

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

IN THE MATTER OF THE CLAIM OF

JEANETTE LOUISE BROCKMAN, EXECUTRIX OF THE
ESTATE OF MARJORIE BROCKMAN, DECEASED,
and
JEANETTE LOUISE BROCKMAN, INDIVIDUALLY

Claim No. CU-0321

Decision No. CU-6761

**Under the International Claims Settlement
Act of 1949, as amended**

Appeal and objections from a Proposed Decision entered August 11, 1971.
No oral hearing requested.

Hearing on the record held October 7, 1971.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on August 11, 1971, certifying 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, to the ESTATE OF MARJORIE BROCKMAN, DECEASED, in the amount of \$160,352.99, and to JEANETTE LOUISE BROCKMAN in the amount of \$119,634.27 plus interest.

Subsequently the Commission was informed that JEANETTE LOUISE BROCKMAN was duly appointed EXECUTRIX OF THE ESTATE OF MARJORIE BROCKMAN, DECEASED, and accordingly JEANETTE LOUISE BROCKMAN, EXECUTRIX OF THE ESTATE OF MARJORIE BROCKMAN, DECEASED is hereby substituted as claimant in lieu and place of the Estate.

Claimant JEANETTE LOUISE BROCKMAN filed objections to the Proposed Decision and stated that certain land in the city of Mariel, evaluated by the Commission at \$4.00 per square meter was worth \$12.00 per square meter and that the shares of stock of Compania Territorial Barker had a higher value than that found by the Commission. The Commission found that the company owned 545,938 square meters of vacant land worth \$2.00 per square meter, while claimant contends that the company owned 862,626.25 square meters of land and that its average value was \$7.75 per square meter.

In her objections claimant refers to the evidence heretofore submitted, and specifically to a report of Mr. Dieguez, received in 1964 from Cuba, where the former bookkeeper of the Cia. Territorial Barker recites the company's holdings. She also relies on statements made and evidence submitted by her uncle Ralph Mayer Barker in his Claim No. CU-0382.

Claimant observes and the Commission confirms that her maternal grandfather who originally owned the land, was Jacob Barker, and not Jacob Brockman, as stated in the Proposed Decision.

The Commission has given careful consideration to claimant's objections, to the evidence in this claim and in the claim of Ralph Mayer Barker (supra) and finds, with respect to the value of the land, that the evidence does not support claimant's assertions. A report attached to the 1958 balance sheet of the Cia. Territorial Barker shows that the land was generally sold at prices ranging from \$1.50 to \$3.30 per square meter, and only one tract of land was purchased by the Mariel Terminal Corporation at a higher price, but this land, situated on the waterfront contiguous to land already owned by the Terminal, may have been sold at such higher price only because of special circumstances and the Terminal's need to enlarge its holdings in and near the port of Mariel. No other single sale from July 1, 1957 to May 23, 1958 exceeded the price of \$3.30 per square meter. The Commission therefore reiterates its findings with respect to the value of the land subject of this claim.

On the other hand, an examination of the record reveals that prior to 1961 Cia. Territorial Barker owned 862,626.25 square meters of vacant land in the area of Mariel, and that Alma Barker Perez, another stockholder of the company, authorized the Central Termoelectrica de Mariel (Thermoelectric Power Plant of Mariel) to take possession of 316,689.25 square meters of land for construction purposes and building of installations. After having taken possession of the land, the Power Plant offered to pay \$.10 per square meter, but Alma Barker Perez refused to accept this offer. In his report, Mr. Dieguez considered the land as sold, but the Commission finds that the sale was not consummated and that on December 6, 1961,

the date of the loss of the stock, the company still owned the land in its entirety of 862,626.25 square meters. This property, at the average value of \$2.00 per square meter, in accordance with the above findings, was worth \$1,725,252.50; other assets of the company after deduction of liabilities had a value of \$122,748.02 and the net worth of the company was \$1,848,000.52.

The company had outstanding 660 shares of stock; the value of one share was therefore \$2,800.0008; based upon this value and their interest of 65 shares each, the Commission finds that the late MARJORIE BROCKMAN and JEANETTE LOUISE BROCKMAN suffered a loss in the amount of \$182,000.05 each.

