

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

IN THE MATTER OF THE CLAIM OF

WILLIAM W. WEINZIRL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3403

Decision No. CU-5742

Appeal and objections from a Proposed Decision entered on August 19, 1970;
oral hearing requested.

Oral argument held November 17, 1970.

Claimant appeared in his own behalf pursuant to the Regulations of the
Commission (45 CFR §500.1)

FINAL DECISION

By Proposed Decision issued on August 19, 1970 this claim was denied for
failure of proof. Subsequently, additional evidence has been submitted, and
based on the new evidence the Proposed Decision is hereby amended.

Claimant now asserts a 1/2 interest in the following losses:

Livestock	\$11,600.00
Improvement made after marriage	11,800.00
Household furnishings bought after marriage	1,940.00
1955 Ford sedan	<u>600.00</u>
	\$25,940.00

On the basis of the present record the Commission finds that claimant
owned a 1/2 interest in the property subject of this claim located in Camaguey.

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 dis-
tribution 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.

Based on the entire record including claimant's statement that he left Cuba in January 1961, the Commission finds, in the absence of evidence to the contrary, that the property subject of this claim was taken on January 15, 1961, pursuant to the Agrarian Reform Law.

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.

Based on the evidence of record the Commission finds that the household furnishings, after appropriate depreciation had a value of \$730.00 on the date of loss and that as to the remaining items of the claim, claimant's valuations are fair and reasonable and had an aggregate value of \$24,000.00. The Commission therefore concludes that claimant suffered a loss in the total amount of \$12,365.00 for his 1/2 interest therein within the meaning of Title V of the Act.

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.


Accordingly, the following certification of loss will be entered, and in all other respects the Proposed Decision is affirmed.

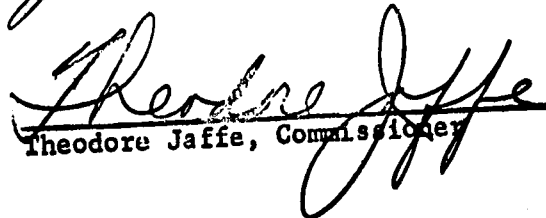
CERTIFICATION OF LOSS

The Commission certifies that WILLIAM W. WEINZIRI 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 Twelve Thousand Three Hundred Sixty-Five Dollars (\$12,365.00) with interest at 6% per annum from January 15, 1961 to the date of settlement.

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

FEB 3 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.

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PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$468,447, was presented by WILLIAM W. WEINZIRL and is based upon the asserted loss of real and personal property in Cuba. Claimant has been a national of the United States since birth. In 1943 he married Maria Teresa Morel who is said to have become a citizen of the United States on November 9, 1967.

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) (1969).)

Claim is based on asserted interests in the following properties:

Finca Altamura, 72 cabs	\$325,000
Buildings, corrals, etc.	25,000
Improvements	25,000
Building lot	1,300
Burial plot, 1/3 interest	2,000
Livestock	5,900
50% of partnership with Jorge Luis de Varona	6,400
700 Head of cattle under rental arrangements with others	59,500
Saddles	300
Personalty - household	12,351
1955 Ford Sedan	700
Personalty stored with neighbor	<u>4,996</u>
	<u>\$468,447</u>

It is further stated that the real property is subject to a mortgage of \$25,000. Claimant stated that his interest in the Finca was indirect, that he operated it in partnership with his wife.

Claimant has also stated that in September 1960, INRA took over one-third of the Finca; and further, that after he left in January 1961, additional properties were nationalized.

The Commission has attempted to assist claimant in obtaining evidence as to ownership of the real properties involved. However, no such properties were found so recorded, and it appears that in fact they were inherited by Maria Teresa Morel Weinzirl. (See Claim of Sigridur Einarisdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].) In such case they are not subject to the Community Property Law of Cuba, and claimant acquired no interest therein. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) There is no evidence that he acquired any interest in the horses, cattle, saddles or automobile listed in the claim.

Moreover there is no evidence of his asserted interest in a partnership with Jorge Luis de Varona, nor of cattle maintained on a grass rental basis with Jorge Luis de Varona and Mrs. Bertha Loret de Mula.

Claimant has submitted a list of personal property which he states was left at the Finca Altamura, submitted in compliance with a suggestion of July 5, 1967. That suggestion of the Commission, however, indicated that not only should the value be shown, but information regarding dates and prices paid, further suggesting affidavits. The affidavits were again suggested in a letter of April 22, 1968. The list submitted, however, totaling \$12,351, gives no indication of when the items were acquired, whether during the marriage, or which may have been inherited by Maria Teresa Morel Weinzirl. The Commission finds that it does not afford a basis for a favorable determination of this item of claim. Claimant has also referred to property left with another family, not knowing whether it has been taken. However, for the aforesaid reasons, the Commission cannot make a favorable determination with respect to this part of the personalty.

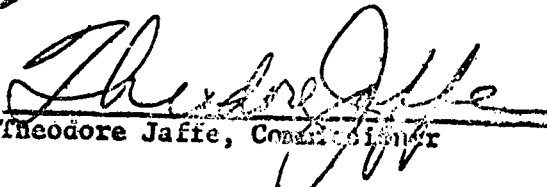
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interest in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

AUG 19 1970



Lyle S. Garlock, Chairman



Theodore Jaffe, Commissioner



Sidney Freidberg, Commissioner

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).)