

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

IN THE MATTER OF THE CLAIM OF

MAC GACHE

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0050

Decision No. CU 3908

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 \$2,925,251.16, was presented by MAC GACHE, based upon the asserted loss of certain real and personal 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 evidence includes statements and affidavits from claimant to the Department of State and the Commission; stock certificates; as well as a statement, dated August 21, 1961, from claimant's former Cuban counsel and Public Notary who participated in the transactions pursuant to which claimant acquired the properties in question and who caused claimant's ownership to be duly recorded with the appropriate Cuban authorities.

On the basis of all the evidence of record, the Commission finds that claimant owned the following items of property in Cuba:

1. A 100% interest in certain improved real and personal property, known as Hotel Kawama, at Varadero Beach, Cuba, including a main building, cottages and cabanas, which hotel was under lease to the Hotel Kawama Operating Company, S.A., a Cuban corporation wholly owned by claimant.
2. A debt due from Hotel Kawama Operating Company, S.A.
3. A 25% stock interest in a Cuban corporation, Inmobiliaria Gustileana, S.A., hereafter called Gustileana, which owned, in turn, certain real property in Vedado, a suburb of Havana.

4. A 100% stock interest in a Cuban corporation, Inmobiliaria Rodojo, S.A., hereafter called Rodojo, which owned, in turn, certain real property in Havana. Claimant's interest in Rodojo was owned indirectly through a wholly-owned Panamanian corporation, Gache Investment Corporation.

5. A debt due from Rodojo secured by the real property owned by Rodojo. Claimant's former Cuban attorney, who has personal knowledge of the facts, has stated in a letter to claimant, dated August 5, 1963, that the Hotel Kawama was intervened by the Cuban Labor Department "in the latter part of 1960" and that Rodojo's real property was taken by the Government of Cuba "during the first semester of 1960". In his affidavit of March 18, 1969, he added that the taking of Gustileana by Cuba is evidenced by an extraordinary edition of the Cuban Official Gazette, dated June 10, 1960, which he had examined.

Based upon the foregoing evidence and in the absence of evidence to the contrary, the Commission finds that Hotel Kawama was intervened by the Cuban Minister of Labor on October 15, 1960, and that claimant's ownership interests in Gustileana and Rodojo were taken by Cuba on June 10, 1960 and March 15, 1960, respectively. Consequently, claimant sustained losses within the meaning of Title V of the Act.

Since all of the corporations, mentioned above, were organized either under the laws of Cuba or Panama, none qualifies as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FGSC Ann. Rep. 33.)

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.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those set forth hereafter.

#### Hotel Kawama

The record shows that claimant acquired the hotel in 1954 at a cost of \$400,000.00 when it was subject to a mortgage of \$200,000.00. Subsequently, claimant improved the property by adding new cottages and improving the existing structures, at a further cost of \$150,000.00. Extracts from claimant's books and records, certified to be accurate by claimant's accountant, disclose that the mortgage was fully satisfied so that claimant owned the hotel free of any liens or encumbrances, including all the furniture, equipment and other personalty contained in the hotel.

Claimant states that he had received an offer of \$1,500,000.00 for his hotel, but had rejected it as inadequate. His statement and claim based on that amount is supported in the record by a single nondetailed letter made by the former President of the Real Estate Brokers Association of Havana. Claimant had failed, however, to furnish balance sheets or other supporting data and has failed to furnish a detailed breakdown of the real and personal property comprising the hotel. He has indicated in his reply of August 19, 1969 that no other evidence is available and that he would like the claim determined "on the basis of the material you now have in your file."

The Commission is well aware of the difficulty of securing certain types of evidence left in Cuba when claimants fled that country. Nevertheless, it must have reasonable evidence upon which to base an award. In the instant case it takes administrative notice of the fact that land values and tourist hotels did rise substantially in value after 1954 and until shortly prior to the take over by Castro. From this record, including the offer to purchase and the brochures available on the hotel, and considering the excellent location of the subject property and the inflationary rise of such hotels, it concludes and holds that the Kawama property had a net value of \$1,500,000.00 as claimed.

Debt From Hotel Kawama Operating Company, S.A.

It is asserted by claimant that his wholly-owned Kawama Operating Company, S.A., a Cuban corporation, owed him a debt of \$225,251.16.

Claimant's statements to the Department of State contain no reference to any such debt, nor is this asserted debt included in any of the communications from claimant's former Cuban attorney. In response to suggestions from the Commission for supporting evidence in this respect, claimant submitted an affidavit from his accountant accompanied by certified extracts from claimant's books and records. An examination of the extracts discloses that claimant paid debts of his Cuban corporation, which had leased his Hotel Kawama, in the amounts of \$70,000.00 on one occasion and \$25,000.00 on another, for a total of \$95,000.00.

