

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

IN THE MATTER OF THE CLAIM OF

ELIZABETH A. BURFORD, Individually
and as Executrix of the Estate of
CHARLES R. BURFORD, Deceased

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0092

Decision No. CU- 6192

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by CHARLES R. BURFORD in the original amount of \$835,125.00 based on the asserted loss of 133.25 caballerias of land comprising sugar plantations known as Colonia San Jose and San Jose de Canasi Colonia Yara, other rural land and other properties. CHARLES R. BURFORD, a national of the United States since birth, died on August 14, 1967, and ELIZABETH A. BURFORD having been appointed Executrix of his Estate, is substituted as claimant therefor.

Further, as under the community property law of Cuba, spouses acquired equal interest in property acquired during coverture (see Claim of Robert L. Cheaney, et ux., Claim No. CU-0915), it appears that ELIZABETH A. BURFORD had equal interests in the properties subject of this claim, and she has been added as claimant in her own right. ELIZABETH A. BURFORD 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 losses, subject of this claim, after amendments and recomputations, are described as follows:

Part I:

Cane land - \$7,000 per caballeria:	
Colonia San Jose - 15 caballerias	\$ 105,000.00
Colonia Yara - 18.75 caballerias	131,250.00
Batey land - \$3,000 per caballeria:	
Colonia San Jose - 1 caballeria	3,000.00
Pasture land - \$5,000 per caballeria:	
Colonia San Jose - 21 caballerias	105,000.00
Undeveloped land - \$2,000 per caballeria:	
Las Mercedes Rincon Grande - 77.5 caballerias	155,000.00
Sepa - (plant remaining after cutting) -	
\$6.00 per 100 arrobas of cut cane:	
Colonia San Jose - 500,000 arrobas	30,000.00
Colonia Yara - 500,000 arrobas	30,000.00
Grass (on the pasture land) \$2,000 per caballeria:	
Colonia San Jose - 21 caballerias	42,000.00
Standing cane (ready for 1960 cutting) at	
\$7.00 per 100 arrobas:	
Colonia San Jose - 500,000 arrobas	35,000.00
Colonia Yara - 500,000 arrobas	35,000.00
Quota - negotiable contract from Florida	
Sugar Mill and Jaronu Sugar Mill	
at \$5.00 per 100 arrobas	57,725.00
Installations & Equipment:	
Colonia Yara - depreciated	92,430.00
Colonia San Jose - depreciated	74,196.50
Urban property:	
Lots in Sola	7,800.00
One caballeria	5,000.00
200 lots in La Gloria	10,000.00
10 acre orange grove - 600 trees at \$50	30,000.00

Buildings - depreciated	\$ 38,500.00
Buildings and lots in Palm City	5,000.00
House furnishings - depreciated	4,971.40
Ford automobile - depreciated	3,997.00

Part II:

Accounts Receivable:		
Central Florida	\$22,050	
Central Jaronu	5,032	
Judgment v. Central Florida	20,000	47,082.00
(deleting \$16,974 as evidence found of some payments on these items)		
Legal expenses		<u>10,000.00</u>
		\$1,057,951.90

The record includes a Notarial Document reflecting ownership of the realties, reports to the National Institute of Agrarian Reform in 1959, a report to the American Embassy in May 1960, a report from abroad, as well as affidavits, including a detailed affidavit from ELIZABETH A. BURFORD as to the house furnishings; and another from Richard D. Burford who formerly managed the Colonias and other properties.

On the basis of the entire record the Commission finds that CHARLES R. BURFORD, now deceased, and ELIZABETH A. BURFORD owned equally the properties subject of this claim.

The Agrarian Reform Law of May 17, 1959, published in the Cuban Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided for the expropriation of rural properties. Regulations for carrying out the expropriation of such rural property were contained in Law 588, published on October 9, 1959. Based on the evidence of record, the Commission finds that on October 26, 1959, those properties described above under Part I were intervened or otherwise taken by the Government of Cuba, and that the decedent and his spouse thereby suffered losses within the scope 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 record includes a statement by the President of the National Executive Committee of the Association of Sugar Cane Plantation Owners of Cuba, concerning the value of land devoted to sugar cane cultivation, the value of sepa and of standing cane; the inventories of property submitted to INRA and the American Embassy, giving evaluations; affidavits of persons having personal knowledge of the properties, including that of Richard D. Burford (Claim No. CU-0653) who managed these colonias and other properties for his parents, and his sister (CU-0144) and who has described the properties in detail. His affidavit also describes the buildings, and the urban lots in some detail.

