

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

IN THE MATTER OF THE CLAIM OF

JOSEPHINE WILKINSON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0046

Decision No. CU 5408

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$33,066.61, was presented by JOSEPHINE WILKINSON based upon the asserted loss of certain real 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.

The record includes a copy of a Deed of Donation, dated March 14, 1953, executed by claimant's mother and filed with the land register authorities in Santiago de Cuba, Oriente Province, Cuba. On the basis of the foregoing, the Commission finds that claimant acquired on March 14, 1953: (a) certain land known as Lot Number Two of the Cardona farm in San Luis, Oriente, Cuba; (b) a 1/4 interest in a house and lot at 101 Diego Palacios Street, Santiago de Cuba; and (c) an interest equivalent to 7.2 caballerias of land (a caballeria having an area of 33.162 acres), representing an interest in property known as Santa Maria and San Prudencio in Caney, Oriente, Cuba. Although claimant's mother, a national of the United States at all pertinent times, retained a life estate in the property, this interest terminated on the death of claimant's mother on July 25, 1961 prior to the date of loss. It further appears from the evidence of record that claimant had acquired, in 1925 upon the death of her father, a 1/10 interest in the improved property at Santiago de Cuba, referred to as item (b) above. Accordingly, claimant's interest in that item of property was 7/20.

In a letter to the Commission, dated July 5, 1966, claimant stated that she did not know the date when her property was taken, but that her mother and other members of her immediate family, who owned interests in real properties in the same area, had left Cuba in January 1961 when "all Americans were advised to leave the island." Claimant has submitted a copy of a letter, dated February 24, 1962, from a friend in Cuba in which he stated that in 1961 the Government of Cuba had taken the properties belonging to claimant and her family.

On December 6, 1961, the Cuban Government published Law 989, which effected confiscation of all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimant, and that her interests in the properties herein were taken by the Government of

Cuba on December 6, 1961 pursuant to Law 989. The Commission further finds that as a result of said action claimant sustained a loss of property within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [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 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 the "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.

On the basis of the said Deed of Donation, which sets forth valuations for all of the properties in question, the Commission finds that claimant's interests in the properties had the following values on December 6, 1961, the date of loss:

1. Lot Number Two of the Cardona farm in San Luis, the area of claimant's property being 6.270 caballerias	\$22,666.66
2. House and lot in Santiago de Cuba, claimant's interest therein being 7/20	5,600.00
3. Santa Maria and San Prudencio properties in Caney, claimant's interest being 7.2 caballerias	<u>4,799.95</u>
Total	<u>\$33,066.61</u>

The Commission has decided that in certification 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.

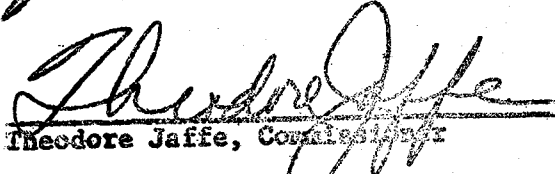
CERTIFICATION OF LOSS

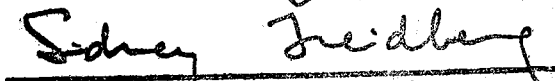
The Commission certifies that JOSEPHINE WILKINSON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-three Thousand Sixty-six Dollars and Sixty-one Cents (\$33,066.61) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

JUL 29 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)

CU-0046