

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

IN THE MATTER OF THE CLAIM OF

ANA MARIA MILLER, INDIVIDUALLY  
and AS EXECUTRIX OF THE ESTATE  
OF HOWARD W. MILLER, DECEASED

Claim No. CU -0285

Decision No. CU- 5960

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

A. Alexander Katz, Esq.

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 HOWARD W. MILLER, in the amount of \$308,354.00, based upon the asserted loss of real and personal property in Cuba, and impairment of health. Inasmuch as his spouse ANA MARIA MILLER, whom he married in 1947, would have an interest in properties subject of this claim, pursuant to the community property law of Cuba, she has been added as a claimant in this matter. HOWARD W. MILLER died on October 1, 1967. ANA MARIA MILLER having been appointed Executrix of his Estate, has been substituted as claimant in his stead. Both Howard W. Miller, now deceased, and ANA MARIA MILLER were nationals 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 items subject of this claim have been described as follows:

1. Residence, 130-36th St., Vedado		\$ 74,594.79
2. Contents of residence		27,844.00
3. Bank accounts:		20,432.67
Bank of Nova Scotia (ANA MARIA MILLER):	\$ 3,216.28	
Trust Co. of Cuba:	20,432.67	
4. Mortgage Receivable		10,000.00
5. Apartment house, Boca Ciega Beach		26,885.00
6. Unimproved land, Finca Leon, Camino Wajay		6,765.81
7. Securities and Investments:		
a. Cuban Telephone Co. stock	\$ 5,000.00	
b. Cuban Electric Co. stock	2,500.00	
c. Minimax Super-Mercados	1,027.00	
d. Autos Volkswagen de Cuba, S.A.	30,481.27	
e. Industrias Cello-Pak de Cuba, S.A.	11,311.85	
f. Envases Modernos, S.A.	56,279.20	
g. Cia. Inmobiliaria LaTorre	1,000.00	
h. Habana Biltmore Yacht & Country Club	<u>300.00</u>	107,899.32
8. Other Assets:		
a. Electric Golf Car	\$ 712.50	
b. Assets in Office	387.50	
c. Accounts Receivable	<u>8,613.23</u>	<u>9,713.23</u>
		\$284,134.82
9. Impairment to health & loss of ability to work		<u>24,219.04</u>
		\$308,353.86

On the basis of the record the Commission finds that the decedent and his spouse owned interests in real and personal property in Cuba, taken by the Government of Cuba, all as further discussed below.

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.

Residence at 130-36th Street, Vedado

The record includes a report from abroad showing that this property was purchased on December 5, 1959, and was registered in the name of ANA MARIA MILLER.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). The decedent had left Cuba in April, 1960.

Based on the foregoing and in the absence of evidence to the contrary, the Commission finds that this improved realty was taken by the Government of Cuba pursuant to the Urban Reform Law (see Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39); and in the absence of evidence to the contrary, that it was taken on July 7, 1962, after decedent's mother-in-law, in residence, had died.

Decedent submitted evidence to establish that he purchased the property for the initial sum of \$115,000.00 consisting of a check for \$90,000.00 and a mortgage by the Confederation Life Insurance Co. of Canada in the amount of \$25,000.00. This price included certain basic furnishings. Additional expenditures were \$1,732.44 for fees, and \$7,472.60 for a pool, screens, and windows. The total expenditure thus was \$124,205.04, which decedent apparently detailed as follows:

Land, at \$25 per square meter	\$ 23,000.00
Landscaping	4,625.00
Building	76,580.00
Furniture & Adornments	3,295.00
Mechanical equipment	7,500.00
Fees	1,732.44
Pool, etc.	<u>7,472.60</u>

\$124,205.04

The property is described as having a land area of 1,085 square meters and a construction area of 624 square meters of reinforced concrete; a ground floor with a 2-car garage; and chauffeur's and butler's quarters of bedroom, bath and closets; first floor with quarters for two servants, laundry, play-room, powder room, parlor with a built-in aquarium, glass doors and similar accoutrements; also, kitchen, hall-pantry, dining room, foyer, sitting-room, library, terraces, all with marble granite floors; second floor having sitting-room, master bedroom, three other bedrooms, kitchen, and sun deck.

