

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

IN THE MATTER OF THE CLAIM OF

ROBERT L. WARREN
LILLIAN O. WARREN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 8809

Decision No. CU - 6826

Counsel for claimant:

F. Willard Griffith, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented on January 26, 1972 by ROBERT L. WARREN, based on his asserted loss of machinery and equipment in Cuba, and certain checks. 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.

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 Commission's Regulations provide that claims under Title V of the Act (Cuban claim) shall be filed with the Commission on or before May 1, 1967 (FCSC Reg., 45 C.F.R. Sec. 531.1(d) (1969); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period (Reg., Sec. 531.1(g)).

No claim was filed with this Commission by or on behalf of claimants within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication, within such period, concerning his asserted loss. The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline (see Claim of John Korenda, Claim No. CU-8255); and claims for losses sustained subsequent to the deadline (see Claim of Vivian Morales, Claim No. CU-8739) so long as the consideration thereof does not impede determination of those claims timely filed, or claims for losses which arose prior to the close of the filing period.

Machinery and Equipment

The record indicates that claimant ROBERT L. WARREN was resident in Cuba from 1928 to 1951. During this time he states that he owned and operated Empacadora Magnolia, a small meat packing plant at Calzada de Luyano, Luyano, Havana. Further, he states that he also bought and imported from the United States some equipment and machinery for resale. When he left Cuba in 1951 he sold Empacadora Magnolia to one T. M. Bernardo, an

employee, but retained title to certain new equipment which he had imported for re-sale, and this equipment had remained in the plant. He has also stated that the equipment was purchased between 1947 and 1948. He returned to Cuba in 1959 but was unable to liquidate his investment.

Claimant contends that the machinery and equipment was discovered and taken by the Government of Cuba on December 15, 1968. However, the record includes a statement by T. M. Bernardo, which he reduced to writing in Havana on December 15, 1968. He describes the contents as a report of equipment and machinery, property of claimant ROBERT L. WARREN, that was found deposited in Empacadora Magnolia, "which were declared of public utility by the Resolution 1-432, of October 16, 1963" issued by the National Institute of Agrarian Reform (INRA). He lists the items totaling \$32,636 in asserted value and adds that an item valued at \$1,400 was sold to Ricardo Blanco, of Empacadora Rio Mar, and another item valued at \$800 was sold to Rene Nunez Beatle, owner of Empacadora Ultramar, which were "also" intervened by INRA, and that these debts were owing to claimant.

Pursuant to the community property law of Cuba, spouses have equal interests in property acquired during coverture, except for property inherited or that acquired by gift. Accordingly, LILLIAN O. WARREN, having an interest in the subject property, has been added as claimant herein.

On the basis of the foregoing, the Commission finds that claimants owned certain machinery and equipment located in the plant of Empacadora Magnolia, and that this property was intervened by the Government of Cuba on October 16, 1963. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33) It is irrelevant to the issue whether the property may have been physically removed from the premises at a later date. Further, the Commission finds that claimants were owed two debts by enterprises which were also intervened on October 16, 1963, and that claimants suffered a loss within the meaning of Title V of the Act.

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 that the machinery and equipment to which title had been retained, purchased in 1947 and 1948, had a total initial cost value of \$32,636. However, such property is subject to depreciation at the rate of 5 per cent a year. The Commission finds, however, that the valuation most appropriate to the property and equitable to the claimants is the result obtained by reducing the figure by 50 per cent. Accordingly, the Commission finds that the value of the equipment on October 16, 1963, the date of loss, was \$18,518. As stated above, two other items had been sold, the purchasing enterprises had been intervened, and the claimants were owed debts therefor in a total amount of \$2,200. Accordingly the total loss suffered as of October 16, 1963 was \$20,718 or \$10,359 to each claimant.

Currency

Claimant has presented photocopies of four checks dated November 9, 1959, each for \$500 drawn on the Banco Hipotecario Mendoza by Mary L. Thompson, in his favor. He states that this amount of \$2,000 represented cash which he removed from his account in the Royal Bank of Canada and exchanged for checks with Mary Grossman Thompson, owner of Argonaut Travel Agency in Havana. The money was to be used later for payment of airline passage tickets to be issued to company employees traveling in Latin America and for which claimant expected to be reimbursed by the company operating in Latin America. However, the issuance of airline passage

tickets was later prohibited, he states, and persons leaving Cuba were precluded from taking dollars with them. Thus, claimant states that he was never able to cash the checks, he does not know when the Mary G. Thompson bank account was taken, nor when the Argonaut Travel Agency may have been expropriated. He indicates that Argonaut Travel Agency and Argonaut Trading Company were the same entity, and owned by Mary L. Thompson de Grossman, submitting in support a cancelled check to Argonaut Trading Company endorsed for deposit in the current account of said Mary L. Thompson de Grossman.

The Commission has considered the record in this matter, noting that whereas claimants discussed the machinery loss with Internal Revenue Service, no mention of the currency or check loss was made in the copies of documentation submitted. However, assuming that Mary L. Thompson had maintained an account in the said bank, there is no evidence of record that this account existed at a time when she may have left Cuba, or that it was not subject to diminution by bank charges, as has been the case.

The Commission finds no evidence of record that the Government of Cuba has taken any action with respect to these checks resulting in a loss to claimants, and accordingly this item of claim is denied.

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 ROBERT L. WARREN 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 Ten Thousand Three Hundred Fifty-Nine Dollars (\$10,359) with interest at 6% per annum from October 16, 1963 to the date of settlement; and

The Commission certifies that LILLIAN O. WARREN 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 Ten Thousand Three Hundred Fifty-Nine Dollars (\$10,359) with interest at 6% per annum from October 16, 1963 to the date of settlement.

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

88 APR 1972

BY ORDER OF THE COMMISSION


Lyle S. Gazlock, Chairman

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).)

CU-8809