

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

IN THE MATTER OF THE CLAIM OF

ALFRED LEE SKLAR

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3209

Decision No. CU
6171

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 ALFRED LEE SKLAR, in the total amount of \$113,836.25, based upon the asserted ownership and loss of real and personal property in Cuba, and stock or other ownership interests in Cuban enterprises. 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 asserted that in 1945 and at times pertinent to this claim he was married to Olga Ferrer Sklar, a Cuban national; and that for several years prior to the loss of the property, subject of this claim, claimant and his wife resided in Cuba. The claimant has asserted that the property in question was nationalized or otherwise taken in October 1961, at or about the time he left Cuba. Claimant stated that with certain exceptions, discussed hereafter, he jointly acquired and owned interests in real and personal property located at Miramar, Vedado and Havana, Cuba; that when leaving Cuba he also owned interests in a life insurance policy, Havana Yacht and Country Club and certain business enterprises, including Cuban Independent Oil Company, Territorial Llano Verde, Clinica Miramar and Minas "La Rosa" y Candida.

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, with one exception (Item 3) 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. A two-story reinforced concrete structure of 9 rooms, with other improvements, located on a lot of approximately 625 square meters, situated at Calle 30 #103, Miramar, Havana, Cuba	\$ 52,000.00
2. Rental property at Linea y L, Vedado, Havana, including units 12, 14 and 15, in co-op building known as "Capi Horacio Ferrer"	34,032.50
3. Office, Linea y L, Vedado (Unit 11) of Capi Horacio Ferrer, ceded to or inherited by Olga Ferrer Sklar, wife of claimant, in 1955	24,500.00
4. Home furnishings packed and ready for shipment to the United States, located on dock in Havana	33,934.00
5. Automobile, ready for shipment, on dock in Havana	3,200.00
6. Scientific equipment and technical books, also on dock in Havana, ready for shipment	8,315.00
7. Office furnishings and equipment, located in Unit 11 at Linea y L, Vedado (medical office)	16,870.00
8. Cash surrender value of life insurance policy with International Life Insurance Company on claimant	3,320.00
9. Loss of equity in Havana Yacht and Country Club	4,500.00
10. Loss of stock or ownership interests in business enterprises in Cuba:	
Cuban Independent Oil Company	25,000.00
Territorial Llano Verde, 15,000 shares	Not stated
Clinica Miramar, 5,000 shares	Not stated
Minas "la Rosa" y Candida, 4,000 shares	<u>Not stated</u>
Total	\$205,671.50

I. Items 1-7, Inclusive, real and personal property:

The claimant submitted sales contracts, fire insurance policies, receipts and several affidavits of persons who were former residents of Cuba with personal knowledge of his ownership interest in the claimed real and personal property. The record also includes correspondence, affidavits and

other evidence concerning the real and personal property which claimant submitted to the United States Internal Revenue Service concerning the loss of the subject properties. Additionally, claimant has submitted detailed descriptions of the property, his own affidavits and statements, as well as correspondence concerning the instant claim. On the basis of the entire record, the Commission finds that under the community property laws of Cuba claimant herein, ALFRED LEE SKLAR, owned a one-half interest in the aforesaid real and personal property, with the exception of Unit 11 of the building known as Capi Horacio Ferrer which was the separate property of claimant's wife, Olga Ferrer Sklar (Item 3).

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 her husband left Cuba in 1961.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was 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].)

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 Commission has considered the detailed description of the real property, and other material concerning the value of such property, as well as a detailed list including household furnishings, equipment, machinery, scientific equipment, books and office furnishings, indicating location, purchase prices and approximate evaluations at the time of loss. 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 real and personal property, subject of this claim, is that evaluation given by claimant and the affiants with personal knowledge of the properties in question; that such evaluation is fair and reasonable, and is consistent with the evaluation of like properties in Miramar, Vedado, Havana and other areas in Cuba. Accordingly, the Commission finds that on the date of loss the real and personal property, subject of the claim, exclusive of Item 3, Unit 11, Capi Horacio Ferrer, discussed above, had a total value of \$148,351.50 and concludes that claimant, pursuant to the community property laws of Cuba, suffered a loss of \$74,175.75 within the meaning of Title V of the Act.

II. Item 8, Life Insurance Policy:

Claimant asserts that he has a one-half interest in the cash surrender value of a life insurance policy, or the accrued sum of \$1,660.00 of the total amount of \$3,320.00, which was issued in Havana in 1957 by the American International Life Insurance Company on the life of claimant. The evidence includes a copy of the insurance policy in the Spanish language. The record indicates that all payments on the policy including premiums and claims are payable in Cuba.

The Commission suggested that claimant submit evidence to establish that the proceeds of the policy were taken by the Government of Cuba. However, to date, no additional evidence concerning the policy has been submitted. Accordingly, the Commission finds that claimant has failed to meet the burden of proof with respect to the portion of the claim based

on the life insurance policy in that the evidence does not establish that the proceeds of the policy were taken by Cuba. Accordingly, this portion of the claim is denied. (See Claim of Estrella Vaughn, et al, Claim No. CU-1213.)

III. Items 9-10, Stock or other ownership interests:

With respect to the remaining portions of this claim including the stock or ownership interests in Cuban enterprises or corporations 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 to establish that he owned interests in such enterprises, how or when he acquired such interests in enterprises which were taken by the Government of Cuba within the meaning of Title V of the Act. Moreover, claimant has not submitted evidence to establish shares outstanding of the subject enterprises, balance sheets, quotations or other evidence which would enable the Commission to determine the value of such interests on the asserted date or dates of loss.

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 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 part of the claim.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act

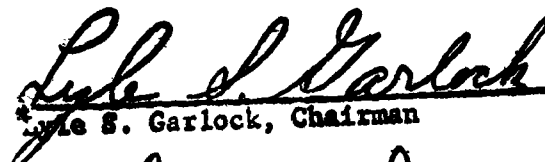
of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

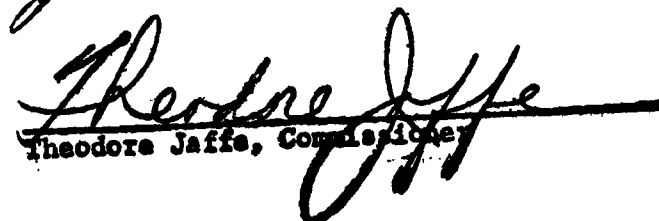
CERTIFICATION OF LOSS

The Commission certifies that ALFRED LEE SKLAR 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 Seventy-Four Thousand One Hundred Seventy-Five Dollars and Seventy-Five Cents (\$74,175.75) 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

APR 28 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. §31.5(e) and (g), as amended (1970).)