

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

IN THE MATTER OF THE CLAIM OF

ANNA SZYDLER
and
MANUEL SCHYDLER

Claim No. CU -4683

Decision No. CU -5966

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered November 17, 1970;
No oral hearing requested.

Hearing on the record held on September 22, 1971.

FINAL DECISION

In its Proposed Decision the Commission issued a certification of loss based on some fifteen items of property to claimant ANNA SZYDLER in the amount of \$96,935.99 and to her son, claimant MANUEL SCHYDLER, in the amount of \$20,734.79. A part of the claim, in the amount of \$15,580.00. based upon a paid-up life insurance policy on the life of Leibush Shydler, the husband and father of the claimants herein, was denied for claimants' failure to establish that the proceeds of the life insurance policy were taken by the Government of Cuba.

Claimants objected solely to the Proposed Decision's denial relating to the insurance proceeds. In support thereof they submitted a letter from the Legal Department of the Pan-American Life Insurance Company of New Orleans, dated January 5, 1960, in which it is recited that on October 26, 1960 the Cuban Government seized the Cuban assets and liabilities of said insurance company. Included in which was the reserve existing under the instant policy which had been invested in Cuba by the company. Accordingly, claimants state that the taking of the property has been established.

The entire record having been reviewed, the Commission finds as follows.

Policy No. 435-381 of the Pan American Life Insurance Company on the life of Leibush Shydlower Perelmuter matured on June 1, 1959. By Agreement of Settlement dated July 7, 1959 the insured left with the Company the net product of the policy amounting to 15,580.00 pesos, as a deposit with interest. The Company agreed to pay interest at 3% per annum to the insured, or upon his death to pay the total proceeds to the named beneficiary (his wife, or upon her prior decease, his son). This deposit was invested by the Company, in Cuba. The Commission has found in the Claim of Pan-American Life Insurance Company (Claim No. CU-3651) that properties such as this reserve were taken by the Government of Cuba on October 24, 1960. The insured, a Cuban national, died on September 1, 1966.

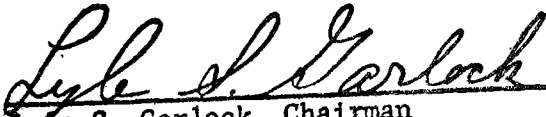
For the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter by a national or nationals of the United States to the date of filing with the Commission. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].)


From the foregoing it is clear that neither of these claimants had a possible interest in this subject property until decedent's death on September 1, 1966. This property was taken during decedent's lifetime. Accordingly, at the time of loss this property was not owned by a national of the United States as required by the statute.

The Commission concludes that for the foregoing reasons the loss herein is not certifiable under the Act. The Proposed Decision as amended herein will be entered as the Final Decision on this claim.

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

SEP 22 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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IN THE MATTER OF THE CLAIM OF

ANNA SZYDLOWER
and
MANUEL SCHYDLOWER

Claim No. CU-4683

Decision No. CU 5966

**Under the International Claims Settlement
Act of 1949, as amended**

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 ANNA SZYDLOWER while absent from continental United States. Subsequent to her return, she adopted this action and presented details of a claim in the amended amount of \$221,037.50, based upon the asserted ownership and loss of interests in real and personal property in Cuba. ANNA SZYDLOWER has been a national of the United States since her naturalization on January 25, 1933. Her son, MANUEL SCHYDLOWER, a national of the United States since birth, having an interest in some items subject of this claim, has been added as claimant.

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.

The property losses subject of this claim have been described as follows,
the peso being equivalent to the dollar:

