

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

IN THE MATTER OF THE CLAIM OF

PEDRO I. ZAYAS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -4515

Decision No. CU 6086

Counsel for claimant:

Brown, Wood, Fuller, Caldwell
& Ivey
By Paul G. Bursick, Esq.

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 PEDRO I. ZAYAS, based upon certain losses which may have been sustained as a result of actions by the Government of Cuba since January 1, 1959. Subsequently, claimant formalized his claim by the execution of an official claim form. The claim, in the amount of \$41,276.00, is based upon the loss of certain 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.

Claimant asserts the following losses:

Lot at 2116-74 Street, Marianao, Havana, Cuba	\$ 4,860.00
Two-story house on the lot	16,960.00
Contents of the house	9,256.00
1956 automobile	2,700.00
75 shares of stock in P.I. Zayas Compania Mercantil, S.A.	<u>7,500.00</u>
Total	<u>\$41,276.00</u>

The evidence includes claimant's detailed affidavit of June 14, 1966, executed in Marianao, Cuba, affidavits from individuals based upon personal knowledge of the facts; a report from abroad; an appraisal, dated April 22, 1966, covering the improved real property; and a stock certificate.

On the basis of the entire record the Commission finds that claimant and his wife, a nonnational of the United States, each owned a 1/2 interest in the property herein pursuant to the community property laws of Cuba.

(See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No.

CU-0915.) No claim has been filed by or on behalf of claimant's spouse and she is ineligible pursuant to the express terms of Section 504 of the Act which provides as follows:

(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.

Improved Real Property

The Commission finds that claimant owned a 1/2 interest in a house and lot at 2116-74 Street, Marianao, Havana, Cuba. Claimant states that the improved real property was taken by Cuba on December 13, 1967, when he left Cuba.

On December 6, 1961, Cuba published Law 989 in its Official Gazette which effected a confiscation of all assets, real property, personal property and other property rights of persons who left Cuba. The Commission finds that this law applied to claimant who left Cuba on December 13, 1967. In the absence of evidence to the contrary, the Commission finds that the improved real property was taken by the Government of Cuba on December 13, 1967 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Although the claim 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.)

The evidence includes an appraisal of the improved real property prepared by three architects in Marianao, Cuba, on April 22, 1966, following a physical inspection of the property. Based upon that appraisal, the Commission finds that the value of the improved real property on December 13, 1967, the date of loss, was \$21,820.00, representing \$4,860.00 for the lot and \$16,960.00 for the house. Therefore, claimant's 1/2 interest therein had a value of \$10,910.00.

Contents of House and Automobile

The Commission finds that claimant owned a 1/2 interest in the furniture and furnishings situated in the house in Marianao, Havana, Cuba, as well as a 1/2 interest in an automobile situated on the premises. The

Commission further finds that the furniture, furnishings and the automobile were also taken by Cuba on December 13, 1967 pursuant to Law 989.

Claimant's affidavit of June 14, 1966, executed in Cuba, lists a number of items of furniture, an electric sewing machine, a 1957 television set, dishes, flatware, kitchenware and related electric equipment, such as washer, water heater, stove, mixer and fan, and a 1956 Ford automobile. The listing aggregates \$9,256.00 for the furniture and furnishings, and \$2,700.00 for the automobile, the amounts claimed herein. Examination of the listing, including 1956 and 1957 items, indicates that claimant's valuations were the original costs, no dates being shown for any of the other items on the list. Accordingly, the Commission suggested the submission of evidence indicating the approximate dates of acquisition and approximate cost of each item. In response, claimant stated in his affidavit of February 8, 1971 that the aggregate values appearing in his list represent the appraised values as of the date of his affidavit of June 14, 1966. However, claimant failed to set forth either the acquisition dates or approximate costs.

Claimant and his wife were married in 1943; and they purchased the improved real property in 1959. Some of the items on the list, such as the furniture, were subject to depreciation at the rate of 5% per year, and other items, such as the electric equipment, were subject to depreciation at the rate of 10% per year. The automobile was subject to a 15% per year depreciation rate. It appears therefore that the 1957 television and the 1956 automobile had little, if any, value on December 13, 1967, the date of loss.

On the basis of the entire record and in the absence of more persuasive evidence, the Commission finds that the 1957 television set and the 1956 automobile had an aggregate residual value of \$100.00 on the date of loss; and that the balance of the personal property, in the amount of \$8,656.00, should be depreciated by 50% to arrive at the value thereof on the date of

loss. The Commission therefore finds that the aggregate value of the furniture, furnishings and the automobile on December 13, 1967 was \$4,428.00. Claimant's 1/2 interest therein had a value of \$2,214.00.

Shares of Stock

The Commission finds that claimant owned a 1/2 interest in 75 shares of stock in P. I. Zayas Compania Mercantil, S.A. (Mercantil), a Cuban corporation which sold lamps and other electric equipment in Havana, Cuba.

On the basis of the evidence of record, the Commission finds that pursuant to Resolution No. 20975, Mercantil was taken by the Government of Cuba on April 9, 1964.

Since Mercantil was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Claimant asserts a loss of \$7,500.00 for the 75 shares of stock, based upon the par value thereof of \$100.00 per share. According to claimant's affidavit of June 14, 1966, the net worth of Mercantil as of December 31, 1963 was \$27,782.62. On the basis of the foregoing evidence, the Commission finds that the excess of Mercantil's assets over its liabilities on April 9, 1964, the date of loss, was \$27,782.62. Since the record shows that Mercantil had 154 shares of outstanding capital stock on the date of loss, the Commission finds that the value of each share was \$180.4066. Therefore, 75 shares had a value of \$13,530.50, and claimant's 1/2 interest therein had a value of \$6,765.25.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Improved real property	December 13, 1967	\$10,910.00
Furniture, furnishings and automobile	December 13, 1967	2,214.00
Shares of stock	April 9, 1964	<u>6,765.25</u>
	Total	<u>\$19,889.25</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 as follows:


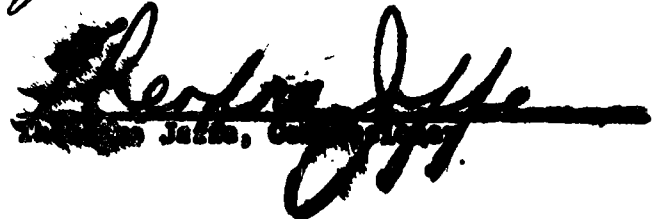
<u>From</u>	<u>On</u>
April 9, 1964	\$ 6,765.25
December 13, 1967	<u>13,124.00</u>
Total	<u>\$19,889.25</u>

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CERTIFICATION OF LOSS

The Commission certifies that PEDRO I. ZAYAS 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 Nineteen Thousand Eight Hundred Eighty-Nine Dollars Twenty-Five Cents (\$19,889.25) with interest 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

MAR 3 1971


Lyle S. Garlock, Chairman

Thomas G. Jaffe, Chairman

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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).)

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