In arriving at the claimed figure, decedent depreciated the building at 2%, the furniture at 10% and mechanical equipment at 5%. Accordingly, he valued the building at \$70,645.05, and purchased furnishings at \$2,712.50 and the mechanical equipment at \$1,875.00. However, he valued the 1,085 square meters of land at \$4.00 (or 4 pesos) per square meter pursuant to Cuban Law 691, published December 4, 1959, which concerned price and sale of lots, and provided for that maximum price per square meter. The Commission has held, however, that the repressive effect of Law 691 resulted in artificial devaluations. (See Claim of Raymond S. Lupse, Claim No. CU-2532.) Accordingly, the Commission finds the value of the purchased residence as follows, as of the date of loss:

Land	\$ 23,000.00
Landscaping	4,625.00
Building	70,645.05
Furnishings	2,712.50
Mechanical equipment	<u>1,875.00</u>

\$102,857.55

From this amount, however, must be deducted the balance of a mortgage in the amount of \$9,602.80. Thus the Commission concludes that the decedent and his

spouse suffered losses of \$46,627.37 and \$46,627.38, respectively, within the scope of Title V of the Act when this property was taken by the Government of Cuba on July 7, 1962.

Personalty (other than that  
which was acquired with the house)

Decedent had submitted a detailed list of these items, showing the date and place of purchase, original cost, years of life and depreciated value of \$27,844.00. However, this includes \$1,440.00 representing a Ford station wagon sold in March, 1960, the purchase price not having been received by the decedent. The Commission finds that there is no evidence that this \$1,440.00 was taken from the decedent by the Government of Cuba, and accordingly this item is denied. However, considering the values of the other items, in comparison with similar properties in Cuba, and considering customary depreciation applied by the Commission, the Commission finds that the remaining figure of \$26,404.00 is the fair and reasonable value of the personalty taken by the Government of Cuba on July 7, 1962.

Accordingly, the Commission concludes that the decedent and his spouse each suffered a loss of \$13,202.00 in this respect.

Bank Accounts

The record establishes that Account No. 263 at the Bank of Nova Scotia had a balance of \$3,216.28, on March 8, 1960, in favor of ANA MARIA MILLER. It further appears that the \$3,000.00 was deposited in 1956. Accordingly, the Commission finds that the decedent and his spouse had equal interests in this account.

Law 989, published in the Official Gazette on December 6, 1961 by its terms effectively confiscated all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left Cuba. This included bank accounts such as the above. From the foregoing, the Commission finds that the above-described bank account, totalling \$3,216.28 (the peso being on a par with the dollar) was taken by the Government of Cuba on December 6, 1961

(see Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]), and concludes that the decedent and his spouse each suffered a loss in the amount of \$1,608.14 in this connection.

Claim was also asserted in the amount of \$20,432.67, based on a bank statement of May 31, 1960 of the Trust Company of Cuba, and on deposits made from the decedent's funds. The bank statement is in the name of the decedent's mother-in-law and in fact shows a balance of \$7,239.36 on June 27, 1960. The decedent stated that \$20,432.67 had been transferred from his bank account to the account of the mother-in-law, Ana Maria Diaz. Further, he stated that on her death this account was confiscated. It appears that the decedent made claim for the amount put into the account, regardless of the ultimate balance. There is no evidence of record that the difference was taken by the Government of Cuba.

The Commission finds, however, that the bank account was inherited by ANA MARIA MILLER on the death of her mother and taken subsequently on July 7, 1962. Accordingly, it is concluded that she suffered a loss in the amount of \$7,239.36 within the meaning of Title V of the Act.