1. Land comprised of 107.3616 hectares in Banes, Oriente	\$ 12,000.00
2. Lot of 1,276 square vara, in Bacuranao, Guanabacoa	6,000.00
3. Building and lot, General Marrero Street, the lot being 624 square meters and the building 23 by 24 meters	15,000.00
Mortgage credits on property in Banes:	
4. 20,000 pesos, on land in Deed 30	20,000.00
5. 21,000 dollars on land in Deed 79	21,000.00
6. 15,000 pesos on land in Deed 194	15,000.00
7. 5,500 pesos on land in Deed 195	5,500.00
8. 5,000 pesos on land in Deed 179	5,000.00
9. 2,000 pesos on land in Deed 106	2,000.00
10. Bank account established under Law 963 of August 4, 1961 and lost under Law 964 of August 9, 1961	25,897.00
11. Savings Account 23,381, National Bank of Cuba, balance on June 24, 1966	19,400.00
12. Savings Account 11,507, National Bank of Cuba, balance on June 21, 1966	18,400.00
13. Special account, National Bank of Cuba, balance on July 1, 1966	3,100.00
14. Uncashed checks (1958-1960), total	7,030.50
15. Participation in "Raul Alvarez y Cia. S. en C."	12,000.00
16. 1957 Oldsmobile	3,500.00
17. Furniture and furnishings	14,630.00
18. Paid-up life insurance policy on life of Leibush Szydlower	<u>15,580.00</u>
	\$221,037.50

The record includes deeds of land, deeds of mortgages, official correspondence, reports from abroad and claimant ANNA SZYDLLOWER's affidavit concerning the losses.

On the basis of the record, the Commission finds that ANNA SZYDLLOWER and Leib Szydlower, pursuant to the community property law of Cuba, owned

equal interests in the property subject of the claim. Leib Szydlower, a Cuban national, died on September 1, 1966. ANNA SZYDLLOWER returned to the United States on June 5, 1968.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). Moreover, Article 30 provided for the cancellation of mortgages.

Based on the foregoing and evidence of record, the Commission finds that the properties in Items 3 through 9 above were taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) This is so even though the property on Marrero Street may have remained in possession of claimant ANNA SZYDLLOWER for a period of time thereafter. (See Claim of Manuela H. Skinner, et al., Claims Nos. CU-1686 and CU-4448,.)

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who left Cuba. The Commission finds, in the absence of evidence to the contrary, that the subject real properties in Items 1 and 2 above, were taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

On the basis of the record, including claimant ANNA SZYDLLOWER's affidavit, the Commission finds that ANNA SZYDLLOWER and her spouse were required by Law 963 of August 4, 1961, to turn in 35,897 pesos, old currency, in

exchange for new currency. 10,000 pesos were made available and the remainder of 25,897 were placed in a special deposit. (See Claim of Betty G. Boyle, Claim No. CU-3473.) Law 964 of August 9, 1961, transferred such special deposits to the Cuban Treasury, and the Commission finds that this account was taken at that time. (See Claim of Dorothy G. O'Kieffe, Claim No. CU-1242.)

The Commission further finds that ANNA SZYDLOWER and her spouse owned a participation interest in "Raul Alvarez & Cia. S. en C.", which was dealing in textiles, silk, and the like. The Commission further finds that this entity, established in Cuba, was within the scope of Cuban Law 1076, of December 5, 1962, and in the absence of evidence to the contrary, finds that it was taken by the Government of Cuba on that date.

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 question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The Commission finds on the basis of the record that the properties in Items 1 and 2 had a total value of \$18,000.00; that the building property had a value of \$15,000.00; the mortgage credits had a value of \$63,750.00 (mortgage No. 79 having been reduced by \$4,000.00 on June 7, 1957 and mortgage No. 106 having been reduced by \$750.00 on December 17, 1953); the aforesaid special account had a value of \$25,897.00; and based on a

financial statement of February 13, 1959, the nearest available record to the date of loss, the participation interest in Raul Alvarez & Cia. had a value of \$10,825.57.

Inasmuch as Leib Szydlower was not a national of the United States, so much of the claim as may be based on losses sustained by him are not within the scope of the Act and are accordingly denied.

Claimant ANNA SZYDLOWER's individual community property interests in the aforesaid items are as follows:

	<u>Date of Loss</u>	<u>Amount</u>
Items 1 and 2	December 6, 1961	\$ 9,000.00
Items 3 through 9	October 14, 1960	39,375.00
Item 10	August 9, 1961	12,948.50
Item 15	December 5, 1962	<u>5,412.79</u>
		\$66,736.29

Claimant ANNA SZYDLOWER also owned one-half interests in Items 11, 12, 13, 16 and 17. The Commission finds that these properties were taken on or about January 5, 1967, although ANNA SZYDLOWER may have remained in possession of some of them for a time thereafter. (See Skinner, supra.) Inasmuch as Leib Szydlower died prior to the date of loss, his one-half interest in the properties passed in one-half (one-quarter of the entire property) to his son MANUEL SCHYDLOWER and the other half to his widow for her life with the remainder to his son.

