

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

IN THE MATTER OF THE CLAIM OF

BROTHERS OF THE ORDER OF HERMITS
OF ST. AUGUSTINE (INC.)

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3503

Decision No. CU 6812

Counsel for claimant:

Lee, Toomey & Kent
By George P. Lamb, Esq.
and Michael Mulroney, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, is asserted by the BROTHERS OF THE ORDER OF HERMITS OF ST. AUGUSTINE (INC.) in the amended amount of \$7,976,728.68 based upon the ownership and loss of real and personal property in Cuba.

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 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized as a non-profit organization under the laws of the State of Pennsylvania for educational, religious and charitable purposes and no shares of stock were issued. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act. (See Claim of Independence Foundation, Claim No. CU-2152.)

Claim has been asserted for the following losses:

<u>University of St. Thomas of Villaneuva</u>			
Land	\$2,240,360.00		
Buildings	1,753,113.17		
Furnishings, equipment et al	<u>1,110,117.25</u>	\$5,103,590.42	
<u>El Cristo Property</u>			
El Cristo Church	\$ 598,811.25		
Colegio San Agustin	138,259.68		
Parochial School	194,577.73		
Dispensary	8,000.00		
Ricla Street, land & building	<u>25,000.00</u>	964,648.66	
<u>St. Augustine Property</u>			
Land Use	\$ 53,680.00		
Monastery & Church	185,759.60		
Furnishings & Equipment	142,083.00		
Youth Center	<u>61,000.00</u>	442,522.60	
<u>St. Rita's Property</u>			
Land	\$ 57,375.00		
Buildings	280,000.00		
Furnishings & Equipment	<u>158,249.00</u>	495,624.00	
<u>St. Helen Property</u>			
Land	\$ 15,000.00		
Buildings	40,000.00		
Furnishings & Equipment	<u>15,383.00</u>	70,383.00	

<u>San Lorenzo Property</u>			
Land	\$	200,000.00	
Buildings		495,000.00	
Furnishings & Equipment		<u>30,760.00</u>	\$ 725,760.00
<u>Santa Monica Property</u>			
Land	\$	33,500.00	
Buildings		45,100.00	
Trees		75,000.00	
Furnishings & Equipment		<u>20,600.00</u>	<u>174,200.00</u>
Total			\$7,976,728.68

The Commission finds, on the basis of the record which will be discussed further with the particular properties, that claimant owned directly and indirectly through wholly owned Cuban entities, certain real and personal property in Cuba such as land, churches, university, clinic, schools, dispensaries and related furnishings and equipment.

The Commission further finds that these properties were intervened by the Government of Cuba on May 3, 1961 (see Claim of Gustavus Basch, Claim No. CU-0972). According to the record, all members of the claimant's Order in Cuba were expelled with one exception. That priest was permitted to remain but left in 1968 for reasons of health and has been unable to return. Since May 3, 1961, claimant has had no control or use of any of its Cuban properties. The Commission holds that claimant suffered losses within the meaning of Title V of the Act as a result of the intervention of all of its Cuban properties by the Government of Cuba on May 3, 1961. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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.

University of St. Thomas of Villaneuva

In 1944, claimant purchased land on which to build the University. Construction of buildings was commenced and, in 1946, a Cuban corporation known as the "Society of Brothers of the Order of Hermits of St. Augustine" was established to operate the University. The authorized capital was \$100,000.00 consisting of 1,000 shares with a par value of \$100.00 per share of which only 10 shares were issued. After the formation of the Cuban corporation, a lease was entered into between claimant and the Cuban subsidiary wherein the subsidiary leased the land and buildings owned by claimant and the tenant was permitted to erect buildings on the leased land. Additional land was subsequently purchased by the Cuban Corporation.

The record includes a balance sheet for the Cuban corporation as of July 31, 1960. However, this balance sheet does not appear to be appropriate to the property claimed and is not the basis for values determined herein by the Commission. Other evidence of record consists of appraisals by a real estate broker, an architect and engineer, the former librarian of the University now employed by the Pan American Union in Washington, D. C., a contractor whose firm constructed one of the University's buildings, and affidavits by former University officials as well as photos, deeds, copies of Cuban Government decrees and maps.