Additionally, the record includes statements from officers of the Florida Industrial Corp. of New York (which operated a sugar mill at Florida, Camaguey) and of the American Sugar Refining Company of New Jersey (whose Cuban subsidiary Central Cunagua, S.A., operated sugar mills at Jaronu and Cunagua). These statements set out the number of arrobas of cane supplied by the Burford Colonias to these mills.

Claimant ELIZABETH A. BURFORD has also submitted a detailed affidavit as to the furnishings of her former home in Cuba.

The Commission has also considered photographs submitted, and other evidence of record with the Commission as to the values of similar properties in Cuba.

On the basis of this record the Commission finds that the asserted values of the properties in Part I of this decision are fair and reasonable and concludes that CHARLES R. BURFORD, now deceased, and ELIZABETH A. BURFORD each suffered a loss in the amount of \$500,434.95 as a result of the taking of their properties by the Government of Cuba on October 26, 1959.

There remain for consideration the items listed under Part II, above.

The record shows that there was due and owing to the decedent and spouse, a sum of \$5,032.00 from Central Cunagua, S.A., a Cuban entity, for sugar cane processed at its Jaronu sugar mill. Although Central Cunagua, S.A., was nationalized by the Government of Cuba on August 6, 1960, the Commission finds that claimants' interest in this debt was intervened by the Government of Cuba on October 26, 1959, and that they suffered a loss in that amount at that time.

Further the record shows that there was due and owing to the decedent and spouse a sum of \$22,050.00 for sugar cane processed at the Central Florida mill. This mill while owned by the Cuban entity Baragua Sugar Estates, was operated by Florida Industrial Corporation of New York, a New York corporation. This debt was that of the Corporation, qualifying as a United States national (see Claim of Bangor Punta Corporation, et al., Claim No. CU-2156) and as such cannot be considered unless it was a charge on nationalized property (Section 505(a)). The record does not establish that it was such a charge on property taken by Cuba, and accordingly, this item of claim is denied. (See Claim of Anaconda American Brass Co., Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

Further, claim is made in the amount of \$20,000.00 for a judgment debt said to have been awarded to the decedent in 1959 for removal of a railroad spur, and that it was binding upon "Central Florida (Baragua Sugar Estates)." The record does not establish, however, that this was a debt of a nationalized Cuban entity, or a debt of the Florida Industrial Corporation (supra). Accordingly, for the reasons outlined above, this item of claim is denied.

Lastly, claim is made for legal expenses incurred during a suit brought by the decedent to test the legality of the intervention of Colonia Quince (Claim No. CU-0144). The Commission has previously determined that such expenditures do not come within the purview of the Act (see Claim of E. R. Squibb & Sons Inter-American Corporation, Claim No. CU2469). 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

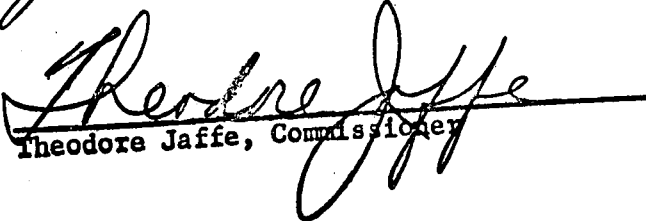
The Commission certifies that ELIZABETH A. BURFORD suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Hundred Two Thousand Nine Hundred Fifty Dollars and Ninety-Five Cents (\$502,950.95) with interest at 6% per annum from October 26, 1959 to the date of settlement; and

The Commission certifies that ELIZABETH A. BURFORD, Executrix of the Estate of CHARLES R. BURFORD, Deceased, 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 Five Hundred Two Thousand Nine Hundred Fifty Dollars and Ninety-Five Cents (\$502,950.95) with interest at 6% per annum from October 26, 1959 to the date of settlement.

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

MAY 19 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 (1970).)

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