

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

IN THE MATTER OF THE CLAIM OF

JOEL L. BRETTON
and
MARY KATHRYN BRETTON ZARA

Claim No. CU-3714

Decision No. CU **6083**

Under the International Claims Settlement
Act of 1949, as amended

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 amount of \$426,925.00, was presented by JOEL L. BRETTON and MARY KATHRYN BRETTON ZARA, brother and sister, based upon the asserted loss of certain real and personal property in Cuba. Claimants 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 equal interests in the following losses:

1798 acres of land	\$270,000.00
Houses, sheds and other buildings	42,500.00
Furniture	10,000.00
Equipment and livestock	<u>104,425.00</u>
Total	<u>\$426,925.00</u>

Ownership

The evidence includes a copy of a decree of distribution issued pursuant to the laws of Cuba showing that claimants inherited certain real and personal property from their father.

In addition, the record contains a copy of an extract, dated March 29, 1949, from the pertinent Cuban land registers establishing that JOEL L. BRETTON acquired certain land in Cuba prior to his marriage to Noehia O. Bretton. Copies of communications from the Internal Revenue Service indicate that claimants and their respective spouses were allowed tax deductions for their Cuban losses.

Pursuant to the community property laws of Cuba, all property acquired by either spouse during coverture is owned in equal shares by both spouses, except property acquired by gift or inheritance. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

Although JOEL L. BRETTON and his wife were jointly allowed tax deductions for Cuban losses, the Commission finds that JOEL L. BRETTON was the sole owner of 200 acres of land in the vicinity of Antonio Machado, Oriente Province, Cuba, which he had acquired in 1949 prior to his marriage.

On the basis of the decree of distribution, the Commission finds that claimants inherited equal interests in the following properties in 1942, which are not subject to the community property laws of Cuba:

1. A bank account at a Cuban bank.
2. 155 head of cattle.
3. A frame house in the vicinity of Antonio Machado.
4. Certain land in the same vicinity.

Based upon the communications from the Internal Revenue Service, it appears that claimants and their respective spouses owned in equal shares certain farm equipment acquired between 1950 and 1958, and a house and furniture acquired in 1951. Claimants were advised of the community property laws of Cuba, and their spouses were invited to join the claim if they were United States nationals at all pertinent times. However, claimants failed to respond to several inquiries by the Commission. Moreover, the record indicates that Mrs. Noehia O. Bretton was a Cuban national at the time of her marriage to JOEL L. BRETTON; and no claim has been filed by or on behalf of either of the spouses of claimants.

On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that claimants each owned a 1/4 interest in the farm equipment and the house and furniture.

Nationalization or Other Taking

Based upon the communications from the Internal Revenue Service and statements of claimants, the Commission finds that claimants' interests in the properties were taken by the Government of Cuba on August 31, 1961.

Valuation

200 Acres of Land:

Claimant JOEL L. BRETTON asserts that the land had a value of approximately \$150.00 per acre. However, he has submitted no evidence in support of this assertion, although evidence in this respect was suggested by the Commission on several occasions.

The land extract of March 29, 1949 does not indicate the purchase price of the 200 acres of land acquired by JOEL L. BRETTON. However, the communications from the Internal Revenue Service show that \$11,350.00 was allowed as a tax deduction on account of said land. In the absence of more convincing evidence, the Commission finds that the 200 acres of land had a value of \$11,350.00, on August 31, 1961, the date of loss. It is concluded that JOEL L. BRETTON sustained a loss in that amount.

Inherited Land:

The record shows that claimants inherited equal interests in 1,510.29 acres of land in the vicinity of Antonio Machado, Oriente Province, Cuba. Claimants assert a valuation of \$150.00 per acre. They further state that 10 caballerias of land (1 caballeria equals 33.162 acres) was planted with sugar cane in 1951 and 1952 at a cost of \$60,000.00. However, no evidence has been submitted in support of these assertions.

It appears that a tax deduction of \$15,991.07 was allowed on account of the inherited land. The decree of distribution indicates that the aggregate value of 1,492.29 acres of land was \$22,739.00, but fails to show the value of 18 more acres of land in the same vicinity.

Upon consideration of the entire record and in the absence of more persuasive evidence, the Commission finds that the tax deduction allowed for the 200 acres of land in the same vicinity may be the basis for evaluating the inherited land. Accordingly, the Commission finds that the value of 1,510.29 acres of land on August 31, 1961 was \$85,708.96. Therefore, the value of each claimant's 1/2 interest therein was \$42,854.48.

