

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

IN THE MATTER OF THE CLAIM OF

ROBERT J. MACAULAY
and
MARIE AGNES MACAULAY

Claim No. CU-0311

Decision No. CU 3822

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$97,698.00, was presented by ROBERT J. MACAULAY and MARIE AGNES MACAULAY, husband and wife, based upon the asserted loss of certain real and personal property in Cuba, and interests in certain Cuban corporations. Claimants have been 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 of 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 record shows that claimants had been residents of Cuba from 1947 until September 1960, when they felt compelled to leave Cuba due to the then prevailing political conditions. During that period of time, Mr. Macaulay was engaged in oil exploration activities as general manager of the Cuban Gulf Oil Company, a subsidiary of the Gulf Oil Corporation. Claimants acquired certain real and personal property in Cuba, discussed below, while thus residing in Cuba.

The Commission finds on the basis of the evidence of record, including reports from sources abroad, a copy of a deed dated June 22, 1953, pursuant to which claimants acquired title to certain land in Marianao, El Cano, Cuba, stock certificates and statements of claimants to the Department of State and to the Commission, that claimants jointly owned the following items of property in Cuba:

1. A parcel of land in Marianao, El Cano, measuring 14,120.86 varas (approximately 32 inches per vara), equivalent to 10,154.51 square meters;
2. Certain household silverware;
3. 12,577 shares of stock in Minimax Super Mercados, S.A., a Cuban corporation;
4. One share of stock in Inmobiliaria La Torre, S.A., a Cuban corporation;
5. One share of Stock, Series B, in Havana Biltmore Yacht and Country Club, a Cuban corporation;
6. Membership in the Havana Country Club, a Cuban entity; and
7. 10 shares of stock, equivalent to a 50% interest, in Compania Petrolera Neptuno, S.A., a Cuban corporation.

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected the confiscation of all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left Cuba. The Commission finds that this law applied to claimants who had left Cuba prior to that date, and concludes that claimants' properties, except as indicated below, were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, as a result of which claimants sustained losses within the meaning of Title V of the Act. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 (July-Dec. 1966).)

Real Property and Silverware

1. Land

Originally, it was asserted that the loss on account of the land was \$50,000.00. Subsequently, the claim in this respect was reduced to \$42,360.00, based upon a statement, dated November 1, 1967, from Professor Jorge Luis Divino, of the School of Architecture, University of Texas. It appears from that statement that Professor Divino had been a practicing architect in Havana, Cuba, until 1960, and that he is familiar with claimants' land because his mother owned an adjacent lot and he owns property in the same area. The professor appraised the property at \$3.00 per square vara in 1958-1959.

Upon consideration of the entire record, the Commission finds that claimants' land, measuring 14,120.86 varas, had a value of \$42,362.58 on December 6, 1961, the date of loss.

2. Silverware

It appears from the record that early in 1961 claimants received from Cuba their furniture, bedding and other household effects in Austin, Texas, but that their silverware was not included. Claimants learned upon inquiry that Cuban authorities had refused to permit claimants' silverware to be shipped out of Cuba. Attempts by claimants to salvage their silverware with the assistance of a friend in Cuba were unsuccessful, and claimants later learned that their friend and his wife had been shot and killed by Cuban authorities. Since that time, claimants have heard nothing further concerning their silverware, which they therefore deemed lost.

On the basis of the evidence of record, including a detailed list of all the silverware and statements of claimants, the Commission finds that the value of the silverware on December 6, 1961, the date of loss, was \$2,500.00.

Rights and Interests in Cuban Entities

The record shows that the five Cuban entities, Minimax Super-Mercados, S.A., Inmobiliaria La Torree, S.A., Havana Biltmore Yacht and Country Club, Havana Country Club, and Compania Petrolera Neptuno, S.A. were organized under the laws of Cuba. Consequently, none of these entities 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 previously that a stockholder in such a corporation is entitled to file a claim based upon his interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

3. Minimax Super-Mercados, S.A.

The Commission has found that Minimax Super-Mercados, S.A. was intervened by the Government of Cuba on September 1, 1960, and that the value of a share of stock in that corporation on September 1, 1960, the date of loss, was \$1.0023. (See Claim of Libby Holman Reynolds, Claim No. CU-1384.) Accordingly, the Commission finds that claimants' stock interests (12,577 shares) in the intervened Cuban corporation had a value of \$12,605.93 on September 1, 1960.

