

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

IN THE MATTER OF THE CLAIM OF

JOHN M. SUNDHEIMER
PAULINE E. SUNDHEIMER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0030

Decision No. CU-
3939

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$18,739.00, was presented by JOHN M. SUNDHEIMER and PAULINE E. SUNDHEIMER based upon the asserted loss of a mortgage interest in real property, certain personal property and an amount due claimants under a promissory note executed in July 1960. Claimants have been nationals 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.

Claimants herein have asserted the ownership and loss of the following items in this claim:

1. An unpaid indebtedness of \$6,250.00 arising from a loan made by claimants to Antonio and Margaret Gutierrez, as evidenced by an unsecured promissory note executed by the debtors on July 30, 1960;
2. A mortgage interest of \$7,000.00 given to claimants by Ramon Medina Y Arena, registered in 1960 in the land office of Camaguey as mortgage #102, with property known as Finquita de Recree, Santa Gertrudis, as the security for such mortgage obligation; and
3. Personal property, including household furnishings, cattle and farming equipment, located at the aforesaid property in Camaguey and valued by the claimants in the amount of \$5,489.00.

With respect to the indebtedness of \$6,250.00, as evidenced by the promissory note executed on July 30, 1960, the claimants advised that such funds were utilized by the debtors in farming improvements and their farm was subsequently nationalized by the Government of Cuba. The evidence of record indicates, however, that the promissory note made no reference to property as security therein and such debt could not be a charge on property which was nationalized or otherwise taken by the Government of Cuba, within the purview of Section 502(3) of the Act, supra. Accordingly, the Commission is constrained to deny this portion of the claim and it is hereby denied.

The evidence establishes and the Commission finds that claimants jointly owned, pursuant to the community property laws of Cuba, a mortgage interest in property in Camaguey, Cuba, as described above; and that they also jointly owned personal property located on this ranching property. The evidence also establishes that the claimants and the purchasers of the property, who executed the mortgage in favor of claimants herein, were forced to leave Cuba in 1961 due to the political developments in that country.

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected the confiscation of all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left Cuba. The Commission finds that this law applied to claimants who had left Cuba prior to that date, and concludes that claimants' property interests were taken by the Government of Cuba on December 6, 1961, pursuant to Law 989, as a result of which claimants sustained the loss of their mortgage interest and personal property within the meaning of Title V of the Act. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

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 taken into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market 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 consider.

The amount of the mortgage interest was established by a copy of the mortgage and other documentation from Cuba which established that claimants held such mortgage interest against real property

registered in book 483, folio 228, property registry of Camaguey, Cuba; and the outstanding amount due claimants was \$7,000.00.

Claimants have asserted losses of furniture, other household furnishings, cattle and farming equipment, which were located at the aforesaid real property in Camaguey, Cuba. The record includes statements from claimants, containing a complete detailed listing and description of all items of personalty thus claimed, aggregating the sum of \$5,489.00. Additionally, claimants have submitted the affidavits of two persons who were former residents of Cuba with personal knowledge of the ownership and value of the personal property in question. An examination of the detailed listing and description of the property indicates that the list included 34 head of cattle, extensive farming equipment and household furnishings. Upon consideration of the entire record, the Commission finds that the aggregate value asserted in the claim is fair and reasonable. The Commission, therefore, finds that the value of such personal property on December 6, 1961, the date of loss, was \$5,489.00.

The Commission concludes that claimants jointly sustained a total loss of \$12,489.00 within the meaning of Title V of the Act for loss of the mortgage interest, as well as personal property located on such property, located in Camaguey, Cuba.

The Commission has decided that in certifications of losses 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.

CERTIFICATION OF LOSS

The Commission certifies that JOHN M. SUNDHEIMER and PAULINE E. SUNDHEIMER 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 Twelve Thousand Four Hundred Eighty-Nine Dollars (\$12,489.00) with interest thereon at 6% per annum from December 6, 1961, the date of loss, to the date of settlement.

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

OCT 1 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)