On the basis of the appraisals and affidavits, the Commission finds that the values of the properties owned by claimant or its subsidiary and occupied by the University on May 3, 1961 were:

Land(112,018 square meters)	\$2,240,360.00
Buildings, Chapel	150,000.00
Hickey	300,000.00
Library	210,000.00
Monastery	250,000.00
Talleres	237,000.00
Tarafa & Revilla	591,050.91

Athletic Field	\$ 15,062.26
Furnishings & Equipment	521,942.71
Library	161,000.00
Automobiles	8,474.54
Bank Account	67,000.00
Book Store	7,700.00
Cuban bond with interest to May 3, 1961	<u>312,000.00</u>
Total	<u>\$5,071,590.42</u>

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$5,071,590.42 for the taking of the University of St. Thomas of Villaneuva.

A loss had been asserted in the amount of \$26,000.00 for accounts receivable as shown on the July 31, 1960 balance sheet. However there is no exact record of the accounts receivable and the accounts payable on May 3, 1961. Inasmuch as the accounts payable, including local taxes and deposits due students, on the 1960 balance sheet are approximately equal, the Commission finds that the accounts payable on May 3, 1961 would offset any accounts receivable of that date and no loss is determined therefor.

2. El Cristo Property

The El Cristo property consisted of a church, parochial school, preparatory school, dispensary and the land located at Villegas and Lamparilla Streets and the rental property at 76 Ricla Street, Havana. The original plot was awarded claimant by decision in 1902 which divided church property seized by the Spanish Governor in 1842. The property was located three blocks from the Capitol of the Cuban Government. Additional purchases of land were made until the El Cristo complex covered almost the entire city block bounded by Villegas, Lamparilla, Amagura and Bernaza Streets and contained 2,869.42 square meters. The church was built in about 1640 but was enlarged in 1926, the original walls being moved to the outside and the church widened 18 feet on each side. Other structural improvements were made at an estimated cost of over \$200,000.00.

The parochial school was established about 1948. The old buildings used for the school were replaced in 1950 by a new building. The school was founded by a separate entity, an association known as "Escuela Gratuita de Ninos de la Iglesia del Cristo". However, the school was operated by claimant

which controlled the association. Therefore the Commission finds that claimant was the owner and suffered a loss by the taking of the El Cristo properties on May 3, 1961.

Colegio San Agustin was the preparatory school established by claimant in 1912. It was operated by Corporacion San Agustin, a Cuban corporation organized by claimant. Title to the school property was later transferred to the Asociacion de la Iglesia del Cristo y Colegio de la Orden de San Agustin, through which claimant operated the school until July 1, 1953. After that date the school was operated directly by the Order of St. Augustine. Thus the Commission finds that claimant was the owner of the Colegio property taken by the Government of Cuba on May 3, 1961.

The remaining property owned by claimant through the El Cristo church consisted of a dispensary built on Villegas Street between the parochial school and the church in 1957, and rental property at 76 Murallo Street (formerly Ricla Street). According to the record, the dispensary was built at a cost of about \$8,000.00. There is no information of record of the cost of the rental property but it is described as a two-story building of brick construction and about 25 feet by 100 feet having a monthly rental of at least \$70.00. Claim is also made for the loss of bank accounts and accounts receivable for the Colegio and the parochial school in the total amount of \$6,500.00 which appears fair and reasonable, and securities issued by the Cuban Telephone Company in the amount of \$50,000.00.

The records of the Cuban Telephone establish that the El Cristo Parochial School was the owner of 500 shares of Cuban Telephone Company preferred stock. The Commission has held that a claim based upon a stock of that company is within the purview of Title V of the Act because, although Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. (See Claim of International Telephone and Telegraph Company, Claim No. CU-2615.) In that claim, the Commission found that the assets of the company were taken by the Government of Cuba

on August 6, 1960 and that the value per share of preferred stock was \$104.50 including accrued dividends. Therefore, the Commission finds that claimant suffered a loss with respect to the preferred stock in the amount of \$52,250.00 on August 6, 1960.

