

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

IN THE MATTER OF THE CLAIM OF

AUGUSTO A. ORTIZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0107

Decision No. CU 3876

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 AUGUSTO A. ORTIZ for \$17,000.00 based upon the asserted ownership and loss of a house and lot, with personal property, located at Holguin, Oriente, 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 evidence of record herein, including documentation from abroad, discloses that pursuant to the Community Property Laws of Cuba claimant and his wife, Zoila Macle Pellitero (Ortiz), a Cuban national, were joint owners of land comprising 322.40 square meters, improved by a chalet style house of 8 x 18 meters, located in Holguin, Oriente, Cuba, and registered in that land district under Volume 273, Folio 24; and that according to Document #67 of March 28, 1958, a mortgage was issued to the Territorial Norte de Oriente, S.A., in the amount of \$2,500.00; and that this mortgage was expanded to \$3,500.00 to that company, according to Document #249 of October 9, 1958.

Based on the entire record the Commission finds that at the time of loss the claimant and his wife owned the aforesaid real property, subject to the above-described mortgage; and that claimant and his wife also owned household furnishings located in the house at Holguin, Oriente, Cuba.

On December 6, 1961, the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was 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].)

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 claimant submitted a detailed description of the property and a photograph of the improvements, with trees and fencing, located at the Reparto La Quinta del Llano, City of Holguin, Oriente, Cuba. Additionally, the Commission has considered other evidence available to it as to the value of land in the area of Holguin, as well as the value of the type of construction included in this claim. The Commission also has extensive evidence concerning the value of items of personal property located in Cuba which are similar to the personalty included in this claim.

Based upon the entire record, the Commission finds that the fair and reasonable value of the subject real and personal property at the time of loss was as follows:

Real Property (House and Lot)	\$15,000.00
Less mortgage interest	<u>3,500.00</u>
Net Value:	\$11,500.00
Personal Property	<u>2,110.00</u>
Total Value:	<u>\$13,610.00</u>

The wife of claimant, Zoila Macle Pellitero (Ortiz), owner of a one-half interest in the aforesaid real and personal property in accordance with the Community Property Laws of Cuba, was not a national of the United States at the time of loss, or when this claim was filed. In order for the Commission to favorably consider a claim filed under Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization has been continuously owned thereafter in whole or in part by a national of the United States to the date of filing claim with the Commission. (See the Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966]).

Thus, while Zoila Macle Pellitero (Ortiz) has not asserted a claim herein for loss of her one-half interest in the subject property, the instant claim was based upon the total value of all property included in the claim. Accordingly, the claim asserted herein for loss of properties owned by Zoila Macle Pellitero (Ortiz), to the extent of a one-half interest, is hereby denied.

In conclusion, the Commission finds that claimant, AGUSTO A. ORTIZ, sustained a loss in the amount of \$6,805.00, within the meaning of Title V of the Act.

The Commission has decided that in certification 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case, it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that AUGUSTO A. ORTIZ 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 Six Thousand Eight Hundred Five Dollars (\$6,805.00) with interest 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

SEP 24 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).)