

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

IN THE MATTER OF THE CLAIM OF

ADELAIDE LEONE,
EXECUTRIX OF THE ESTATE OF
JOSEPH LEONE, DECEASED

Claim No CU -0202

Decision No. CU -332

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Stolar & Stolar
By Gerald E. Fine, Esq.

Appeal and objections from a Proposed Decision entered on September 20, 1967;
no oral hearing requested.

Hearing on the record held on October 14, 1971.

FINAL DECISION

Under date of September 20, 1967, the Commission issued its Proposed Decision denying this claim for lack of proof. The claim had been filed by Joseph Leone, a national of the United States since September 30, 1919. Subsequently, the Commission was advised that the original claimant had died on July 25, 1967, and evidence was submitted to establish that his widow, ADELAIDE LEONE, was duly appointed Executrix of his estate. Accordingly, the Executrix has been substituted as claimant in place of the late Joseph Leone.

Following the issuance of the Proposed Decision, a substantial amount of evidence was filed. The record now includes original deeds, affidavits from the former Property Registrar of the Isle of Pines, Cuba, and from a former Cuban attorney who has personal knowledge of the facts; certified copies of probated wills; and pertinent files of the Department of State. Upon consideration of the entire record, including the new evidence, the Commission amends the decision in this matter, as follows.

The Commission finds that Cia. Aguas Minerales Isla de Pinos, S.A. (Aguas) and Cia. Centro de Pesca Deportiva, S.A. (Centro), two Cuban corporations, owned 4,947.73 acres and 5,662 acres, respectively, of land on the Isle of Pines, Cuba.

The record establishes that Leo C. Leone, a United States national from August 24, 1917 until his death on December 29, 1963, owned 100% stock interests in Aguas and Centro.

The Commission further finds that the assets of Aguas and Centro, consisted only of the said parcels of land, which were taken by the Cuban National Agrarian Institute (I.N.R.A.) on June 15, 1959.

Since Aguas and Centro were organized under the laws of Cuba, neither 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 that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Upon the testate death of Leo C. Leone, his brother, JOSEPH LEONE, succeeded to the claim against Cuba.

The late JOSEPH LEONE asserted in his claim form that the land had a value of \$2,000,000.00.

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 former Property Registrar of the Isle of Pines and a former Cuban attorney state on the basis of their experience with property values in Cuba that the land in question had a value of \$200.00 per acre. Based upon the entire record, including information available to the Commission concerning the values of similar land in the same area, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that suggested by the said former Property Registrar and the former Cuban attorney.

The Commission therefore finds that the 10,609.73 acres of land owned by Aguas and Centro had an aggregate value of \$2,121,946.00 on June 15, 1959, the date of loss. Since the record shows that the two corporations had no liabilities on the date of loss, the Commission finds that Leo C. Leone sustained a loss of \$2,121,946.00, to which JOSEPH LEONE succeeded.

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.

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by the claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by the claimant as to the extent thereof.

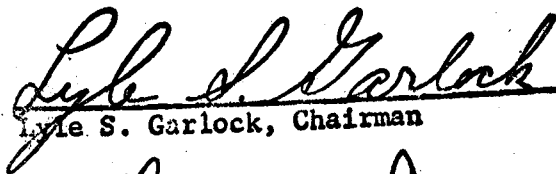
Accordingly, the following Certification of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.

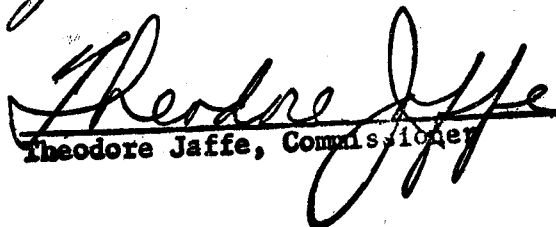
CERTIFICATION OF LOSS

The Commission certifies that ADELAIDE LEONE, EXECUTRIX OF THE ESTATE OF JOSEPH LEONE, DECEASED succeeded to and 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 One Hundred Twenty-One Thousand Nine Hundred Forty-Six Dollars (\$2,121,946.00) with interest thereon at 6% per annum from June 15, 1959 to the date of settlement.

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

OCT 14 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.

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

IN THE MATTER OF THE CLAIM OF

JOSEPH LEONE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0202

Decision No. CU **332**

Counsel for claimant:

Huberty, Bloomberg, Sgarlata
and Smith

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 \$2,000.00, was presented by JOSEPH LEONE, and is based upon the asserted loss of real property located on the Isle of Pines, Cuba, and upon the loss of stock interests. Claimant states that he has been a national of the United States since his naturalization on September 30, 1919.

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.

Section 504 of the Act provides, as to ownership of claims, that

A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

In his claim, filed July 9, 1965, claimant asserts that his late brother, Leo Leone, was the owner of approximately 7,024 acres of land located on the Isle of Pines, Cuba; that he also owned 200 shares of stock issued by Aguas Minerales Isla de Pinos, S.A.; that said property was lost as a result of actions of the Government of Cuba on an unspecified date; and that claimant acquired the claim for said losses as a sole heir of his late brother who died testate on December 29, 1963.

By Commission letter of July 6, 1966, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Specifically, the Commission suggested that he submit additional evidence of his late brother's ownership of the real property; the value of said real property on the date of loss; and his inheritance of the claim. Claimant was further requested to submit proof to establish the decedent's United States nationality. On October 13, 1966, claimant, through counsel, was advised that the evidence previously suggested in the Commission's letter of July 6, 1966 had not been submitted, and further suggestions were made. Subsequently, by letter dated November 4, 1966,

claimant, through counsel, was requested to submit the original stock certificates as proof of his ownership of the 200 shares in Aguas Minerales Isla de Pinos, S.A.

On June 7, 1967, the Commission advised claimant, through counsel, that it had received no reply to its letters of July 6, 1966, October 13, 1966, and November 4, 1966, and advised him that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

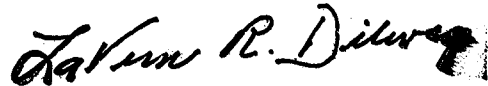
SEP 20 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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-0202