

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

IN THE MATTER OF THE CLAIM OF

ROBERTO M. GONZALEZ
and
OSCAR J. GONZALEZ

Claim No. CU-3701

Decision No. CU -6173

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Macfarlane, Ferguson,
Allison & Kelly
By John C. Bierley, Esq.

Appeal and objections from a Proposed Decision entered on April 28, 1971.
No hearing requested.

Hearing on the record held on **AUG 18 1971**

FINAL DECISION

Under date of April 28, 1971, the Commission issued its Proposed Decision on this claim, certifying losses in favor of OSCAR J. GONZALEZ and ROBERTO M. GONZALEZ in the amounts of \$36,833.33 and \$307.50, respectively.

Claimants filed objections to the Proposed Decision with respect to interests in the livestock and the valuations of the library, furniture, and clothing. Moreover, claimants stated that Mrs. Roberto M. Gonzalez was entitled to an allowance with respect to her husband's property. However, claimants submitted no evidence in support of their objections, nor evidence to establish that Mrs. Roberto M. Gonzalez was a United States national at all pertinent times.

Upon consideration of claimants' objections in light of the entire record, the Commission finds no basis for altering or otherwise modifying the Proposed Decision of April 28, 1971. Accordingly, the Proposed Decision is affirmed in all respects.

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

APR 25 1971


Lyle S. Carlock, Chairman


Theodore Jaffe, Commissioner

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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 \$75,866.00, was presented by OSCAR J. GONZALEZ and ROBERTO M. GONZALEZ based upon the asserted loss of certain real and personal property in Cuba. Claimants OSCAR J. GONZALEZ and ROBERTO M. GONZALEZ have been nationals of the United States since November 7, 1955 and June 18, 1965, respectively.

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:

OSCAR J. GONZALEZ

1/3 interest in La Esperanza Farm, Colon, Matanzas	\$29,333.00
1/3 interest in farm equip- ment at La Esperanza Farm	4,800.00
Livestock	<u>5,400.00</u>
Total	<u>\$39,533.00</u>

ROBERTO M. GONZALEZ

1/3 interest in La Esperanza Farm, Colon, Matanzas	\$29,333.00
1/3 interest in farm equip- ment at La Esperanza Farm	4,800.00
Furniture and other personal belongings	<u>2,200.00</u>
Total	<u>\$36,333.00</u>

The record includes a copy of a joint affidavit of December 29, 1954 from OSCAR J. GONZALEZ and his wife submitted to the Internal Revenue Service in connection with their claim for tax deductions for their Cuban losses; copies of affidavits from two individuals who knew claimants in Cuba, having done business with their father, and were familiar with the properties in question; a copy of an affidavit from claimants' mother, a nonnational of the United States, and claimants' statements to the Commission.

La Esperanza Farm

On the basis of the entire record, the Commission finds that upon the death of claimants' father on April 21, 1959, claimants each acquired a 1/3 interest in certain agricultural property known as La Esperanza

Farm, located at Colon, Matanzas Province, Cuba. One of the affiants states that after he left Cuba on May 5, 1960, he received information that the La Esperanza Farm had been confiscated by Cuba. The other affiant states that the Farm was taken after the death of claimants' father. Based upon the evidence of record, the Commission finds that La Esperanza Farm was taken by the Government of Cuba on June 1, 1960.

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.

Since ROBERTO M. GONZALEZ did not acquire nationality of the United States until June 18, 1965, the Commission finds that his interest in the claim for loss of the farm may not be considered under Title V of the Act. Therefore this portion of his claim is denied.

The said two affiants estimate the value of La Esperanza Farm at about \$90,000.00. In their affidavit to the Internal Revenue Service, Mr. and Mrs. OSCAR J. GONZALEZ state that the value of the farm was \$88,000.00. On the basis of the entire record, the Commission finds that La Esperanza Farm had a value of \$88,000.00 on June 1, 1960, the date of loss. It is concluded that OSCAR J. GONZALEZ sustained a loss in the amount of \$29,333.33 for his 1/3 interest.

Farm Equipment

Based upon the evidence of record, the Commission finds that claimants each acquired by inheritance a 1/3 interest in certain farm equipment maintained on La Esperanza Farm. The Commission further finds that the farm equipment was taken by the Government of Cuba on June 1, 1960 when the farm was taken.

For the reasons stated with respect to the portion of ROBERTO M. GONZALEZ's claim based upon La Esperanza Farm, mutatis mutandis, the portion of his claim based upon the farm equipment is denied.