#### Mortgage Receivable

Claim was also asserted for a mortgage in the amount of \$15,000.00 assertedly on a property at 1157-43rd Street sold to one Juan F. Sanchez in 1958. The only evidence submitted is a letter of said Sanchez dated December 20, 1960 which refers to an undescribed business matter and a check for 10,000 pesos in "Mrs. Miller's" name. Nevertheless this does not establish that the decedent held a mortgage in any amount on any property subject to the laws of Cuba. In the absence of evidence to substantiate this item of claim, the Commission is constrained to and does deny this part of the claim.

#### Apartment House

On the basis of a report from abroad, the Commission finds that the decedent and his spouse owned equal interests in an apartment building at

43407-09, Avenida 3d, Boca Ciega Beach, Havana Province, and further that this property was taken by the Government of Cuba on October 14, 1960, pursuant to the Urban Reform Law of that date (see Slade, supra).

The property is described as a corner lot of 615 square meters, purchased in 1952, improved in 1953 by a 2-story building of four apartments, each having a porch, kitchen, living and dining areas. On the basis of the record, including the report from abroad, and evidence as to the value of similar properties, the Commission finds that the asserted value of \$26,885.00 for this property is fair and reasonable, and concludes that the decedent and his spouse each suffered a loss of \$13,442.50 in this respect.

Finca Leon - Unimproved Land

On the basis of a report from abroad, the Commission finds that the decedent and his spouse had equal interests in 128,492 square meters of unimproved land on Camino Wajay in Santiago de las Vegas; and further that this property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989 (supra). (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

This item of the claim was described as approximately 153,000 square meters of land, purchased on April 1, 1958 for \$55,000 Cuban pesos (about \$.3594 per square meter), a mortgage for \$30,000 having been given with \$25,000 in cash. Thereafter it is said 25,000 square meters were sold on December 17, 1958 and the remaining 128,000 (approximately) square meters were valued by the decedent at \$6,765.81, as follows:

Legal fees and taxes	\$2,290.90	
Juzgado Bejucal	100.00	
Josefina Barrios	1,600.00	
Cirilo Real	2,000.00	
Tesorero General	399.91	
Commission	<u>375.00</u>	\$6,765.81

It is said that the \$3,600 paid to the sellers represented 10 per cent of the cash portion withheld pending clearing of title.

The report from abroad indicates that the price of \$55,000 covered three plots, the credit of \$25,000 being for the plot thereafter sold,

the remaining lots of 128,492 square meters being subject to the mortgage of \$30,000.

On this record the Commission finds that this property had a value of \$46,180 and after deduction of the mortgage of \$30,000, the decedent and his spouse shared equally the equity of \$16,180, and suffered a loss in this aggregate amount.

Cuban Telephone Company Stock

Based upon the record, the Commission finds that ANA MARIA MILLER and the decedent owned equal interests in 50 shares of Cuban Telephone Company common stock.

The Commission has held that a claim based upon stock of the Cuban Telephone Company is within the purview of Title V of the Act because, although the Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. (See Claim of International Telephone and Telegraph Company, Claim No. CU-2615.) In that claim, the Commission found that the assets of the Cuban Telephone Company had been taken by the Government of Cuba on August 6, 1960.

The Commission has also found that each share of common stock issued by Cutelco had a value of \$184.0057. Accordingly, the Commission finds that the 50 shares of stock in question here had a value of \$9,200.28 and concludes that ANA MARIA MILLER and the decedent each suffered a loss in the amount of \$4,600.14 in this connection.

Cuban Electric Company

Claim is based on 100 shares of stock of Cuban Electric Company. Commission records reflect that Cuban Electric Company qualifies as a United States national, and has filed its own claim CU-2578.

Section 505(a) of the Act provides that

A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered.



Under these circumstances the Commission is precluded from considering this item of claim. (See Claim of Mary F. Sonnenberg, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 [July-Dec. 1966].) Accordingly, it is hereby denied.

