

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

IN THE MATTER OF THE CLAIM OF

MARGARET VIRGINIA UBERTO
BRUNO PETER UBERTO
THEODORA UBERTO MCGIVNEY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3499

Decision No. CU 5834

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$140,000.00, was presented by MARGARET VIRGINIA UBERTO, BRUNO PETER UBERTO and THEODORA UBERTO MCGIVNEY based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimants, mother and her two children, 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 assert the following losses:

House, lot and adjoining lot at Calle 8 #511 Vista Alegre, Santiago de Cuba, Oriente Province, Cuba	\$ 90,000.00
Furniture and home furnishings in above house, and a bank account	<u>50,000.00</u>
Total	<u>\$140,000.00</u>

Real Property

The evidence establishes and the Commission finds that Ardsley Bertha Scheffey, a national of the United States from birth until her death on March 6, 1963, owned improved real property and an adjoining lot at Calle 8 #511 Vista Alegre, Santiago de Cuba, Oriente Province, Cuba. Upon the testate death of Ardsley Bertha Scheffey, said improved real property was devised to her daughter, MARGARET VIRGINIA UBERTO, for life with the remainder in equal shares to BRUNO PETER UBERTO and THEODORA UBERTO McGIVNEY, grandchildren of the deceased. In the course of judicially settling the estate of the deceased, which was approved by a Surrogate's Court in New York on April 18, 1966, the executors of the estate executed a deed to the improved real property to claimants, setting forth their respective interests therein in accordance with the terms of the will.

Pertinent files of the Department of State included in the record indicate that after the deceased left Cuba her improved real property was cared for by a housekeeper until taken by the Cuban Government pursuant to Law 989.

Law 989, published in the Official Cuban Gazette on December 6, 1961, by its terms effected a confiscation of all goods and chattels, rights, shares, real property, bonds and other securities of persons who left Cuba. The Commission finds that this law applied to the deceased who had left Cuba before that date, and concludes that her improved real property and adjoining lot were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].) Upon the death of the deceased, claimants succeeded to the claim to the extent of a life estate in favor of MARGARET VIRGINIA UBERTO with the remainder interest in favor of BRUNO PETER UBERTO and THEODORA UBERTO McGIVNEY in equal shares.

Claimants have asserted that the value of the improved real property and adjoining lot was \$90,000.00. The record includes a photograph of the house. The probated will of the deceased was dated February 25, 1960, and the codicil to the will, which merely named a co-executor, was dated December 27, 1962. Pursuant to the Second clause of the will, the improved real property and adjoining lot were devised to the claimants. In addition, that clause provides that in the event the said real property had been sold by the deceased, MARGARET VIRGINIA UBERTO and her husband were to receive \$50,000.00 "in lieu of this devise" to be used by themselves and for the benefit of their two children. It appears, therefore, that on February 25, 1960 when the will was executed and as late as December 27, 1962, the date of the codicil, the deceased placed a value of \$50,000.00 on her improved real property and adjoining lot in Cuba.

On several occasions, the Commission suggested the submission of evidence to establish that the real property had a value of \$90,000.00, as claimed herein. In a statement accompanying her official claim form, Mrs. Uberto stated that in 1959 her mother had told her that the real property in Cuba had a value of \$90,000.00. On September 1, 1970, Mrs. Uberto stated, in response to Commission suggestions in this respect, that she had

no evidence to support her valuation and that she merely recalls what her mother told her. Moreover, she stated that she was not familiar with the property and could furnish no other information concerning the value of the property. It appears that the other two claimants likewise have no further proof to offer.

Upon consideration of the entire record and in the absence of evidence to the contrary, the Commission finds that the valuation of the real property, as indicated in the probated will, represents the most appropriate basis for evaluating the property as of December 6, 1961, the date of loss. Accordingly, the Commission finds that the improved real property and adjoining lot had an aggregate value of \$50,000.00 on the date of loss. The record shows that on the date of loss MARGARET VIRGINIA UBERTO, who owned a life estate in the property, was 50 years of age.

