

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

IN THE MATTER OF THE CLAIM OF

JOSE ANTONIO LUCIANO GAGO

Claim No. CU-4155

Decision No. CU-5644

Under the International Claims Settlement
Act of 1949, as amended

Petition to reopen; Proposed Decision entered on August 6, 1970; Final Decision entered on September 8, 1970.

AMENDED FINAL DECISION

Under date of September 8, 1970, the Commission entered its Final Decision denying this claim for lack of proof. Subsequently, claimant submitted new supporting evidence, which was construed as a petition to reopen the claim.

Upon consideration of the new evidence, the Commission amends the decision in this matter as follows:

The Commission finds that pursuant to the community property laws of Cuba claimant and his wife, apparently a nonnational of the United States, each owned 1/2 interests in the properties in question, discussed hereafter. (See Claim of Robert L. Cheaney, et ux., Claim No. CU-0915.)

The Commission finds on the basis of the new evidence that claimant owned a 1/2 interest in certain land in Holguin, Oriente Province, Cuba, consisting of 990 acres of sugar cane and 1,782 acres of pasture land. On the basis of statements by claimant, who was in Cuba until May 15, 1969, the Commission finds that the land was taken by the Cuban National Institute of Agrarian Reform (I.N.R.A.) on September 13, 1961.

Claimant has submitted an affidavit of September 21, 1970 from Silvestre Pina, formerly President of the National Executive Committee of the Association of Sugar Plantation Owners of Cuba. Affiant is familiar with claimant's property and states that the values of the lands were \$100.00 per acre for sugar

cane and \$50.00 per acre for pasture land. The Commission finds these valuations to be fair and reasonable. Therefore, the aggregate value of the property was \$188,100.00, and claimant's 1/2 interest had a value of \$94,050.00 on September 13, 1961.

The Commission finds that claimant owned a 1/2 interest in certain cattle which were on the land in Holguin, Oriente Province, Cuba. The Commission further finds that the cattle were also taken by the Government of Cuba on September 13, 1961. The record includes an inventory of the cattle prepared by I.N.R.A. On the basis thereof the Commission finds that the cattle had a value of \$29,880.00 on September 13, 1961. Therefore, claimant's 1/2 interest had a value of \$14,940.00.

The Commission finds that claimant owned a 1/2 interest in certain farm equipment maintained on the property in Holguin, Oriente Province, Cuba, which was also taken by the Government of Cuba on September 13, 1961. On the basis of the evidence of record, the Commission finds that the aggregate value of the equipment on September 13, 1961 was \$13,613.62 after depreciation. Therefore, claimant's 1/2 interest therein had a value of \$6,806.81.

On the basis of an insurance policy and claimant's statements, the Commission finds that claimant owned 1/2 interests in a house at Holguin, Oriente Province, Cuba, and the personal belongings therein, as well as a 1956 Ford automobile. The Commission further finds that said house and personal property were taken by the Government of Cuba on May 15, 1969 pursuant to Law 969, which effected the confiscation of the properties of all persons who left Cuba. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Although this claim was timely filed and whereas it appears that the loss of the house and personal belongings arose subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period. (See Claim of Vivian Morales, Claim No. CU-8739.)

Based on the entire record and in the absence of evidence to the contrary, the Commission finds that on May 15, 1969, the date of loss, the house had a value of \$9,000.00; and that the said personal property, including the automobile, had a value of \$1,500.00 after depreciation. Therefore, claimant's 1/2 interests therein had values of \$4,500.00 and \$750.00, respectively.

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Land	September 13, 1961	\$ 94,050.00
Cattle	September 13, 1961	14,940.00
Farm Equipment	September 13, 1961	6,806.81
House at Holguin	May 15, 1969	4,500.00
Personal Property at Holguin	May 15, 1969	<u>750.00</u>
		<u>\$121,046.81</u>

The Commission has decided that in certification 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).

<u>FROM</u>	<u>ON</u>
September 13, 1961	\$115,796.81
May 15, 1969	<u>5,250.00</u>
Total	<u>\$121,046.81</u>


Accordingly, the following Certification of Loss will be entered.

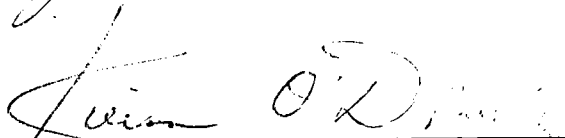
CERTIFICATION OF LOSS

The Commission certifies that JOSE ANTONIO LUCIANO GAGO sustained 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 One Hundred Twenty-One Thousand Forty-Six Dollars and Eighty-One Cents (\$121,046.81) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran Q'Doherty, 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 was opened by the Commission under Title V of the International Claims Settlement Act of 1949, as amended, on behalf of the claimant who has since presented claim in the amount of \$329,910.00 based upon the asserted loss of real and personal property in Cuba. Claimant has been a national 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.

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).)

Claimant returned to the United States, from Cuba, on May 15, 1969.

He contacted the Commission by letter of July 8, 1969, requesting assistance in recovering documentation from a private depository in Cuba. By letter of July 29, 1969, the Commission forwarded claimant claim forms to be completed and returned to the Commission.

On September 20, 1969, claimant forwarded an unsigned claim form and a list of his losses setting out the value of 83-1/2 caballerias of land as \$11,000, and sugar plantation equipment at \$202,910, 800 cattle (which he said the Cuban Government inventoried at 519) at \$50,000, two houses at \$44,000 and furnishings therein at \$22,000, totalling \$329,910.


By communication of October 1, 1969, the Commission forwarded to claimant documents received by the Commission, and suggested that he forward any which would support his claim, with translations of pertinent parts. By letter of November 24, 1969 a detailed letter was sent to claimant. A "follow-up" was sent him on June 1, 1970. Claimant has not submitted any evidence in support of his asserted losses, nor responded to the above letters.


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 6 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).)

CU-4155