Based upon the information supplied by Mr. and Mrs. Oscar J. Gonzalez to the Internal Revenue Service, the Commission finds that the value of the farm equipment after appropriate depreciation was \$14,400.00 on June 1, 1960, the date of loss. Therefore the value of OSCAR J. GONZALEZ's 1/3 interest was \$4,800.00.

Livestock

Pursuant to the community property laws of Cuba, property acquired during coverture, except by gift or inheritance, is owned in equal shares by both spouses. (See Claim of Robert L. Cheaney, et ux., Claim No. CU-0915.) On the basis of the entire record, the Commission finds that OSCAR J. GONZALEZ and his wife, a nonnational of the United States, each owned a 1/2 interest in certain livestock which they had maintained on La Esperanza Farm. The Commission further finds that the livestock was taken by the Government of Cuba on June 1, 1960 when the farm was taken.

Based on information supplied by Mr. and Mrs. Oscar J. Gonzalez to the Internal Revenue Service, the Commission finds that the livestock had a value of \$5,400.00 on June 1, 1960. Therefore, OSCAR J. GONZALEZ's 1/2 interest therein had a value of \$2,700.00.

Furniture and Other Personal Belongings

The evidence establishes and the Commission finds that ROBERTO M. GONZALEZ and his wife each owned a 1/2 interest in certain furniture and other personal belongings which they had maintained at their home in Cuba. Prior to their leaving Cuba, they left said property in the custody of America M. Gonzalez, claimants' mother, a nonnational of the United States who had been divorced from claimants' father in 1957. The record shows that Mrs. Gonzalez left Cuba about July 15, 1966.

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effectively confiscated goods and chattels, rights, real property, bonds and securities of persons who left Cuba. The Commission finds that this law applied to claimants' mother who left Cuba about July 15, 1966. In the absence of evidence to the contrary, the Commission finds

that the personal property of Mr. and Mrs. Roberto M. Gonzalez was taken by the Government of Cuba on July 15, 1966 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

On several occasions the Commission suggested to counsel for claimants that the interest of Mrs. Roberto M. Gonzalez may be considered by the Commission upon written request to join the claim accompanied by proof of her United States nationality at all pertinent times. Counsel responded that Mrs. Roberto M. Gonzalez acquired nationality of the United States on June 18, 1965, but no request to join the claim accompanied by proof of Mrs. Gonzalez's United States nationality was filed with the Commission. Accordingly, only ROBERTO M. GONZALEZ's 1/2 interest in the personal property will be considered herein.

The record includes an affidavit from claimants' mother in which she itemizes the personal property and sets forth costs.

Upon consideration of the entire record, the Commission finds that the items of personal property had the following values after appropriate depreciation on July 15, 1966, the date of loss:

Library-residual value	\$300.00
Furniture-depreciated at 5% per year for 9 years	275.00
Clothing-residual value	<u>40.00</u>
Total	<u>\$615.00</u>

Recapitulation

Claimants' losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>OSCAR J. GONZALEZ</u>		
La Esperanza Farm	June 1, 1960	\$29,333.33
Farm equipment	June 1, 1960	4,800.00
Livestock	June 1, 1960	<u>2,700.00</u>
Total		<u>\$36,833.33</u>

ROBERTO M. GONZALEZ

Furniture and other personal belongings	July 15, 1966	\$ <u>307.50</u>
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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 as follows:

<u>FROM</u>	<u>ON</u>
<u>OSCAR J. GONZALEZ</u>	
June 1, 1960	<u>\$36,833.33</u>
<u>ROBERTO M. GONZALEZ</u>	
July 15, 1966	\$ <u>307.50</u>

CERTIFICATIONS OF LOSS

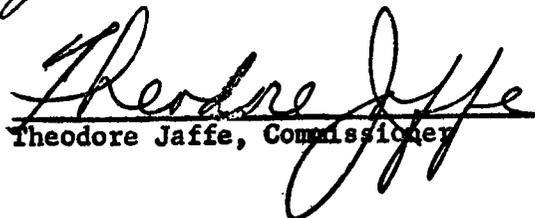
The Commission certifies that OSCAR J. GONZALEZ suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-Six Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$36,833.33) with interest thereon at 6% per annum from June 1, 1960 to the date of settlement; and

The Commission certifies that ROBERTO M. GONZALEZ 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 Three Hundred Seven Dollars and Fifty Cents (\$307.50) with interest thereon at 6% per annum from July 15, 1966 to the date of settlement.

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

APP 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. 531.5(e) and (g), as amended (1970).)