With respect to the values of life estates and remainder interests, the Commission has adopted the Makehamized mortality table used by the United States Treasury Department in connection with the collection of gift and estate taxes. (See Claim of Richard Franchi Alfaro and Anna Alfaro, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71.) Pursuant to that method of valuation, a life estate in property of a person 50 years of age is valued at 51.970% of the estate. Since the encumbered property had a value of \$50,000.00 the life estate had a value of \$25,985.00, and the remainder interest (48.030%) had a value of \$24,015.00. Therefore, MARGARET VIRGINIA UBERTO succeeded to a loss in the amount of \$25,985.00, and BRUNO PETER UBERTO and THEODORA UBERTO MCGIVNEY each succeeded to a loss in the amount of \$12,007.50.

Personal Property

Claimants assert a loss of \$50,000.00 for personal property situated in the house Calle 8 #511 Vista Alegre, Santiago de Cuba, Oriente Province, Cuba, and an unstated amount for a bank account in Cuba. Pursuant to the Twenty-third clause of the probated will, the deceased's furniture, furnishings and other items of personal property maintained at her home in Cuba were devised

to claimants in the same proportions as the real property. It further appears from the record that on December 6, 1961 the house contained certain items of personal property.

The Commission finds that claimants owned the same interests in the personal property as in the real property, and that said personal property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989.

The sole remaining question is the aggregate value of the various items of personal property. As in the case of the real property, Mrs. Uberto states that her mother told her in 1959 that the items of personal property in Cuba had an aggregate value of \$50,000.00. Unlike the case of the real property, however, the record contains no evidence whatsoever to support the portion of the claim based upon personal property. With respect to the bank account, Mrs. Uberto stated that its value was unknown.

On several occasions, the Commission suggested the submission of appropriate evidence in support of the claim for the loss of personal property in the amount of \$50,000.00. The will does not describe the personal property except in general terms, and no valuation thereof is indicated in the will. The Commission suggested that claimants file a certified list of the items of personal property including descriptions and valuations. On September 1, 1970, Mrs. Uberto was informed by the Commission that the record contained no evidence to support the claim for the loss of personal property. It was suggested that Mrs. Uberto submit her own itemized list, setting forth approximate dates of acquisition and approximate costs. Her reply was that she could not do so because she was not familiar with the property and could not establish the value thereof. She could only recall that her mother once said the personal property had a value of \$50,000.00. Mrs. Uberto added that she knew no other person who could furnish such a list, and was unable to supply any further details in this respect or with respect to the bank account.

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).)

The Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of the claim based upon personal property in the amount of \$50,000.00 and a bank account in an unstated amount. While the record indicates that the deceased owned certain items of personal property at her home in Cuba, the value thereof is not established by any evidence of record. Claimants are even unable to furnish descriptions of the various items of personal property in question. Under the circumstances, any amount allowed as the aggregate value of the items of personal property and the bank account would be entirely speculative and without foundation. Accordingly, this portion of the claim is denied.

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.

CERTIFICATIONS OF LOSS

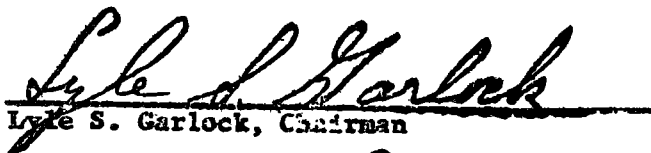
The Commission certifies that MARGARET VIRGINIA UBERTO succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-five Thousand Nine Hundred Eighty-five Dollars (\$25,985.00) with interest at 6% per annum from December 6, 1961 to the date of settlement;

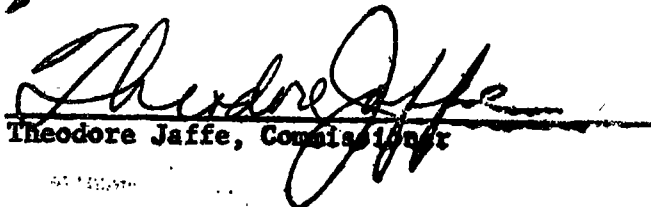
The Commission certifies that BRUNO PETER UBERTO succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twelve Thousand Seven Dollars and Fifty Cents (\$12,007.50) with interest at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that THEODORA UBERTO McGIVNEY succeeded to and 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 Seven Dollars and Fifty Cents (\$12,007.50) with interest 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

SEP 9 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. 31.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)