Claimants' losses are restated below:

ESTATE OF MARJORIE BROCKMAN, DECEASED

Marinel realty	\$ 17,240.00
Bonds, etc.	23,478.72
Stock interest	<u>182,000.05</u>
	\$222,718.77

JEANETTE LOUISE BROCKMAN

Stock interest	\$182,000.05
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Interest shall be included as follows:

FROM

ON

JEANETTE LOUISE BROCKMAN, EXECUTRIX OF
THE ESTATE OF MARJORIE BROCKMAN, DECEASED

October 24, 1960	\$ 17,240.00
June 29, 1961	10,084.03
December 6, 1961	<u>195,394.74</u>
	\$222,718.77

JEANETTE LOUISE BROCKMAN
INDIVIDUALLY

December 6, 1961	\$182,000.05
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Accordingly, the Certifications of Loss in the Proposed Decision are set aside, the following Certifications of Loss will be entered, and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATIONS OF LOSS

The Commission certifies that JEANETTE LOUISE BROCKMAN, EXECUTRIX OF THE ESTATE OF MARJORIE BROCKMAN, 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 Two Hundred Twenty-two Thousand Seven Hundred Eighteen Dollars and Seventy-seven Cents (\$222,718.77) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that JEANETTE LOUISE BROCKMAN, INDIVIDUALLY, 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-two Thousand Dollars and Five Cents (\$182,000.05) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

OCT 7 1971



Lyle S. Garlock, Chairman



Theodora Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

ESTATE OF MARJORIE BROCKMAN, DECEASED,
JEANETTE LOUISE BROCKMAN

Claim No. CU - 0321

Decision No. CU- 6761

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, was presented by MARJORIE BROCKMAN, in the amount of \$911,723.12, based upon the asserted loss of real property, stocks, bonds, mortgage notes, a savings account and household goods. Claimant MARJORIE BROCKMAN was a national of the United States since her birth.

Subsequently the Commission was informed that MARJORIE BROCKMAN died testate on August 10, 1970; that probate proceedings were instituted in the appropriate court in Kings County, New York, but due to the absence of witnesses could not be completed; and that the last will of the testator has not been admitted to probate. Pursuant to §531.5(j)(1) of the Commission's regulations the ESTATE OF MARJORIE BROCKMAN, DECEASED, has been substituted as claimant in lieu of the deceased.

The record shows that JEANETTE LOUISE BROCKMAN, daughter of the deceased, a national of the United States also had an interest in the claim and upon due consideration the said JEANETTE LOUISE BROCKMAN has been joined in 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 claim is predicated upon the following losses:

- (1) Real property consisting of two lots in Mariel, Province Pinar del Rio, with improvements thereon;
- (2) 132 shares of stock in Compania Territorial Barker;
- (3) Bonds: 5-1/4% Fondo de Inversiones F.H.A. and 4% Republic of Cuba Veterans, Courts and Public Works obligations;
- (4) Mortgage notes of Mariel Terminal Corporation;
- (5) Savings Account with the Trust Company of Cuba; and
- (6) Household goods, furniture and furnishings.

In support of the claim evidence has been submitted which will be discussed under separate headings below together with other aspects concerning the various items of the claim.

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 particular circumstances is "most appropriate to

the property and equitable to the claimant". The Commission has concluded that 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.

(1) Real Property

The evidence shows that the late MARJORIE BROCKMAN was the owner of real property located at No. 1914 Calle 90 in the center of the city of Mariel, consisting of two lots measuring 1,310 and 1,000 square meters, respectively, with a house constructed thereon; that she had acquired this property as a widow on March 28, 1947; that the house contained two bedrooms, a living room, kitchen, bath and other facilities; and that it was rented in 1960 for a monthly rent of \$100.00, which included all the furniture and furnishings.

The record discloses that this property was subject to the Law on Urban Reform published in the Cuban Official Gazette on October 14, 1960. Under that law the renting of urban property, and all other transactions or contracts involving transfer of the use of the property was outlawed. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) The Commission, therefore, concludes that the above-described real property was taken by the Government of Cuba on October 14, 1960.

The record indicates that at the time of taking the property had been appraised by local appraisers. Considering that the depreciation of the house since its construction in 1947 has been offset by considerable appreciation of urban properties, such as the house in question, the Commission finds that the value at the time of taking was as follows:

Land	\$ 9,240.00
House	8,000.00
Total	<u>\$17,240.00</u>

and that the late MARJORIE BROCKMAN suffered a loss in that amount.

(2) Stock in Compania Territorial Barker

The record shows that the late MARJORIE BROCKMAN and JEANETTE LOUISE BROCKMAN were since 1949 the joint owners with right of survivorship of 130 shares of stock in Compania Territorial Barker, a corporation organized

under the laws of Cuba in 1944 for the purpose of administering and selling certain land holdings which MARJORIE BROCKMAN and her brothers and sisters inherited from their father Jacob Brockman who died in 1940.