Buildings and Furniture:

Claimants assert a valuation of \$42,500.00 for houses, sheds and other buildings, and \$10,000.00 for furniture. In their official claim form, claimants state that the aggregate value of the inherited real and personal properties was \$31,982.15, which is shown by the decree of distribution. They further state that they improved the premises at a cost of \$187,925.00. Claimants refer to a brick and stone house which they assertedly caused to be constructed on the land in 1951 at a cost of \$35,000.00, and to the addition of furniture and furnishings for the house at a cost of \$10,000.00.

In addition, they state that there was a 2-story building behind the residence; that the first floor thereof was used for the electric power plant, etc.; that the second floor was used as an office; and that a 1,500 gallon water tank was situated on top of this structure.

The communications from the Internal Revenue Service show that the aggregate value of the house, constructed in 1951, and the furniture situated therein was \$22,500.00, and that the value of a tractor shed was \$1,750.00. No other structures were allowed on account of claimants' Cuban losses. The decree of distribution shows the presence of a frame house valued at \$600.00.

These matters were brought to claimants' attention and it was suggested on several occasions that evidence be submitted in support of their valuations. No such evidence has been filed.

On the basis of the entire record, the Commission finds that the improvements to the premises on the date of loss included a wooden house, a tractor shed and a house with furniture and furnishings; and that the values thereof on August 31, 1961 were \$600.00 for the wooden house, \$1,750.00 for the tractor shed, and \$22,500.00 for the house and contents, aggregating \$24,850.00. Therefore, claimants' 1/4 interests therein each had a value of \$6,212.50.

The Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of their claim for other structures and improvements, except as noted below under "Equipment and Livestock". Accordingly, so much of the claim as is based upon such other structures and improvements is denied.

Equipment and Livestock:

Claimants assert a loss of \$104,425.00 for certain farm equipment and 350 head of cattle. On several occasions the Commission suggested the submission of supporting evidence in these respects, but the only pertinent evidence of record is the material claimants received from the Internal Revenue Service.

That material indicates the allowance of tax deductions for certain farm equipment, but fails to mention any livestock. The Commission notes that the decree of distribution of September 9, 1942 includes 155 head of cattle having an aggregate value of \$5,888.00. However, the Commission

finds no valid basis for concluding claimants owned any livestock on August 31, 1961. Accordingly, the portion of the claim based upon 350 head of cattle is denied.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the farm equipment and equitable to the claimants are those set forth in the communications of the Internal Revenue Service, which show dates of acquisition, costs and depreciated values as of the date of loss.

The Commission therefore finds that the farm equipment had the following values on August 31, 1961:

Tractors	\$ 450.00
Truck	225.00
Station wagon	448.50
Light plant	100.00
Electric weld	360.00
Air compressor	311.50
Saddles	<u>245.00</u>
Total	<u>\$2,140.00</u>

Accordingly, the value of each claimant's 1/4 interest therein was \$535.00.

Recapitulation

Claimants' losses on August 31, 1961 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
<u>JOEL L. BRETTON</u>	
200 acres of land	\$11,350.00
Inherited land	42,854.48
Buildings and furniture	6,212.50
Equipment	<u>535.00</u>
Total	<u>\$60,951.98</u>
<u>MARY KATHRYN BRETTON ZARA</u>	
Inherited land	\$42,854.48
Buildings and furniture	6,212.50
Equipment	<u>535.00</u>
Total	<u>\$49,601.98</u>

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

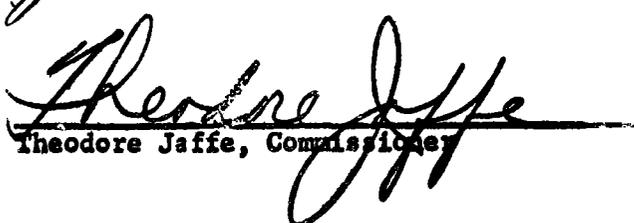
The Commission certifies that JOEL L. BRETTON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty Thousand Nine Hundred Fifty-One Dollars and Ninety-Eight Cents (\$60,951.98) with interest at 6% per annum from August 31, 1961 to the date of settlement; and

The Commission certifies that MARY KATHRYN BRETTON ZARA 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 Forty-Nine Thousand Six Hundred One Dollars and Ninety-Eight Cents (\$49,601.98) with interest at 6% per annum from August 31, 1961 to the date of settlement.

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

FEB 24 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. 31.5(e) and (g), as amended (1970).)