

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

IN THE MATTER OF THE CLAIM OF

ELIZABETH DANNER WHEELER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3298

Decision No. CU 6027

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 ELIZABETH DANNER WHEELER in the amount of \$41,762 based upon the asserted ownership and loss of real and personal property, and stock interests 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.

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 describes her losses as follows:

1) An apartment - investment	\$5,902.00
2) 7,500 shares of Productos Plasticos de Espuma, S.A.	18,000.00
3) 3,360 shares of Cia. Distribuidora de Productos Plasticos de Espuma S.A.	3,360.00
4) Furniture and furnishings taken to Cuba	5,000.00
5) Furniture purchased in Havana	4,000.00
6) Rambler auto taken to Cuba	1,500.00
7) Fiat auto purchased in Cuba	1,000.00
8) Books taken to Cuba	2,000.00
9) Office equipment	<u>1,000.00</u>
	\$41,762.00

The Commission finds, on the basis of evidence of record further discussed below, that claimant owned certain property in Cuba which was taken by the Government of Cuba. Pursuant to the Community Property Law of Cuba, claimant and her spouse each owned a one-half interest in said property. Inasmuch as the record does not establish that claimant's spouse was a national of the United States at the pertinent times, so much of the claim as may be based on his interest must be and is denied. (See Claim of Sigridur Einarisdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)

APARTMENT

The record includes a report from abroad which establishes that claimant purchased on August 25, 1960, Apartment 8-A of the building at 312 Avenue A, Marianao.

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).

Based on the foregoing, the Commission finds that claimant's real property in Cuba, specifically the aforementioned apartment, was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39)

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 which reflects that the cost of the apartment was \$20,200, encumbered by a mortgage in the amount of \$15,200. Additionally claimant has submitted evidence of two payments against the mortgage, totalling \$222.42. Thus the equity in this property was \$5,222.42 and claimant's one-half interest therein had a value of \$2,611.21.

SECURITIES

Productos Plasticos de Espuma, S.A.

Claim has been asserted for loss based on ownership of 7,500 shares of Productos Plasticos de Espuma, S.A., a Cuban corporation. In support claimant had submitted a provisional stock certificate (No. 7) for 7,500 nominative shares of Productos, which was issued to her spouse Carlos Victor

Wheeler Rodriguez. On this basis, the Commission finds that claimant owned a one-half interest in 7,500 shares.

Evidence of record in another claim before the Commission (Claim No. CU-0243, Claim of Harry Wassall) indicates that this company was intervened in 1961.

Law 989, published in the Cuban Official Gazette on December 6, 1961 by its terms effected the confiscation of goods and chattels, rights, shares, stocks, bonds and other securities of persons who were not in Cuba. The Commission finds that this law in general applied to this claimant and that probably her stock interest in Plasticos was taken by the Government of Cuba on December 6, 1961. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Claimant has valued the shares at \$2.40 each, asserting that this represented the approximate book value. The only evidence tending to show that Productos had any property is a deposit slip for 2,400 pesos, made on January 5, 1960. However, the record does not include evidence showing the value of Productos on the apparent date of loss. In this connection the Commission has also considered the record in Claim CU-0243, supra., but has found no basis for evaluating Productos.

The Commission appreciates the difficulties encountered by some 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. Thus, the Commission finds that claimant herein has not met the burden of proof in that she has failed to establish what value, if any, Plasticos had on December 6, 1961, the probable date of loss. Accordingly, this portion of the claim is denied.

Cia. Distribuidora de Productos Plasticos de Espuma, S.A.

Claim has been asserted for 3,360 shares of Cia. Distribuidora de Productos Plasticos de Espuma, S.A., a Cuban corporation. Apparently no certificates of ownership are available, it being said that they were not printed

due to political turmoil. Claimant relies on a copy of the constitution which sets out the initial subscriptions and shows that her spouse subscribed for 2,801 shares of a total of 35,000 shares, with a par value of \$1.00 each. No further evidence has been submitted in support of this portion of the claim.

The Commission finds that claimant has failed to sustain the burden of proof with respect to Distribuidora in that the record does not establish the extent of her stock interest, if any, or that it had any value on December 6, 1961, the probable date of loss. Accordingly, this portion of the claim is also denied.

PERSONALTY

Claimant has submitted evidence in the form of shipping documents, and her affidavit, of household goods and a Rambler automobile shipped to Cuba in 1959. Inherited property was not community property.

The Commission finds that these properties were in use in connection with claimant's residence in Cuba, and were taken by the Government of Cuba on October 14, 1960, when the apartment was taken.

Claimant has listed a wide range of household goods which she states were taken to Cuba in March, 1959, and which she valued at \$5,000. She has refrained from submitting her sworn statement itemizing each item with its date of purchase (or acquisition) and price paid therefor. She states however, that the silver, crystal and linen were inherited from her mother and grandmother, and that the other items were purchased during the three and four years prior to moving to Cuba in 1959.

On the basis of this record the Commission finds that the silver and crystal listed had a non-depreciable value of \$700 on the date of loss, and that the linen had an original value of \$300 but depreciated at the rate of 50 per cent prior to the date of loss, to \$150. Further, the remaining properties having a cost value of \$4,000 were subject to depreciation at the rate of five per cent for five years, thus having a residual value of \$3,000 on October 14, 1960, and claimant's one-half interest therein had a value of \$1,500.

Additionally, claimant had a one-half interest in the Rambler automobile described as a 1959 four-door sedan. According to the Guide of the National Automobile Dealers Association, such a vehicle had a value of \$1,430 on the date of loss and claimant's interest had a value of \$715.

As to the personalty said to have been purchased from Muebleria Nunez in Havana, a Fiat Bianchina said to have been purchased in Havana, and books and office equipment, claimant has submitted no evidence in support of these parts of the claim.

The Commission holds that claimant has not sustained the burden of proof in these connections, and these parts of the claim are denied.

Recapitulation

The Commission concludes that claimant's losses on October 14, 1960 within the scope of Title V of the Act may be summarized as follows:

Apartment equity (1/2 interest)	\$2,611.21
Household effects inherited	850.00
Household effects purchased	
(1/2 interest)	1,500.00
Rambler automobile (1/2 interest)	<u>715.00</u>
	\$5,676.21


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.

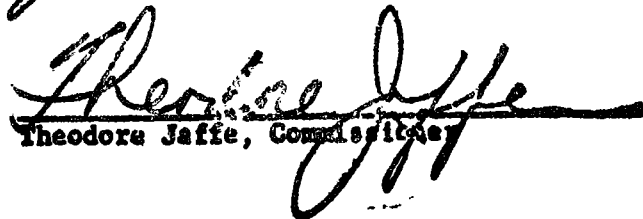
CERTIFICATION OF LOSS

The Commission certifies that ELIZABETH DANNER WHEELER 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 Five Thousand Six Hundred Seventy-Six Dollars and Twenty-One Cents (\$5,676.21) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

JAN 13 1971


Lyle S. Carlock, 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).)