On the basis of the entire record and in the absence of more persuasive evidence, the Commission finds that the Hotel Kawama Operating Company, S.A., which apparently was formed merely to operate the hotel through a corporation, was intervened by Cuba on October 15, 1960 when the hotel itself was intervened. The Commission further finds that on October 15, 1960, the date of loss, the Cuban corporation owed claimant a debt in the amount of \$95,000.00, and concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Inmobiliaria Gustileana, S.A.

As indicated above, claimant owned a 25% stock interest in Gustileana. The record shows that this Cuban corporation owned no assets other than certain real property in Vedado, a suburb of Havana.

Claimant now asserts that the total value of Gustileana was \$1,400,000.00 making his 25% stock loss \$350,000.00. The record shows that Gustileana purchased the real property on November 6, 1957 at a total cost of \$879,000.00 which included an encumbrance of \$439,000.00 which was still unpaid on June 10, 1960, the date of loss. An affidavit in the file dated January 28, 1969, secured from Cuban sources, shows the appraised value of this property was \$879,000.00. Claimant's original claim of June 15, 1965 asserts that his one-fourth interest cost him \$223,500.00 and was worth \$350,000.00 when confiscated. The property owned by Gustileana evidently consisted of several assembled parcels of land in the Vedado littoral and had a substantial value. Unfortunately, however, as in the case of the Kawama Hotel, there is no detailed or corroborative evidence to support the claimed value. Further, there is no long passage of time in which the Commission could find the property would have substantially increased in value. Here the property was acquired on November 6, 1957 and was confiscated on June 10, 1960, a period of approximately 2 years and 8 months. In the Kawama Hotel case the interval was approximately 7 years. Applying the same principle here as on the hotel the Commission finds that this property cost of \$879,000.00 increased in value approximately one-third as much as the Kawama property which we have held had appreciated about three times its original value in the 7 year period. This would place a gross value on Gustileana of less than double its original cost for a total value of \$1,172,000.00, and the Commission finds that is the fair gross value to be applied here.

As noted above, the Commission finds that the value of the property owned by Gustileana was \$1,172,000.00 on the date of loss, and that the property was then encumbered by a mortgage in the amount of \$439,400.00.

Accordingly, the Commission concludes that the net value of the property was \$732,600.00 and that claimant's 25% interest in Gustileana on the date of loss was \$183,150.00.

Inmobiliaria Rodojo, S.A.

The record discloses that the real property owned by Rodojo, its only asset, was acquired on October 17, 1955 at a cost of \$485,000.00, encumbered by a mortgage in favor of claimant in the amount of \$250,000.00. It further appears from the record that the mortgage in that amount encumbered the property on March 15, 1960, the date of loss.

Claimant has asserted a value of \$850,000.00, supported by a similar appraisal as in the hotel case. Based upon the foregoing reasoning and evidence, the Commission finds that the value of the real property was \$850,000.00 on the date of loss, and that the property was then encumbered by a mortgage in the amount of \$250,000.00. Accordingly, the Commission concludes that the net value of the property was \$600,000.00, and that claimant sustained a loss in that amount within the meaning of Title V of the Act.

Debt From Inmobiliaria Rodojo, S.A.

As stated above, Rodojo was indebted to claimant in the amount of \$250,000.00 on March 15, 1960, the date of loss. Accordingly, the Commission concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, supra.)

It also appears that claimant has asserted and the United States Internal Revenue Service has allowed an income tax deduction for claimant's losses.

Recapitulation

Claimant's losses may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Hotel Kawama	October 15, 1960	\$1,500,000.00
Debt from Hotel Kawama Operating Company, S.A.	October 15, 1960	95,000.00
Gustileana	June 10, 1960	183,150.00
Rodojo	March 15, 1960	600,000.00
Debt from Rodojo	March 15, 1960	<u>250,000.00</u>
	Total	<u>\$2,628,150.00</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 as follows:

<u>FROM</u>	<u>ON</u>
March 15, 1960	\$ 850,000.00
June 10, 1960	183,150.00
October 15, 1960	<u>1,595,000.00</u>
Total	<u>\$2,628,150.00</u>



CERTIFICATION OF LOSS

The Commission certifies that MAC GACHE 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 Two Million Six Hundred Twenty-eight Thousand One Hundred Fifty Dollars (\$2,628,150.00) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

SEP 24 1969

*Leonard v. B. Sutton*  
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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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).)