The Commission finds the values of these items on January 5, 1967 to have been as follows:

Items 11, 12, 13	\$40,900.00
Item 16	350.00
Item 17 (subject to depreciation of 5% per year, except for antiques)	<u>9,684.50</u>
	\$50,934.50

The value of ANNA SZYDLER's one-half interest is \$25,467.25 and the value of MANUEL SCHYDLER's one-fourth interest is \$12,733.63.

Accordingly, the remaining one-fourth interest in these last named items, or \$12,733.62, was subject to a life estate in favor of ANNA SZYDLER, with remainder to MANUEL SCHYDLER. According to evidence of record, ANNA SZYDLER was 62 years old on her birthday nearest to January 5, 1967. The value of her life estate and the remainder interest must be determined.

The Commission has adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F. R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, a life estate in property so encumbered is valued at .37165 of the entire estate, and the remainder interest is valued at .62835 of the entire estate. Therefore, since the value of the property in question is \$12,733.62, the life estate is valued at \$4,732.45 which is .37165 of that amount and the remainder is valued at \$8,001.17 which is .62835 of that amount.

Claim has also been made for the value of a paid-up life insurance policy issued by the Pan-American Life Insurance Company of New Orleans, Louisiana with the proceeds being kept by the Company under an agreement to pay interest of 3% per annum to the insured, Leib Szydlower, or upon his death to pay the total proceeds to the named beneficiary. However, the record does not disclose that the Government of Cuba has taken this property, and accordingly, this item of the claim is denied.

The claim also includes an assertion of loss resulting from several checks made payable to Leib Szydlower. The checks were dated in 1958, 1959 and 1960 and there is no evidence of record that any loss suffered by reason of these checks resulted from actions of the Government of Cuba. The portion of the claim based upon the checks is therefore denied.

RECAPITULATION

The claimants' losses within the scope of Title V of the Act are summarized as follows:

<u>Items</u>	<u>Date of Loss</u>	<u>Value</u>
ANNA SZYDLER		
Items 1 and 2	December 6, 1961	\$ 9,000.00
Items 3 through 9	October 14, 1960	39,375.00
Item 10	August 9, 1961	12,948.50
Item 15	December 5, 1962	5,412.79
Items 11, 12, 13, 16 and 17	January 5, 1967	25,467.25
Life Estate in \$12,733.62	January 5, 1967	<u>4,732.45</u>
		\$96,935.99
MANUEL SCHYDLER		
Items 11, 12, 13, 16 and 17	January 5, 1967	\$12,733.62
Remainder in \$12,733.62	January 5, 1967	<u>8,001.17</u>
		\$20,734.79

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.

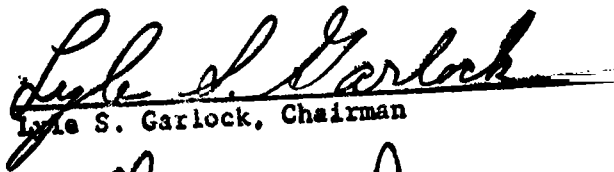
CERTIFICATIONS OF LOSS

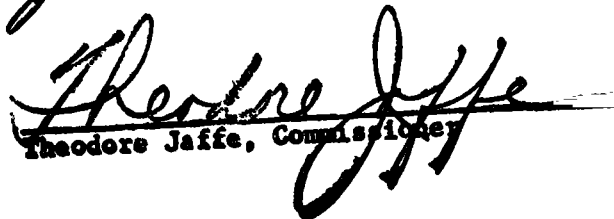
The Commission certifies that ANNA SZYDLER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Ninety-six Thousand Nine Hundred Thirty-five Dollars and Ninety-nine Cents (\$96,935.99) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement; and

The Commission certifies that MANUEL SCHYDLOWER 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 Twenty Thousand Seven Hundred Thirty-four Dollars and Seventy-nine Cents (~~\$20,734.79~~) with interest at 6% per annum from January 5, 1967 to the date of settlement.

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

NOV 17 1970


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, 32 Fed. Reg. 412-13 (1967).)