4. Inmobiliaria La Torre, S.A.

The Commission has found that the value of a share of stock in Inmobiliaria La Torre, S.A. was \$1,000.00. (See Claim of Frederick Snare Corporation, et al., Claim No. CU-2035.) The Commission, therefore, finds that the value of claimants' one share of stock in that Cuban corporation on December 6, 1961, the date of loss, was \$1,000.00.

5. Havana Biltmore Yacht and Country Club

The Commission has found that the Havana Biltmore Yacht and Country Club was intervened by the Government of Cuba on March 19, 1960. (See Claim of Arman E. Becker, Jr., Claim No. CU-1094.) In that claim the Commission determined that the aggregate value of a membership interest in the Country Club and one share of stock in the Cuban corporation itself (Series A) on March 19, 1960, the date of loss, was \$3,500.00.

Claimants herein, however, owned one share of stock (Series B) in that Cuban corporation. The record in the Becker claim 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 though that claimants' right of membership alone 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 the evidence of record, including the Becker claim, the Commission finds that the value of claimants' membership interest in the Country Club should be measured by their investment or cost of membership. The record shows that claimants paid \$1,000.00 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 \$1,000.00.

6. Havana Country Club

The record shows that claimants were also members of the Havana Country Club, an organization that offered facilities to its members similar to those of the Havana Biltmore Yacht and Country Club. It further appears that claimants paid \$1,000.00 for such membership interest which, like their interest under item (5) above, constituted property within the meaning of Section 502(3) of the Act.

The Commission finds that the value of claimants' membership interest in the Havana Country Club should be measured by the cost thereof, and concludes that the value of such membership interest on December 6, 1961, the date of loss, was \$1,000.00.

7. Compania Petrolera Neptuno, S.A.

The evidence establishes and the Commission finds that Compania Petrolera Neptuno, S.A., hereafter called Neptuno, owned certain oil concessions in Cuba, and was entitled to certain royalties from other oil concessions in Cuba.

The Cuban Government enacted Law No. 635 on November 23, 1959, which cancelled all rights with respect to the exploration and exploitation of concessions in land, including oil concessions. The Commission, therefore, finds that the rights of Neptuno were effectively taken on November 23, 1959. (See Claim of Felix Heyman, Claim No. CU-0412.)

It appears from the evidence of record that no balance sheets or other financial statements concerning this Cuban corporation are available. However, the record includes a letter from the President of Gulf Oil Company-Latin America, dated May 27, 1969, in which he states that Neptuno was to have received from the Cuban Gulf Oil Company, a now defunct subsidiary of the Gulf Oil Corporation, the balance of \$40,000.00 due on the purchase price of \$60,000.00 for a concession with respect to 26,664 hectares of land in Cuba; that Neptuno was to have a 2% overriding royalty from the concession; that title was never perfected and the \$40,000.00 was not paid; and that Neptuno also owned a 2% overriding royalty interest in 15,320 hectares of other land in Cuba, which was part of a Texaco-Gulf business arrangement.

On the basis of all the evidence of record and in the absence of evidence to the contrary, the Commission finds that the value of claimants' 50% stock interest in Neptuno on November 23, 1959, the date of loss, was their purchase price of \$25,000.00.

Recapitulation

Accordingly, claimants sustained the following losses within the meaning of Title V of the Act.

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Land	12/6/61	\$ 42,362.58
Silverware	12/6/61	2,500.00
Minimax Super-Mercados, S.A.	9/1/60	12,605.93
Inmboliliaria La Torre, S.A.	12/6/61	1,000.00
Havana Biltmore Yacht and Country Club (Series B)	3/19/60	1,000.00
Havana Country Club	12/6/61	1,000.00
Compania Petrolera Neptuno, S.A.	11/23/59	25,000.00
Total		<u>\$ 85,468.51</u>

The Commission has decided that in certification of losses 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>
11/23/59	\$25,000.00
3/19/60	1,000.00
9/1/60	12,605.93
12/6/61	46,862.58
Total	<u>\$85,468.51</u>

CERTIFICATION OF LOSS

The Commission certifies that ROBERT J. MACAULAY and MARIE AGNES MACAULAY jointly 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 Eighty-Five Thousand Four Hundred Sixty-Eight Dollars and Fifty-One Cents (\$85,468.51) 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 Proposed
Decision of the Commission

AUG 27 1969

Forrest B. Newton
Forrest B. Newton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, 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 for 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. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)