Minimax Super-Mercados, S.A.

The record establishes that the decedent and his spouse owned equal interests in 1,027 shares of Minimax Super-Mercados, S.A.

In our decision entitled the Claim of Libby Holman Reynolds (Claim No. CU-1384, which we incorporate herein by reference), we held that the properties of this company were intervened by the Government of Cuba on September 1, 1960, and that this type of claim is compensable to American nationals under the facts and conditions set forth therein. We need not again detail here the reasons or method used in determining the value per share as \$1.0023.

Accordingly, the Commission concludes that the decedent and his spouse suffered a loss in the aggregate amount of \$1,029.36 in this respect.

Autos-Volkswagen de Cuba, S.A.

On the basis of the record, the Commission finds that the decedent and his spouse owned equal interests in 200 shares of preferred stock of Autos-Volkswagen de Cuba, S.A. (hereafter referred to as Volkswagen) and 1,000 shares of common stock of Volkswagen, these 1,200 shares representing 10 per cent of an issue of 4,000 preferred with a par value of \$100 and 8,000 common of \$1.00 par value, respectively.

Volkswagen was listed as nationalized by the Government of Cuba in Resolution 3, of October 24, 1960, pursuant to Cuban Law 851, and the Commission finds that it was nationalized on that date.

Decedent had valued this 10 per cent interest at \$20,000.00 cost plus \$10,481.27, being assertedly 10% of the surplus shown on the balance sheet of June 30, 1960.

Decedent had stated that \$400,000 capital of this company was raised by selling preferred shares of \$100 par plus one share of common stock as a

bonus. The preferred and common stock certificates carry the same legend and no conditions of preference are specifically set out.

In another case before the Commission (Claim of John Henry Fitzgerald, Claim No. CU-3097) reference has been made to a Balance Sheet of September 30, 1960. However this is not of record.

The balance sheet for June 30, 1960, reflects the following:

<u>Current Assets</u>			
Cash	\$ 1,655.99		
Bank Accounts	98,446.11		
Acceptances	110,545.39		
Accounts Receivable	306,981.19		
Inventory	<u>355,688.73</u>	\$873,317.41	
<u>Fixed Assets</u>			
Equipment		81,421.97	
<u>Deposits &amp; Bonds</u> (Investments)			
		103,795.00	
<u>Deferred Expenses</u>			
Insurance not due	\$ 568.43		
Organization Expenses	5,379.28		
Improvements to leased properties	45,498.30		
Other	<u>48.00</u>	51,494.01	
<u>Deferred Assets</u>			
Shipments in Transit	\$ 52,072.44		
Claims	<u>1,619.80</u>	<u>53,692.24</u>	
Total Assets			<u>\$1,163,720.63</u>
<u>Current Liabilities</u>			
Accounts Payable	\$163,316.08		
Taxes	93,518.15		
Vacation pay	9,938.23		
Depreciation Reserves	3,940.97		
Deferred Income	<u>18,569.67</u>	\$289,283.10	
Mortgages		<u>360,654.79</u>	\$ 649,937.89
<u>Capital</u>			
Preferred stock - 4,000 shares at \$100	\$400,000.00		
Common stock - 8,000 shares at \$1.00	<u>8,000.00</u>	\$408,000.00	
Bonus on sale of stock	970.00		
Surplus	<u>104,812.74</u>	<u>105,782.74</u>	<u>513,782.74</u>
Total Liabilities and Capital			<u>\$1,163,720.63</u>

On the basis of this record, the Commission finds that the 1,200 shares represented an aggregate loss of \$31,578.27, as follows:

200 preferred	\$20,000.00	
1,000 common	1,000.00	
10% of \$105,782.74	10,578.27	

Accordingly the Commission concludes that the decedent and his spouse suffered an aggregate loss of \$31,578.27 as the result of the taking of Volkswagen by the Government of Cuba on October 24, 1960.

Industrias Cello-Pak de Cuba, S.A.

