

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

IN THE MATTER OF THE CLAIM OF

ENRIQUE CANAL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3166

Decision No. CU 6061

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was opened by the Commission on behalf of ENRIQUE CANAL. Since then he has presented claim in the amount of \$106,320.00 based upon the asserted ownership and 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 enter-

prises 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:

1. A sugar cane plantation in El Cristo, Oriente	\$ 63,670.00
2. House and furniture in Santiago, Oriente	22,150.00
3. Plot of land in El Caney, Oriente	5,500.00
4. Automobile	3,000.00
5. Mortgage	7,000.00
6. Bank Account	2,500.00
7. Life Insurance	<u>2,500.00</u>
	\$106,320.00

The record contains several reports from abroad, copies of several deeds, a receipt for the sale of a 1955 Ford Fairlane and a copy of a title thereto, and a list of the household furnishings subject of this claim. On the basis of the evidence of record further discussed below, the Commission finds that pursuant to the community property law of Cuba claimant owned a 1/2 interest in the real and personal properties listed under items 1 through 5. His wife, Dolores Canal, a Cuban national, owned the other 1/2 interest pursuant to the community property laws of Cuba.

Claimant asserts that this claim arose on October 2, 1967 and it appears that he was unable to leave Cuba until October 9, 1968.

On December 6, 1961, the Cuban Government published its Law 989 which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The Agrarian Reform Law of May 17, 1959, published in the Cuban Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided for the expropriation of rural properties and distribution among peasants and agricultural workers. The Fifth Transitory Provision provided that until regulations for the Law were promulgated, it should be applied through resolutions of the National Agrarian Reform Institute. The regulations for carrying out the expropriation of such rural property were contained in Law 588, published in the Official Gazette (No. 191) on October 7, 1959.

The Commission finds, in the absence of evidence to the contrary, that claimant's residence, furnishings and automobile were taken by the Government of Cuba on October 2, 1967 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 that the sugar plantation and plot of land were taken on the same date pursuant to the provisions of the Agrarian Reform Law.

In this regard although the loss of this portion of the claim arose on October 2, 1967, subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period. (See Claim of Vivian Morales, Claim No. CU-8739.)

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.

Sugar Plantation

Claimant states that he purchased this land on July 22, 1948 and thereafter invested large sums of money improving it as a sugar cane plantation, planting trees, building a wooden house in 1953 at a cost of \$1,500.00 and installing new fences. He states that the plantation produced 3,000 tons of sugar cane annually and asserts that the improvements increased the value of the property by 4 or 5 times its purchase price. The record establishes that it was purchased in 1948 and measured 4 caballerias.

On the basis of the evidence of record and evidence available to the Commission with regard to the value of similar property the Commission

finds that the value of this property including the improvements was \$32,000.00 on the date of loss.

Residence

Claimant states that he purchased his house in Santiago de Cuba in 1956, and spent \$8,000.00 in improvements and repairs, adding a brick and concrete garage, and similar facilities. It is described as a brick house with about 10 rooms and usual facilities. The deed recites the purchase price as 6,500 pesos (the peso being on a par with the United States dollar).

On the basis of the entire record, including evidence available to the Commission as to the value of similar properties, the Commission finds that on the date of loss the improved property had a value of \$14,500.00.

Household Furnishings and Automobile

Claimant asserts the loss of household furnishings in the amount of \$4,150.00 and of a 1955 Fairlane Ford in the amount of \$3,000.00. In support of this portion of his claim, claimant has submitted a list of the household furnishings including appliances and TV set, and a copy of the sales receipt and registration for the automobile dated December 24, 1955 which discloses the sales price as \$3,285.00.

Based on the evidence of record the Commission finds that on the date of loss, the household furnishings and the Ford Fairlane, after appropriate depreciation, had a total value of \$2,575.00.

Mortgage

Claimant asserts a loss of \$7,000.00 based on a mortgage. The record includes a copy of a document which establishes that on June 10, 1952, claimant and his wife sold a certain farm known as La Clotilde for 10,000 pesos taking a 7,000 peso mortgage payable in 3 years. Claimant states that the terms were extended at the mortgager's request and that when he left Cuba, the mortgage had not been paid.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting

of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). Moreover, Article 30 provided for the cancellation of mortgages.

Based on the foregoing, the Commission finds that claimant owned an interest in a mortgage of \$7,000.00 which was cancelled by the Government of Cuba on October 14, 1960 pursuant to its Urban Reform Law. (See Claim of Marita Dearing de Lattre Estate, Claim No. CU-0116.)

Plot of Land

The record establishes that claimant purchased a 500 square meter lot in El Caney near Santiago de Cuba on October 6, 1939. Claimant states that this lot is located in an area that was later developed into a resort. Based on the evidence of record the Commission finds that on the date of loss this property had a value of \$2,000.00.

Bank Account and Insurance

With regard to the remaining portion of this claim based on the loss of a savings account and a life insurance policy, claimant states that his life insurance policy was with the Confederation Life Association with offices in Toronto, Canada, and that he has no evidence to support his claim for the loss of a savings account.

In view of the foregoing, the Commission finds that claimant has not established that the proceeds of the insurance policy were taken by the Government of Cuba or that he suffered any loss thereby. The Commission is therefore constrained to hold that claimant has not established the loss of the portion of his claim based on the loss of a savings account and life insurance policy, and accordingly it is denied for failure to meet the burden of proof.

Inasmuch as claimant's wife, a Cuban national, owned a 1/2 interest in the real and personal property, as stated above, so much of this claim as is based on her interest is hereby denied.

Accordingly claimant's losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
1/2 interest in sugar plantation	October 2, 1967	\$16,000.00
1/2 interest in residence	October 2, 1967	7,250.00
1/2 interest in furnishings and auto	October 2, 1967	1,287.50
1/2 interest in mortgage	October 14, 1960	<u>3,500.00</u>
		\$28,037.50

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:

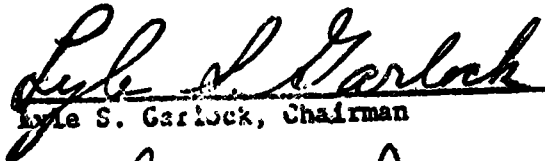
<u>FROM</u>	<u>ON</u>
October 14, 1960	\$ 3,500.00
October 2, 1967	<u>24,537.50</u>
	\$28,037.50

CERTIFICATION OF LOSS

The Commission certifies that ENRIQUE CANAL 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 Twenty-Eight thousand Thirty-Seven Dollars and Fifty Cents (\$28,037.50) with interest thereon 6% per annum from the respective dates of loss to the date of settlement.

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

FEB 11 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 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. 1.5(e) and (g), as amended (1970).)