960	\$ 2,756.35
Improvements	November 19, 1960	27,563.58
Personalty	November 19, 1960	9,597.34
Personalty	January 2, 1959	4,500.00
		<u>\$44,417.27</u>
ELIZABETH C. BAROTHY		
Land	November 19, 1960	2,756.36
Improvements	November 19, 1960	27,563.57
Personalty	November 19, 1960	9,597.34
Personalty	January 2, 1959	4,500.00
		<u>\$44,417.27</u>

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, as follows:

	<u>FROM</u>	<u>ON</u>
VICTOR L. BAROTHY		
	November 19, 1960	\$39,917.27
	January 2, 1959	4,500.00
ELIZABETH C. BAROTHY		
	November 19, 1960	39,917.27
	January 2, 1960	4,500.00


CERTIFICATIONS OF LOSS

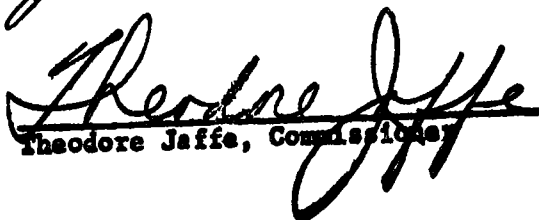
The Commission certifies that VICTOR L. BAROTHY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Four Thousand Four Hundred Seventeen Dollars and Twenty-Seven Cents (\$44,417.27) with interest at 6% per annum from the aforesaid dates to the date of settlement; and

The Commission certifies that ELIZABETH C. BAROTHY 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 Forty-Four Thousand Four Hundred Seventeen Dollars and Twenty-Seven Cents (\$44,417.27) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

NOV 17 1970


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 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).)