The Commission finds that the decedent and his spouse owned equal interests in 150 shares of stock of Industrias Cello-Pak de Cuba, S.A. having a par value of \$50.00. This was a cellophane converting factory.

The Commission further finds that this stock interest was taken by the Government of Cuba pursuant to Law 989 (supra) and in the absence of evidence to the contrary finds that it was taken on December 6, 1961, the date the said law was published.

Decedent described the 150 share interest as a majority interest, although no documentation has been submitted on this point, nor any evidence of value such as balance sheets. The valuation asserted for this interest was as follows:

Construction of factory:	\$7,269.00	
1/2 cost of two machines	<u>2,291.00</u>	\$ 9,560.00
Other payments including fees and office supplies		<u>1,751.85</u>
		\$11,311.85

It is said that by December 6, 1961, the decedent's partner was just about able to meet expenses. The Commission finds that the accounts receivable and accounts payable were equal. The factory therefore had a value of \$7,269.00 and the machinery having an initial cost of \$4,582.00, after depreciation at 5% per year, had a value of \$3,894.70, for a total value of \$11,163.70. The record does not establish that the Miller interest was more than 50% and the Commission concludes that the decedent and his spouse suffered a loss in the aggregate amount of \$5,581.85, in this respect.

Envases Modernos, S.A.

On the basis of the record including copy of a stock certificate, the Commission finds that the decedent and his spouse had equal interests in 350 shares of Envases Modernos, S.A., having a par value of \$100. This company, initially organized in 1952, was engaged in the manufacture of paper cups for various purposes, including use by the Department of Agriculture for planting of seedlings.

Envases was listed as nationalized by the Government of Cuba on December 6, 1962, by Resolution 6930, pursuant to Cuban Law 890. However, the record indicates that on May 31, 1960, the enterprise was already under intervention by the Cuban Government. In the absence of evidence to the contrary, the Commission finds that Envases was intervened by the Government of Cuba on May 31, 1960, within the meaning of Title V of the Act.

Decedent had valued this stock interest at \$47,201.36 cost, plus \$9,077.84, 20% assertedly of the surplus as of December 31, 1960.

The balance sheet for December 31, 1960, the latest of record, reflects the following:

<u>ASSETS</u>			
<u>Current Assets</u>			
Cash and bank account		\$ 2,905.64	
Accounts Receivable	\$ 25,010.39		
Less Reserve for bad debt	<u>4,160.10</u>	20,850.29	
Inventories		<u>17,935.88</u>	\$ 41,691.81
<u>Fixed Assets</u>			
Building less depreciation		\$ 9,575.40	
Land	\$ 26,621.89		
Landscaping, etc.	7,327.97		
Factory	71,340.78		
Office Building	16,000.00		
Machinery & Equipment	308,878.78		
Parts, etc.	<u>31,681.90</u>		
	\$461,851.32		
Less depreciation	<u>62,374.58</u>	<u>399,476.74</u>	409,052.14
<u>Deferred Charges</u>			<u>34,078.56</u>
			<u>\$484,822.51</u>

LIABILITIES

Current Liabilities

Bank Loan	\$ 21,055.00		
Accounts Payable	27,665.87		
Expenses Payable	2,703.71		
Payroll & Vacation Pay	1,169.63		
Taxes Accrued	<u>10,511.00</u>	\$ 63,105.21	
INRA Financing	\$128,000.00		
Mortgage Loan	<u>44,500.00</u>	<u>172,500.00</u>	\$235,605.21
Capital		\$200,000.00	
Bonus	\$ 2,500.00		
Surplus	<u>45,389.20</u>	47,889.20	
Reserve for contingencies		<u>1,328.10</u>	<u>249,217.30</u>
			<u>\$484,822.51</u>

On the basis of this record the Commission finds that at the time of loss the net worth of Envases was \$249,217.30 and that each share had a value of \$124.1086 and that the Millers thus suffered an aggregate loss of \$43,438.01 in this respect.