Since Compania Territorial Barker was organized under the laws of Cuba, it does not qualify 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 percent or more in natural persons who are citizens of the United States. In this type of situation, it has been held that American stockholders are entitled to file a claim for the value of their ownership interest (see Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33).

The record shows that Compania Territorial Barker had issued 660 shares of stock at \$100.00 each, and, as already stated, the deceased and JEANETTE LOUISE BROCKMAN owned 130 of the outstanding shares. A report from Cuba indicates that the company owned considerable land in the area of Mariel between Mariel Bay and the Mariel - Havana Highway; that some land has been expropriated for the construction of the highway; that other portions of the land have been assigned by the local authorities for the use of the Electric Power Enterprise of Mariel; and that the remainder of the land has been placed under the control of the Department of Public Works of the Government of Cuba.

The Commission finds that the shares of stock of the late MARJORIE BROCKMAN and JEANETTE LOUISE BROCKMAN were subject to Law 989 published in the Cuban Official Gazette on December 6, 1961, which confiscated all goods, chattels, rights, shares, stocks, bonds and other property of persons who left Cuba. The late MARJORIE BROCKMAN and her daughter, claimant herein, were formerly residents of Cuba, but left that country prior to December 6, 1961. In the absence of evidence to the contrary, the Commission finds that

their stockholders' interests were taken by the Government of Cuba on December 6, 1961.

The value of the stock remains to be determined.

The record before the Commission includes a balance sheet of Compania Territorial Barker, dated June 30, 1958, which shows the following (in condensed form):

<u>Assets:</u>		<u>Liabilities:</u>	
Cash	\$ 6,162.15	Accounts Payable	\$ 825.00
Accounts Receivable	80,319.52	Taxes Payable	200.00
Notes Receivable	35,000.00	Capital	66,000.00
Land	23,522.27	Surplus	80,270.29
Buildings	1,717.05		
Transportation facilities	574.30		
	<u>\$147,295.29</u>		<u>\$147,295.29</u>

Claimants assert that the land entered in the balance sheet in the amount of \$23,522.27 was grossly undervalued, since that land consisted, at the time of taking, of 545,937 square meters of valuable realty.

In support of this assertion, claimants submitted a report from Cuba, dated December 8, 1964, which shows that the company, at the time of taking, had unsold land of an area of 545,938 square meters on both sides of the highway Havana - Mariel; there have also been submitted listings with data and names of customers showing that the company sold to certain purchasers in 1957 and 1958 land and building lots at prices which vary from \$0.75 per square meter to \$12.00 per square meter.

The Commission finds that the said report is credible and that the value of the unsold 545,937 square meters of land at the time of taking of the shares of stock was \$1,092,000.00, that the net assets of Compania Territorial Barker, after deduction of liabilities, had a value of \$1,214,748.02 and that each of the 660 outstanding shares of stock was therefore worth \$1,840.5273.

Accordingly, the late MARJORIE BROCKMAN and JEANETTE LOUISE BROCKMAN suffered a loss, based upon their interest of 65 shares each, in the amount of \$119,634.27 each.

(3) Bonds

The record shows that the late MARJORIE BROCKMAN owned \$5,000

5-1/2% Fondo de Inversiones F.H.A. bonds, due in 1965, deposited with the Trust Company of Cuba, now the Banco Nacional de Cuba. The Commission has held that these bonds were issued by a Cuban Government agency, equivalent to our Federal Housing Administration, and that interest on these bonds was last paid for the period ending June 30 1960 (see Claim of Occidental Life Insurance Company of North Carolina, Claim No. CU-2353). The Commission finds that MARJORIE BROCKMAN's interest in these bonds was taken by the Government of Cuba on December 6, 1961, on which date the Cuban Government was indebted on those bonds as follows:

Principal	\$5,000.00
5-1/4% Interest from July 1, 1960 to December 6, 1961	<u>376.25</u>
Total	\$5,376.25

The record further shows that the late MARJORIE BROCKMAN owned \$3,000 4% Republic of Cuba Veterans, Courts and Public Works Bonds, 1953-1983, also on deposit. The evidence establishes that the Government of Cuba defaulted on the payment of interest of these bonds on May 1, 1961, the last payment of interest having been made as of November 1, 1960 (see Claim of Westchester Fire Insurance Company, Claim No. CU-1703). The Commission, therefore, finds that the Government of Cuba was indebted on these bonds on May 1, 1961, the date of loss, as follows:

Principal	\$3,000.00
Interest from November 1, 1960	<u>134.00</u>
Total	\$3,134.00

The aggregate loss suffered by the late MARJORIE BROCKMAN as owner of the aforesaid bonds was therefore \$8,510.25.

