

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

IN THE MATTER OF THE CLAIM OF

CECILE C. SAMUELS, individually, and
CECILE C. SAMUELS and FRÉDERIC SAMUELS,
Executors, Estate of LEE SAMUELS,
Deceased

Claim No. CU -0234

Decision No. CU -6210

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Aranow, Brodsky, Bohlinger,
Einhorn & Dann
By Alvin D. Lurie, Esq.

Appeal and objections from a Proposed Decision entered on June 2, 1971;
oral hearing requested.

Oral hearing held on August 11, 1971.

FINAL DECISION

Under date of June 2, 1971, the Commission issued its Proposed Decision certifying losses in favor of CECILE C. SAMUELS, individually, and CECILE C. SAMUELS and FRÉDERIC SAMUELS, Executors of the Estate of LEE SAMUELS, Deceased, each in the amount of \$53,327.06 plus interest. A portion of the claim based on a stock interest in Rothschild-Samuels Duignan, S.A. (RSD), a Cuban corporation, was denied because the evidence of record, including that in the related Claim of Frederic Samuels, Claim No. CU-0263, indicated that the corporation was insolvent on September 15, 1960 when it was intervened by the Government of Cuba.

Claimants objected to the Proposed Decision only insofar as it denied the portion of the claim for a stock interest in RSD, and requested an oral hearing which was held on August 11, 1971.

At that hearing counsel for claimants offered oral argument, and subsequently submitted further evidence in support of the contention that RSD owned another asset, goodwill, which was not recorded on its books and records, and which establishes that RSD was solvent and that its stock had value on the date of loss.

Upon consideration of the entire record, including the new evidence, the Commission amends the decision in this matter as follows:

The evidence now shows that RSD's net annual earnings rose substantially from \$31,251.79 for the fiscal year ending April 30, 1958, to \$84,781.83 for the following fiscal year (April 30, 1959), to \$97,184.61 for the fiscal year ending April 30, 1960. It is clear therefore that RSD owned an asset in the nature of goodwill not reflected in its balance sheet as of September 30, 1960, which was the basis for finding that RSD was insolvent.

The Commission now finds that the valuation most appropriate to that asset and equitable to the claimants is the result obtained by capitalizing at 15% RSD's average annual net earnings for the three-year fiscal period immediately preceding the date of loss. Since the record shows that the average annual net earnings of RSD were \$71,072.74, the Commission finds that the value of the asset in the nature of goodwill was \$473,818.27.

The balance sheet for RSD as of September 30, 1960 shows that its assets aggregated \$838,528.26. The Commission finds that the aggregate value of RSD's assets, including the asset in the nature of goodwill, was \$1,312,346.53 on September 15, 1960, the date of loss. Since its liabilities aggregated \$101,390.12, the net worth of RSD was \$1,210,956.41. Inasmuch as the record shows that the stockholders of RSD recovered \$757,451.09, the total loss sustained by all of its stockholders owning 4,063 shares of stock, was \$453,505.32, and the loss with respect to each share of stock was \$111.6183.

The evidence establishes and the Commission finds that CECILE C. SAMUELS and her late husband, LEE SAMUELS, jointly owned 2,413 shares of stock in RSD. Therefore they each sustained a loss of \$134,667.48 on September 15, 1960.

Each claimant's losses are now summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Real and personal property	December 6, 1961	\$ 53,327.06
RSD-stock interest	September 15, 1960	<u>134,667.48</u>
	Total	<u>\$187,994.54</u>

The Commission reaffirms its holding that interest shall be included, and it is so ordered as follows with respect to each claimant:

<u>FROM</u>	<u>ON</u>
September 15, 1960	\$134,667.48
December 6, 1961	<u>53,327.06</u>
Total	<u>\$187,994.54</u>

Accordingly, the Certifications of Loss in the Proposed Decision of June 2, 1971 are set aside and the following Certifications of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.


CERTIFICATIONS OF LOSS

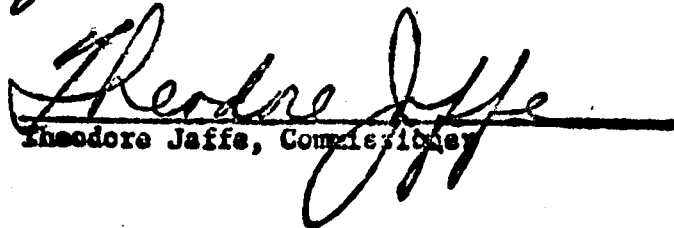
The Commission certifies that CECILE C. SAMUELS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Eighty-Seven Thousand Nine Hundred Ninety-Four Dollars and Fifty-Four Cents (\$187,994.54) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that CECILE C. SAMUELS and FREDERIC SAMUELS, Executors, Estate of LEE SAMUELS, 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 One Hundred Eighty-Seven Thousand Nine Hundred Ninety-Four Dollars and Fifty-Four Cents (\$187,994.54) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

CECILE C. SAMUELS

CECILE C. SAMUELS and FREDERIC SAMUELS,
Executors, Estate of LEE SAMUELS,
Deceased

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0234

Decision No. CU 6210

Counsel for claimants:

Aranow, Brodsky, Bohlinger,
Einhorn & Dann
By Alvin D. Lurie, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed on July 15, 1965, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$182,215.00, was presented by the late LEE SAMUELS, and is based upon the asserted loss of real and personal property, including the asserted loss of his stock interest in Rothschild-Samuels-Duignan, S.A. The decedent has been a national of the United States since birth until death on October 2, 1966, after filing this claim.