Cia. Inmobiliaria La Torre

On the basis of the decedent's sworn statement, the Commission finds that he owned a membership certificate, No. 373, in La Torre, assertedly costing \$1,000.00. Evidence available to the Commission indicates that such membership fee was in fact \$1,000.00 (see Claim of Robert M. Thomson, et ux., Claim No. CU-0679).

The Commission further finds that the Miller's membership privileges were taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989 (supra), and that they suffered a loss in the aggregate amount of \$1,000.00 in this respect.

Havana Biltmore Yacht & Country Club

The Commission finds that the decedent and his spouse owned one share of stock (Series B) in the Havana Biltmore Yacht and Country Club which was intervened by the Government of Cuba on March 19, 1960. (See Claim of Arman E. Becker, Jr., Claim No. CU-1094.)

The record before the Commission discloses that Series B stockholders merely owned a membership interest in the Country Club with the right to use

the Club's facilities. They, however, owned no interest in the Club's physical assets. The Commission holds that the right of membership also constituted property within the meaning of Section 502(3) of the Act, and that upon the intervention of the Club by the Government of Cuba, claimants sustained a loss within the scope of Title V of the Act.

Upon consideration of all evidence of record, including the Becker claim, the Commission has found that the value of a membership interest in the Country Club should be measured by the investment or cost of membership. The record shows that the Millers paid \$300.00 for their Series B membership interest in the Country Club. Accordingly, the Commission finds that the value of claimants' interest in the Country Club on March 19, 1960, the date of loss, was \$300.00. (See Claim of Robert J. Macaulay, et ux, Claim CU-0311.)

#### Electric Golf Car

The evidence of record establishes that the decedent purchased an electric golf car and sent it to Havana, in 1956. This was later stored at the Havana Biltmore Yacht & Country Club and was taken when the club was taken on March 19, 1960 (supra).

The Commission finds that the depreciated value of this item on the date of loss was \$375.00 and concludes that the Millers suffered a loss in that amount on March 19, 1960.

#### Personalty Located in Place of Employment

The Commission finds that the decedent owned certain items of personalty located in his place of business, and further finds that as the Millers left Cuba on about April 9, 1960, the personalty was taken on May 9, 1960. The items with their depreciated value as of the time of loss are as follows:

Cigarette lighter	\$ 50.00	
Clock-barometer	12.50	
Mahogany cabinet	175.00	
Commerce Clearing tax books	<u>150.00</u>	\$387.50

Accordingly, the Commission finds that the Millers suffered a loss in the aggregate amount of \$387.50 in this respect on May 9, 1960.

Accounts Receivable

The decedent made claim in the amount of \$8,113.13 for personal loans to Cuban citizens, contending that the Cuban Government has taken the assets which were purchased with these funds. Nevertheless, it does not appear that any such losses were represented by liens on property taken, or that they were debts of nationalized enterprises. In the absence of evidence that such losses were within the scope of Title V of the Act, the Commission is constrained to and does deny this portion of the claim.

Impairment of Health

Decedent included in his affidavit of claim, an item for loss of ability to work full time because of heart attack suffered on or about September 25, 1960.

Section 503(b) of the Act provides as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

He submitted in support several affidavits from physicians, which reflect in pertinent part the following:

Edward W. St. Mary, M.D., dated February 19, 1963:

That the decedent had been referred to him on September 25, 1960, with symptoms of heart disease; an examination disclosed that he was suffering from coronary artery disease and rheumatoid arthritis; that it is a condition which may be arrested, but is not usually cured.

William C. Phillips, M.D., dated February 8, 1963:

That the decedent was under his care from March 31, 1961 until his departure for Phoenix on or about May 30, 1962; that he was hospitalized on three occasions from acute heart attacks; that he suffered from chronic cardiac insufficiency, angina pectoris, and arteriosclerosis; that the condition is usually incurable.