On the basis of all the evidence of record including the photographs, financial records, deeds, and affidavits, the Commission finds that the values of the El Cristo properties were:

Land	\$358,677.50
El Cristo Church, building & furnishings	389,095.00
Parochial School, building & furnishings	82,077.73
Cuban Telephone Securities	52,250.00
Colegio San Agustin building & equipment	45,298.43
Dispensary	8,000.00
76 Ricla	16,800.00
Cash & Accounts Receivable	6,500.00
Total	<u>\$958,698.66</u>

The Commission concludes that claimant suffered a loss in the amount of \$52,250.00 on August 6, 1960 when the Cuban Telephone Company's assets were nationalized and \$906,448.66 on May 3, 1961 when the El Cristo properties were taken.

3. St. Augustine Property

Claimant asserts a loss in the amount of \$442,522.60 for the taking of its property in St. Augustine parish in La Sierra, Havana. In 1926, the first building was erected on land belonging to the Diocese of Havana. No claim is made for the taking of the land but for the loss of the use of the land, such loss being valued by claimant at \$53,680.00. The original building was a monastery which was also used as the parish chapel until the church was built between 1937 and 1941. Additional property including land and two buildings was purchased about 1953 for a Youth Center. The lot was approximately 100 feet by 120 feet. One building was a three-story house of brick containing 14 rooms the other being a garage with living quarters for the caretaker and his family. In support of the values claimed for the lost property, claimant has submitted complete descriptions of the buildings with pictures of the church and an itemized listing of the equipment and furnishings of the church and monastery.

On the basis of the evidence of record, the Commission finds that the values of the St. Augustine properties were:

Monastery	\$ 40,000.00
Church	145,759.60
Furnishings & Equipment	142,083.00
Youth Center	<u>61,000.00</u>
Total	\$388,842.60

The Commission concludes that claimant suffered a loss in the amount of \$388,842.60 for the taking of the St. Augustine properties on May 3, 1961.

No determination of loss is made for the land on which the monastery and church were located inasmuch as it did not belong to claimant.

4. St. Rita Property

The property claimed for St. Rita's parish consisted of land, chapel, church and monastery. The land was purchased in 1941 and 1942 and contained 3,825 square meters, and was located at 5th Avenue and 26th Street, Reparto Miramar, Marianao. Initially the chapel was built and then, in 1942, construction commenced on the church which was completed in 1954. The adjacent monastery was built gradually during the years after 1942, having two separate sections joined by a long covered outside corridor. In support of the claimed values, claimant has submitted a statement by the architect, an affidavit listing the equipment and furnishings of the chapel, church and monastery and pictures of the church.

The Commission finds the values of St. Rita's property on May 3, 1961 to have been

Land	\$ 57,375.00
Chapel & Church	250,000.00
Monastery	30,000.00
Furnishings & Equipment	<u>158,249.00</u>
Total	\$495,624.00

The Commission concludes that claimant suffered a loss in the amount of \$495,624.00 for the taking of St. Rita's property on May 3, 1961.

5. St. Helen Property

In 1946, claimant purchased 3,618 square meters of land in Tarara, Guanabacoa, Cuba with the condition that a church be built upon that land within five years. The church was built the following year at a cost of \$40,000.00 according to an affidavit of an architect whose firm designed and inspected the construction of the building. Evidence in support of the values asserted include the aforesaid affidavit, an affidavit listing the equipment and furnishings of the church and attached living quarters and a photocopy of the original deed.

On the basis of all the evidence of record, the Commission finds that the values of St. Helen's parish property on May 3, 1961 were:

Land	\$15,000.00
Church building	40,000.00
Equipment & furnishings	<u>15,383.00</u>
Total	\$70,383.00

The Commission concludes that claimant sustained a loss in the amount of \$70,383.00 by the taking of the St. Helen's parish property on May 3, 1961.

6. San Lorenzo Property

The property belonging to the San Lorenzo complex consisted of a church, convent, school, dispensary and a day nursery located on Galbis Street, Reparto Buenavista, Marianao, Cuba. To provide an income for the

operation of the dispensary and nursery, two apartment buildings were built on land purchased by claimant in the block bounded by Avenida Novena, Calle Quinta, Solar 24 and Solareo 2-11 in Marianao. Construction of the church, convent, school and dispensary was started in 1947. The building housing the school and convent originally contained a clinic but it proved to be too small and another wing was added to become the dispensary. The day nursery was built in 1956 as were the two apartment buildings.