CECILE C. SAMUELS, widow of decedent and national of the United States at all times pertinent to this claim, has an interest in the property subject of this claim, and therefore has been joined as a claimant in this matter.

Further, CECILE C. SAMUELS and FREDERIC SAMUELS, wife and son of the decedent, were appointed Executors under the Last Will and Testament of said decedent, LEE SAMUELS, by the County Court of Broward, Fort Lauderdale, Florida, on October 7, 1966. Accordingly, they are substituted in their representative capacities with respect to the decedent's claim for loss of property.

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 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) (1970).)

The claim is asserted for loss of improved real property located at 6207-7th Avenue, Miramar, Marianao, Havana, including lots 3 and 4 of Block 11; and household furnishings, equipment and personal effects, including equipment and machinery in a carpentry room; and on 2,413 shares of common stock of a Cuban corporation known as Rothschild-Samuels-Duignan, S.A..

The record indicates that the above property was acquired by decedent while married to claimant CECILE C. SAMUELS. As provided by the community property laws of Cuba, property acquired by one or both spouses during the marriage with money of the marriage partnership or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal

parts to both spouses (see Claim of Robert L. Cheaney, et ux., Claim No. CU-0913.) Accordingly, the property discussed below will be deemed to have been owned by the decedent and his wife as community property.

The evidence of record includes contracts of sale; a record obtained from abroad; several affidavits of persons who were former residents of Cuba with personal knowledge of decedent's ownership of the claimed real and personal property located at Miramar, Marianao; a State Department file with correspondence from decedent and others, including the American Embassy at Havana, Cuba. Further, decedent had submitted itemized lists of the personal property and data relating to the real and personal property, as well as his detailed affidavit executed at Melina del Sur, Cuba, on May 19, 1959.

On the basis of the entire record, the Commission finds that decedent and CECILE C. SAMUELS, owned one-half interests in certain real and personal property located at their residence in Miramar, including two lots and the personalty in a carpentry room.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, shares, stocks, bonds and securities of persons who had left the country. The record reflects that decedent and his wife left Cuba prior to that date.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property at Miramar, Marianao, Havana, 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]; and Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [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 "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 affidavit executed by decedent on May 19, 1959, indicates that the improved real property, included lots 3 and 4, at 6207-7th Avenue, Miramar, Marianao, with a stucco-cement 1-story house of 10 rooms and other improvements, and had a total value of \$88,034.40 immediately prior to the date of loss.

The claimants have submitted a detailed list itemizing all personal property at the residence, such as household furnishings, equipment and machinery. This list reflects the value of the items at the date of purchase and the time of loss and discloses that the personal property had a total value of \$23,186.30 for household furnishings and equipment and \$1,640.00 for the personalty in the carpentry room, or a total of \$24,826.30.

Based upon the entire record, including evidence available to the Commission concerning the value of similar properties in Cuba, the Commission finds that the evaluation most appropriate to the improved real and personal property at the residence is that evaluation in the afore-said evidence, including a report from abroad, as well as statements, with descriptions, given by decedent and the affiants with personal knowledge of the properties in question; and that such evaluation is fair and reasonable, and is consistent with the evaluation of like properties in Miramar and other areas of Cuba. However, evidence of record discloses that the evaluation of the personal property at the residence is based primarily on the appraised value of an appraisal firm in New York City when the property was acquired in 1956. Accordingly, to allow for depreciation over a 5-year period, the value of the personal property is reduced by 25% or to \$18,619.73.

The Commission finds that on the date of loss the real and personal property discussed above, subject of this claim, had a total value of \$106,654.13, and concludes that the decedent and spouse suffered a loss in that amount within the meaning of Title V of the Act.

This leaves for determination the portion of the claim asserted for loss of a stock interest in Rothschild-Samuels-Duignan, S.A., a Cuban corporation. The evidence of record included in the related claim of FREDERIC SAMUELS, son of decedent and claimant herein in a representative capacity, discloses that no loss was certifiable on account of that claimant's stock interest in Rothschild-Samuels-Duignan, S.A.

For reasons stated in the decision involving Claim of Frederic Samuels, Claim No. CU-0263, the Commission is constrained to find that no loss is certifiable in the instant claim on account of the stock interest of decedent and his wife in this Cuban corporation; and that this portion of the claim is hereby 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 CECILE C. SAMUELS 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 Fifty-Three Thousand Three Hundred Twenty-Seven Dollars and Six Cents (\$53,327.06) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

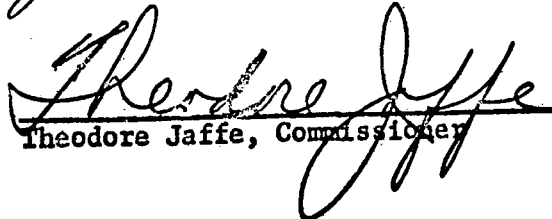
CU-0234

The Commission certifies that CECILE C. SAMUELS and FREDERIC SAMUELS, Executors, Estate of LEE SAMUELS, 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 Fifty-Three Thousand Three Hundred Twenty-Seven Dollars and Six Cents (\$53,327.06) 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

JUN 2 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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