

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

IN THE MATTER OF THE CLAIM OF

JOSE A. GOMEZ

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

Claim No. CU - 8814

Decision No. CU - 6830

Counsel for claimant:

Rufus King, Esq.

FINAL DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented on April 24, 1972, by JOSE A. GOMEZ in the amended amount of \$1,213,001, based upon the asserted ownership and loss of real and personal property interests in Cuba. Claimant has been a national of the United States at all times pertinent to this claim.

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 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 claimant 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) 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. This is such a claim.

Claimant has described his claim as follows:

1.	1/3 interest in land and buildings of Inmobiliaria Jocesal:	\$318,334.00
2.	Land and buildings of Milprint Headquarters - 3/4:	150,000.00
3.	1,000 shares of Tropical Brewery (held by Jocesal) - 1/3:	166,667.00
4.	Milprint Converting Group Value, (less land of \$200,000) \$825,000 - 3/4:	450,000.00 (sic)
5.	Other real property:	
	Barlovento Marina lot (1/2 paid)	5,000.00
	Beach lot in Playa Veneciana	20,000.00
	2 lots at Country Club, 1/2:	30,000.00
6.	Second floor construction with air conditioning and furnishings	35,000.00
7.	Silver and clothing	10,000.00
8.	Gun collection	5,000.00
9.	Automobiles and speedboat	13,000.00
10.	Membership shares in Country Club, Havana Biltmore Yacht & Country Club, and La Torre	6,000.00

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Pursuant to the community property law of Cuba, property purchased or acquired during coverture, other than inherited property, is owned in equal parts by the spouses. Claimant's spouse is not a national of the United States and any interest she may have is not certifiable under the Act.

The Commission finds that claimant owned certain property interests in Cuba, further described below, taken by the Government of Cuba on the dates set out below.

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.

I. 1/3 Interest in "Jocesal"

The record discloses that certain properties in Cuba, further described below, originally belonged to one Jose Alvarez Riuz, grandfather of claimant. Upon his death in 1951, the properties were inherited by his two daughters. They were appraised in 1952 and the portion accruing to Celia Maria Martinez was placed in a holding company "Jocesal." The name had been formed from the initials of the three children of Celia Maria Martinez (mother of the claimant) who had been divorced from Salvador Gomez (Sr.) in about 1949, and remarried. Ownership of the company was given to the three children, equally, the mother retaining however, a life estate.

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 the country. The Commission finds that claimant's property interests in "Jocesal," 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]).

Claimant's sister Celita Gomez de Estevez also had an interest in "Jocesal"

and made claim therefor in Claim No. CU-2792. Evidence submitted in that claim will be considered here.

The record before the Commission includes a Financial Statement for Inmobiliaria Jocesal, C.A., reconstructed in 1972, as of December 31, 1958, which reflects the following:

1. Building at Obispo St., No. 1	\$ 100,000
2. Six houses in Buen Retiro in Marianao, near Columbia Barracks	90,000
3. Building at Infanta & Principe Sts.	170,000
4. Building at Principe No. 47	120,000
5. Building at San Jose No. 120	100,000
6. Building named Jose Antonio near Marti's Monument	125,000
7. Farm Josefina, later called Granja Azul	<u>250,000</u>
	\$ 955,000
8. 1,000 shares of Tropical Brewery, par \$100, market \$500 each	<u>500,000</u>
	\$1,455,000

These properties were discussed in detail with Salvador Gomez (Sr.) on the occasion of a visit to the offices of the Commission, and who stated that the values in the Statement are those set by the appraiser at the time of dividing the properties in about 1952. The Commission finds that any accounts receivable and accounts payable of "Jocesal" would balance out, and the Commission also finds that the improvements on the properties should be subjected to 2 per cent depreciation annually from 1952 to about 1960, whereas subsequent to that time depreciation and appreciation would be about equivalent. Accordingly, the Commission affirms its finding in Claim No. CU-2792 that the properties, as further described below, had the values ascribed below, at the time of loss:

1. Building at Obispo St., No. 1: a large old warehouse, on a good site	
Land (1/2 total claimed value)	\$ 50,000
Building	42,000
2. Six houses in Buen Retiro: new, of brick, 1 family each	
Land (1/2 total claimed value)	45,000
Houses	37,800
3. Building at Infanta & Principe Sts.: large, old, 3-floor, used for distributorship	
Land (1/4 total claimed value)	42,500
Building	107,100
4. Building at Principe No. 47: built 1928, ground and 3 stories	
Land (1/5 total claimed value)	24,000
Building	80,640
5. Building at San Jose No. 120: This building once had three floors, but was razed, and efforts made to sell land:	
Land (1/4 the total claimed value)	25,000
6. Building called Jose Antonio: Built about 1949, 5 stories:	
Land (1/6 the total claimed value)	20,833
Building	87,500
7. Farm Granja Azul (site of claimant's poultry business)	
Land, about 500 acres	50,000
25-year old residence, of about ten rooms with all appointments (not including furnishings)	<u>75,000</u>
	\$687,373