Joe C. Ehrlich, M.D., dated March 1, 1963:

That the decedent was a patient of his since June 8, 1962; that he suffered from coronary disease; that it is a condition which may be arrested but is not usually cured.

The Commission has carefully considered this entire matter and holds that in a claim for disability under Section 503(b) of the Act it must be

established, as one prerequisite to favorable action, that the disability was the proximate result of the actions of the Government of Cuba in violation of international law. (See Claim of Julio Lopez Lopez, Claim No. CU-3259.)

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) (1969).)

The Commission finds that the decedent failed to sustain the burden of proof with respect to this item of claim in that he had not adduced convincing evidence that his heart attacks suffered in September 1960 were the proximate result of actions taken by the Government of Cuba, before or after his departure from Cuba on April 19, 1960. This portion of the claim therefore is denied.

Recapitulation

The losses certifiable within the scope of Title V of the Act may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Values</u>	
		<u>HOWARD W. MILLER</u>	<u>ANA MARIA MILLER</u>
Residence	July 7, 1962	\$ 46,627.37	\$ 46,627.38
Personalty	July 7, 1962	13,202.00	13,202.00
Bank account	December 6, 1961	1,608.14	X 1,608.14
Bank account	July 7, 1962	--	7,239.36
Apartment house	October 14, 1960	13,442.50	13,442.50
Unimproved land	December 6, 1961	8,090.00	X 8,090.00
Cutelco stock	August 6, 1960	4,600.14	X 4,600.14
Minimax stock	September 1, 1960	514.68	514.68
Volkswagen stock	October 24, 1960	15,789.14	15,789.13
Cello-Pak stock	December 6, 1961	2,790.93	2,790.92
Envases Modernos stock	May 31, 1960	21,719.00	21,719.01
La Torre	December 6, 1961	500.00	500.00
Havana Biltmore	March 19, 1960	150.00	150.00
Golf cart	March 19, 1960	187.50	187.50
Other personalty	May 9, 1960	193.75	193.75
		<u>\$129,415.15</u>	<u>\$136,654.51</u>

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 as follows:

<u>FROM</u>	<u>ON</u>	
	<u>HOWARD W. MILLER EST.</u>	<u>ANA MARIA MILLER</u>
March 19, 1960	\$ 337.50	\$ 337.50
May 9, 1960	193.75	193.75
May 31, 1960	21,719.00	21,719.01
August 6, 1960	4,600.14	4,600.14
September 1, 1960	514.68	514.68
October 14, 1960	13,442.50	13,442.50
October 24, 1960	15,789.14	15,789.13
December 6, 1961	12,989.07	12,989.06
July 7, 1962	<u>59,829.37</u>	<u>67,068.74</u>
	\$129,415.15	\$136,654.51


CERTIFICATIONS OF LOSS

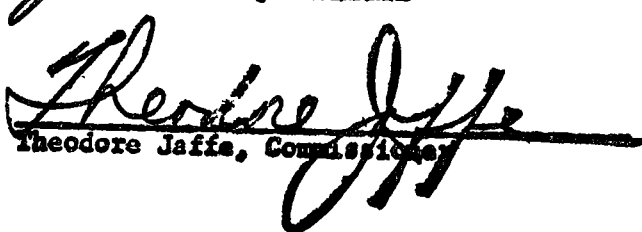
The Commission certifies that ANA MARIA MILLER AS EXECUTRIX OF THE ESTATE OF HOWARD W. MILLER, DECEASED, succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Twenty-nine Thousand Four Hundred Fifteen Dollars and Fifteen Cents (\$129,415.15) with interest at 6% per annum from the aforesaid dates to the date of settlement; and

The Commission certifies that ANA MARIA MILLER 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 Thirty-six Thousand Six Hundred Fifty-four Dollars and Fifty-one Cents (\$136,654.51) with interest at 6% per annum from the aforesaid dates to the date of settlement.

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

NOV 17 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, 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 or 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. 31.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-0285