Claimant asserts a value of \$725,760.00 for the loss of these properties and in support thereof has submitted photos of the dispensary and day nursery, newspaper accounts of the day nursery, affidavits of the former principal of the school and former Administrator of the dispensary and nursery which list the equipment and furnishings of the buildings, a statement of the rental income from the apartment houses, and an affidavit appraising the values for the items claimed.

Based upon the record, the Commission finds that the value of the San Lorenzo properties taken by the Government of Cuba on May 3, 1961 were:

Land		
Dispensary complex	\$ 80,000.00	
Apartment lot	<u>120,000.00</u>	\$200,000.00
Buildings		
Church, convent, school dispensary & day nursery	255,000.00	
Apartment houses	<u>240,000.00</u>	495,000.00
Furnishings & Equipment		
Church, school & convent	27,408.00	
Day nursery	<u>3,352.00</u>	<u>30,760.00</u>
Total		\$725,760.00

The Commission concludes that claimant suffered a loss in the amount of \$725,760.00 for the taking of the San Lorenzo properties on May 3, 1961.

7. Santa Monica Property

In 1958, claimant purchased property located near San Antonio de los Banos, Province of Havana for construction of a seminary. The property consisted of approximately 33-1/2 acres of land most of it cultivated as an orchard with more than 1,500 trees of a variety of

fruits, the main house, a garage with large living quarters attached, a caretaker's house, storehouse, stable, equipment shed, pump house, and a small fuel storage building. The farm had a complete irrigation system, electric cables, 1,500 feet of two-inch pipe for its water service, and a macadam road about 500 meters in length.

In support of the amount claimed for the loss of this property, claimant has submitted photos of the main building, an inventory of the property and an affidavit setting forth the values for the land and personal property as well as the buildings.

Based on the complete record, the Commission finds that the value of the Santa Monica property taken by the Government of Cuba on May 3, 1961 was:

Land	\$ 33,500.00
Buildings	45,100.00
Trees	75,000.00
Road, furnishings & equipment	<u>20,600.00</u>
Total	\$174,200.00

The Commission concludes that claimant suffered a loss in the amount of \$174,200.00 as a result of the actions of the Government of Cuba on May 3, 1961.

Recapitulation

Claimant's losses within the scope of Title V of the International Claims Settlement Act of 1949, as amended, are summarized as follows:

University of St. Thomas	\$5,071,590.42
El Cristo	958,698.66
St. Augustine	388,842.60
St. Rita	495,624.00
St. Helen	70,383.00
San Lorenzo	725,760.00
Santa Monica	<u>174,200.00</u>
Total	\$7,885,098.68

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 claim it is so ordered as follows:

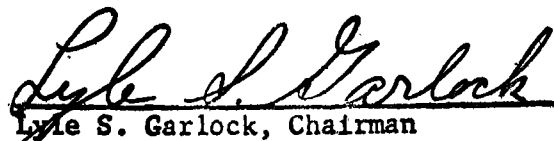
<u>FROM</u>	<u>ON</u>
August 6, 1960	\$ 52,250.00
May 3, 1961	7,832,848.68

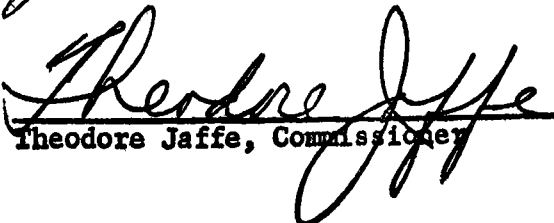
CERTIFICATION OF LOSS

The Commission certifies that BROTHERS OF THE ORDER OF HERMITS OF ST. AUGUSTINE(INC.) 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 Seven Million Eight Hundred Eighty-five Thousand Ninety-eight Dollars and Sixty-eight Cents (\$7,885,098.68) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement.

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

SEP 8 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. 531.5(e) and (g), as amended (1970).)