As shown above, the Financial Statement for "Jocesal" also lists 1,000 shares of Tropical Brewery (Cerveceria Tropical, S.A.). It is said that these shares had a par value of \$100. Mr. Gomez (Sr.) has stated that this company was owned by a small group, of which Jose Alvarez Riuz (deceased) had been one, that it was owned mainly by Cubans, that it was the main distributor of beer, the largest in Cuba, and had 70 per cent of the market for beer in Cuba; that the company held large tracts in the city; had been in business for 100 years; paid big dividends; and further, that the holders of these shares never sold.

The Commission has found no mention of this company in its excerpts from the Cuban Official Gazette of nationalized enterprises, nor is it listed in several available commercial directories. Moreover, other than the above recitation, the record contains no probative evidence upon which the Commission could make a finding of value. Clearly, par value or investment value is no measure of value as of the date of taking (See Claim of Warren and Arthur Smadbeck, Claim No. CU-2465). Similarly, the asserted market value of stock may bear little relation to the real value as it might be affected by many things, including the progress of Castro in Cuba.

On the basis of the record before it, the Commission is constrained to deny so much of the claim as based on an interest in the Tropical Brewery.

Accordingly, the Commission finds that the value of a one-third interest in "Jocesa1" on December 6, 1961, was \$229,124.33. However, as stated above, this was encumbered by a life estate in favor of claimant's mother, who was 58 years old on the date of loss.

With respect to the values of life estates the Commission has adopted the Makehamized mortality table used by the United States Treasury Department in connection with the collection of gift and estate taxes. (See Claim of Richard Franchi Alfaro and Anna Alfaro, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71). Pursuant to that method of valuation a life estate in property of a person 58 years old is valued at .42191 of the estate. Since the one-third interest had a value of \$229,124.33, the value of the life estate was \$96,669.85 and the value of claimant's interest was \$132,454.48, on the date of loss. Claimant's spouse has no interest in this property.

II. Milprint Converting Group

Claimant's father-in-law, Rafael Oriol, described as the former treasurer of this group of companies, stated that in 1956, the United States parent

company was bought out and claimant became the 75% owner of these Cuban companies. They have been described by claimant as follows:

- a. Envolturas Milprint de Cuba, S.A. - Holding Company
 - Land and building \$200,000
 - Printing & Converting equipment 300,000
 - Inventories 150,000
- b. Empaques Celloprint, S.A., Sales Operating Company - with sales in 1957 and 1958 over 1,000,000; Cuba's second printing outfit 100,000
- c. Equipos Convertidores, S.A. - Packaging machines built and leased, both either imported and contracted locally 50,000
- d. Extrusora Lerol, S.A., Plastic Division producer with extruding equipment and converting equipment 150,000
- e. Papeles Transparents, S.A., - Sales of packaging material, pulp trays, etc., for food marketing, cellophane tubing for cigars, etc., 25,000
- f. Papelera Gomeco, S.A. - Paper bags and envelopes for food products and derivates 50,000

Further, claimant has stated that considering the increased value of commodities, the above group should be worth from three to four times more after the thirteen years elapsed from 1959 to 1971.

The records of the Commission disclose that Empaques Celloprint was listed as nationalized on July 7, 1961, and Extrusora Lerol was nationalized on June 29, 1961. Specific record of nationalization of the other entities was not found.

With respect to Envolturos Milprint, the record before the Commission discloses that claimant's father, Salvador Gomez, owned a debt claim against this company which is included in his claim No. CU-2791. Moreover with respect to Empaques Celloprint, the Commission's records disclose that this company owed debts totalling \$23,006.80 to E.I. du Pont de Nemours & Company, which has been considered in its Claim No. CU-2371.

Claimant has submitted the statement of Eduardo Benet, now a United States citizen, who was engaged in the banking business in Cuba, as well as here. He has stated that during his four years with Banco Continental Cubano in Havana, the bank did a sizable business with the Milprint group of companies; that the relationship included the extension of credit up to \$250,000, such borrowings having always been liquidated satisfactorily; further, he states his opinion that based on the line of credit placed at the disposal of the group, the tangible resources of Envolturas Milprint de Cuba, S.A., must have been well in excess of \$500,000.

