

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

IN THE MATTER OF THE CLAIM OF

ELEANOR URRUTIA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-4205

Decision No. CU - 6037

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was opened by the Commission on behalf of ELEANOR URRUTIA while absent from the United States. Subsequent to her return she adopted this action and presented claim in the amount of \$164,500.00 based upon the asserted ownership and loss of real and personal property in Cuba. Claimant has been a national of the United States since her naturalization in 1944.

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.

Claimant describes her loss as follows:

5 caballerias of sugar cane	\$ 30,000.00
16 caballerias under lease	50,000.00
Residence including generator and well	23,000.00
Household furnishings	1,500.00
15 caballerias for cattle raising and pine forest	<u>60,000.00</u>
Total	\$164,500.00

Based upon the entire record, including affidavits of claimant and of two other individuals with personal knowledge of the facts, a list of the personalty, a document dated November 1, 1959 relating to claimant's inheritance from her late brother and a document dated August 18, 1956 relating to the disposition of property following claimant's divorce on September 14, 1954, the Commission finds that claimant owned certain real and personal property subject of this claim as further discussed below.

The evidence establishes that claimant owned 2 farms in La Mulata, Pinar del Rio, one known as Finca Reduan and the other inherited from her brother in 1959 and known as Finca "Buena Vista" or "Margajitas."

Finca Reduan

Claimant states that this farm comprised 21 caballerias of which 14 caballerias were leased, 5 caballerias were planted with sugar cane, and the remaining 2 caballerias included her residence and a registered mine of iron and copper deposits which had not been fully explored.

The Agrarian Reform Law of May 17, 1959, published in the Cuban Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided for the expropriation of rural properties and distribution among peasants and agricultural workers. The Fifth Transitory Provision provided that until regulations for the Law were promulgated,

it should be applied through resolutions of the National Agrarian Reform Institute. The regulations for carrying out the expropriation of such rural property were contained in Law 588, published in the Official Gazette (No. 191) on October 7, 1959.

Based on the evidence of record the Commission finds, in the absence of evidence to the contrary, that the 14 caballerias which were leased were taken by the Government of Cuba on June 15, 1960, that the five caballerias of sugar cane were taken on July 19, 1965, and that the two caballerias which included claimant's residence, were taken on December 20, 1967, all pursuant to the provisions of the Agrarian Reform Law.

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 record includes, in support of the claimed values the aforementioned affidavits and document dated August 18, 1956, and claimant's certified statement that the mortgages on the farm were fully paid and that in 1958 she had been offered \$80,000.00 for the farm. It also includes a description of the residence as a one-year-old, one-story home containing five bedrooms, two bathrooms with electric generator and artesian well.

On the basis of the entire record, including evidence available to the Commission as to the value of similar properties, the Commission finds that on the respective dates of loss the 14 caballerias of leased farm land had a value of \$28,000.00, that the five caballerias of sugar cane had a value of \$35,000.00 and that the two caballerias including the residence and mines, had a value of \$23,000.00.

Finca Buena Vista

The record establishes that claimant inherited about 15 caballerias of this farm upon the death of her brother in 1959. The Commission finds in

the absence of evidence to the contrary, that it was taken on October 15, 1962 pursuant the Agrarian Reform Law.

Claimant states that her portion of the farm comprised 10 caballerias which had been 60% planted with "Pangola" grass for cattle and included three windmills; and 5 caballerias of pine tree forest. Claimant asserts that the aggregate value of this property was \$60,000.00. Based upon the entire record, as well as information available to the Commission regarding the value of similar properties in Cuba, the Commission finds that the asserted value is fair and reasonable and concludes that on October 15, 1962, the date of loss, the value of this property was \$60,000.00.

Household Furnishings

In claimant's original claim she valued the loss of her furniture, refrigerator and other household items at \$1,500.00. Subsequently she submitted a list which includes the date of purchase and purchase prices totalling \$4,530.00, and which includes an item of jewelry in the amount of \$1,950.00.

Based on the evidence of record, the Commission finds that the items of personalty on this list, with the exception of the jewelry, were taken on December 20, 1967, when the Government of Cuba took claimant's home, and that these items had an aggregate value, after appropriate depreciation, of \$1,500.00.

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) (1970).)

With regard to the jewelry, the Commission finds that there is insufficient evidence to support this portion of the claim, and it is therefore denied for failure of proof.

Although the claim for loss of two caballerias and a residence arose in December 1967, 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.)

The record indicates that upon the taking of her five caballerias of land on July 19, 1965, claimant was granted a pension of \$50.00 a month. However, the Commission holds that this was in lieu of compensation for the land and does not form a basis for an additional Certification of Loss.

Claimant's losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Finca Reduan		
14 caballerias	June 15, 1960	\$ 28,000.00
5 caballerias of sugar cane	July 19, 1965	35,000.00
2 caballerias and residence	December 20, 1967	23,000.00
Finca Buena Vista (15 caballerias)	October 15, 1962	60,000.00
Household furnishings	December 20, 1967	<u>1,500.00</u>
		\$147,500.00

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>
June 15, 1960	\$ 28,000.00
October 15, 1962	60,000.00
July 19, 1965	35,000.00
December 20, 1967	<u>24,500.00</u>
	\$147,500.00

CERTIFICATION OF LOSS

The Commission certifies that ELEANOR URRUTIA 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 One Hundred Forty-Seven Thousand Five Hundred Dollars (\$147,500.00) 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 Proposed
Decision of the Commission

22 JAN 1971


Lyle S. Gerlock, 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. 501.5(e) and (g), as amended (1970).)