(4) Mortgage Notes

The late MARJORIE BROCKMAN owned ten mortgage notes signed by the Mariel Terminal Corporation in the aggregate amount of \$10,000.00, bearing 5% interest, of which \$5,000 were due on February 28, 1961, and \$5,000 on February 28, 1964 .

The Commission records disclose that the Mariel Terminal Corporation was nationalized by the Government of Cuba on June 29, 1961. Pursuant to Section 502(3) of the Act debts owed by nationalized enterprises or debts which are a charge on property which has been nationalized or taken by the

Government of Cuba are within the scope of Title V of the Act. The debt of \$10,000 was secured by the mortgage of the Mariel Terminal Corporation and the Commission finds that the late MARJORIE BROCKMAN suffered an additional loss due to the nationalization of the debtor corporation as follows:

Principal	\$10,000.00
5% interest on \$5000 from February 28, 1961 to June 29, 1961	84.03
	<u>\$10,084.03</u>

(5) Savings Account

The record shows that the late MARJORIE BROCKMAN had a savings account with the Trust Company of Cuba, now Banco Nacional de Cuba, the balance of which on November 4, 1960 was \$3,384.44. For the reasons stated above, the Commission finds that this bank account was taken under Law 989 on December 6, 1961, and that the late MARJORIE BROCKMAN suffered an additional loss in the aforesaid amount of \$3,384.44.

(6) Personal Property

The late MARJORIE BROCKMAN submitted a list of furniture and household goods owned by her and left in her home in Mariel when she moved from Cuba to the United States. The Commission finds that she was the owner of the furniture, furnishings and household goods; that this property was taken on December 6, 1961; and that its value was, after due allowance for depreciation, \$1,500.00.

Recapitulation

The losses are summarized as follows:

ESTATE OF MARJORIE BROCKMAN, DECEASED

<u>Property</u>	<u>Date of Loss</u>	<u>Amount</u>
(1) Real property: house and lot in Mariel	October 14, 1960	\$ 17,240.00
(2) Stocks: Compania Territorial Barker	December 6, 1961	119,634.27
(3) Bonds	December 6, 1961	8,510.25
(4) Mortgage Notes	June 29, 1961	10,084.03
(5) Savings Account	December 6, 1961	3,384.44
(6) Personal Property	December 6, 1961	<u>1,500.00</u>
	Total	\$160,352.99

JEANETTE LOUISE BROCKMAN

Stocks: Compania Territorial Barker	December 6, 1961	\$119,634.27
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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 has been so ordered as follows:

<u>FROM</u>	<u>ON</u>
<u>ESTATE OF MARJORIE BROCKMAN, DECEASED:</u>	
October 14, 1960	\$ 17,240.00
June 29, 1961	10,084.03
December 6, 1961	<u>133,028.96</u>
	<u>\$160,352.99</u>
<u>JEANETTE LOUISE BROCKMAN</u>	
December 6, 1961	\$119,634.27

CERTIFICATION OF LOSS

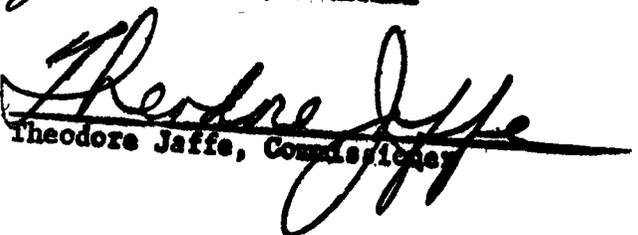
The Commission certifies that the ESTATE OF MARJORIE BROCKMAN, DECEASED, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Sixty Thousand Three Hundred Fifty-Two Dollars and Ninety-Nine Cents (\$160,352.99) with interest at 6% per annum from the respective dates of taking to the date of settlement; and

The Commission certifies that JEANETTE LOUISE BROCKMAN 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 Nineteen Thousand Six Hundred Thirty-Four Dollars and Twenty-Seven Cents (\$119,634.27) 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

AUG 11 1971


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. 531.5(e) and (g), as amended (1970).)