Additionally claimant has submitted the statement of H. Villa, General Manager of Du Pont de Venezuela, C.A., who declares that Envolturas and Empaques were among the best customers of du Pont of Delaware, working with a rotating credit line over \$100,000; and that Extrusora was a satisfactory account.

However, apart from the above statements there is no tangible evidence to support the asserted values of this group of companies and which would enable the Commission to make findings other than conjectural. Claimant did expect to submit a statement from his auditor, but this has not been received.

Claimant states in his letter of May 30, 1972, to the Commission that it is difficult after 12 years to reconstruct these financial matters. Although in another statement of February 23, 1972, claimant stated he learned in 1967 he might have United States citizenship, it is not clear why he did not attempt to establish this point and assert claim until late 1971. He also said he and his family were not aware of the Commission's functions, yet his father and sister filed their claims in May, 1967.

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).)

In the absence of probative evidence concerning the Milprint group, the Commission is constrained to and does deny this part of the claim.

III. Real Property

As stated above claim has been asserted for interests in lots of land at Barlovento Marina, in Playa Veneciana subdivision, and in the Country Club area. The Commission made appropriate suggestions as to evidence to be submitted in support of such items of claim in its letter of April 27, 1972, and even prior to that under date of December 9, 1971. However, no evidence has been submitted to substantiate these items of claim, and accordingly the Commission is constrained to and does deny these parts of the claim.

IV. Personalty

Claimant has included in his claim for personal property a 1957 Fleetwood Cadillac and a 1958 Century Buick. The Commission finds that he owned a one-half interest in these vehicles, that they were taken by the Government of Cuba on December 6, 1961, and further finds, after consulting the 1961 Guide of the National Automobile Dealers Association, that these vehicles had values of \$2,750 and \$1,295 respectively on the date of loss and concludes that claimant suffered a loss of \$2,022.50 in this respect.

Also included in the claim for personalty, were second floor construction with air conditioning and furniture, silver and clothing, a gun collection and a speedboat. However the record in these matters is not supported by any evidence and the Commission could make no finding which would be other than conjectural. Accordingly, these items of claim are denied.

V. Membership Shares

The Commission finds that claimant owned a one-half interest in a membership share in the Havana Country Club, in the Inmobiliaria La Torre, S.A., and in the Havana Biltmore Yacht and Country Club. The Commission further finds that claimant's interest in the first two clubs was taken on December 6, 1961 and that his interest in the last-named club was lost on March 19, 1960 when it was intervened by the Government of Cuba.

Such membership interests did not include an ownership interest in the property of the Clubs, but constituted a right to use the Clubs' facilities, and that this also constituted property within the meaning of the Act, upon loss of which claimant suffered a loss within the scope of Title V of the Act.

The Commission has found that the value of these membership shares was \$1,000 each (See the Claim of Robert J. Macaulay, et al, Claim No. CU-0311). Accordingly, the Commission finds that claimant suffered a loss of \$1,500 on the aforesaid dates.

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:

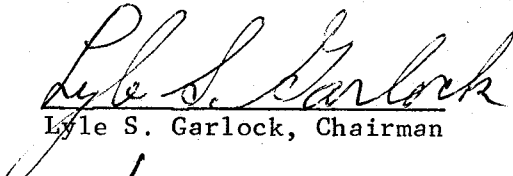
<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
"Jocesal"	December 6, 1961	\$132,454.48
Automobiles	December 6, 1961	2,022.50
Membership shares:		
Country Club	December 6, 1961	500.00
La Torre	December 6, 1961	500.00
Havana Biltmore	March 19, 1960	500.00
		<u>\$135,976.98</u>

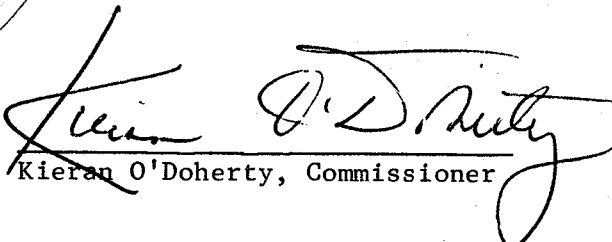
CERTIFICATION OF LOSS

The Commission certifies that JOSE A. GOMEZ 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 Thirty-Five Thousand Nine Hundred Seventy-Six Dollars and Ninety-Eight Cents (\$135,976.98) 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 Final
Decision of the Commission

JUN 30 1972
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Lyle S. Garlock, Chairman


Kieran O'Doherty, Commissioner