

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

IN THE MATTER OF THE CLAIM OF

RALPH MAYER BARKER  
ROSE BARKER

Claim No. CU-0382

Decision No. CU-6762

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 to RALPH MAYER BARKER, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, in the amount of \$252,569.60.

Claimant objected to the Proposed Decision and stated that his wife ROSE BARKER also has an interest in the claim; 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; that the Commission should have allowed accrued interest on mortgage notes issued by the Mariel Terminal Corporation; and that shares of stock of the Cia. Territorial Barker had a higher value than the value found by the Commission, because the company had among its assets 862,626.25 square meters of vacant land, and not 545,938 square meters as found by the Commission, and further because this land had an average value of \$7.75 per square meter, and not \$2.00 as determined by the Commission.

In support of the objections, claimant submitted his marriage certificate of August 10, 1935, the birth certificate of his wife ROSE BARKER showing that she was a native born citizen of the United States and other documentation.

The Commission, finds, on the basis of the new evidence, that ROSE BARKER has an interest in certain property subject of this claim and she is therefore added as party claimant.

Full consideration having been given to claimants' objections and the newly submitted evidence, the Commission finds that with respect to the value of the land, the evidence does not support claimants' 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 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, affirms 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 \$0.10 per square meter, but Alma Barker Perez refused to accept this offer. In a report to the claimant, Mr. Dieguez, the company's bookkeeper in Mariel, considered this land as having been sold, but the Commission finds that the sale was not consummated and that on December 6, 1961, the date of the loss of stock, the company still owned 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 amounted to \$122,748.02 and the net worth of the company was thus \$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 the 132 shares of stock owned by RALPH MAYER BARKER were worth \$369,600.11.

The land recorded in the name of RALPH MAYER BARKER in Mariel was purchased in 1947, and the mortgage notes of the Mariel Terminal Corporation were issued in 1956. It is, therefore, concluded that under the community property law of Cuba a one-half interest in the land and in the notes belonged to ROSE BARKER, the wife of RALPH MAYER BARKER, and that she suffered a loss in the amount of \$4,620.00 for her interest in the land, and \$5,000.00 for her interest in the principal of the notes.

With respect to the claim for the accrued interest on the notes, the Commission finds that 5% interest was due and payable on February 28 and August 28 of each year; that the last payment by the borrower was made on August 28, 1958 in the amount of \$250.00 at the office of claimant's attorney in Havana; and that no interest was paid for the years 1959, 1960 and the first half of 1961 in the aggregate amount of \$1,250.00. Such interest, therefore, represents an additional loss of \$625.00 each to RALPH MAYER BARKER and to ROSE BARKER.

Claimants' losses are stated below:

| <u>RALPH MAYER BARKER</u> |               |                   |
|---------------------------|---------------|-------------------|
| Realty                    |               | \$ 4,620.00       |
| Mortgage notes            | \$5,000.00    |                   |
| Interest                  | <u>625.00</u> | 5,625.00          |
| Stock                     |               | <u>369,600.11</u> |
|                           | Total         | \$379,845.11      |

| <u>ROSE BARKER</u> |               |                 |
|--------------------|---------------|-----------------|
| Realty             |               | \$ 4,620.00     |
| Mortgage notes     | \$5,000.00    |                 |
| Interest           | <u>625.00</u> | <u>5,625.00</u> |
|                    | Total         | \$10,245.00     |

Interest shall be included as follows:

| <u>FROM</u>               | <u>ON</u>         |
|---------------------------|-------------------|
| <u>RALPH MAYER BARKER</u> |                   |
| June 29, 1961             | \$ 5,625.00       |
| December 6, 1961          | <u>374,220.11</u> |
|                           | \$379,845.11      |
| <u>ROSE BARKER</u>        |                   |
| June 29, 1961             | \$ 5,625.00       |
| December 6, 1961          | <u>4,620.00</u>   |
|                           | \$10,245.00       |

Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certifications are entered, and the remainder of the Proposed Decision, as amended herein, is affirmed.


CERTIFICATIONS OF LOSS

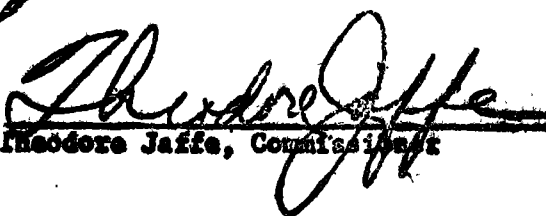
The Commission certifies that RALPH MAYER BARKER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Hundred Seventy-Nine Thousand Eight Hundred Forty-Five Dollars and Eleven Cents (\$379,845.11) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that ROSE BARKER 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 Ten Thousand Two Hundred Forty-Five Dollars (\$10,245.00) 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 13 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

RALPH MAYER BARKER

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0382

Decision No. CU - 6762

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the revised amount of \$1,386,659.83 was presented by RALPH MAYER BARKER, based upon the asserted loss of real property, stocks and mortgage notes. Claimant has been a national of the United States since his 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.

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

(a) 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 claim is predicated upon the following losses:

|   |                  |
|---|------------------|
| (1) Real property   | \$ 15,480.00     |
| (2) Stock: 132 shares of stock<br>of Compania Territorial<br>Barker | 1,361,179.83     |
| (3) Mortgage notes  | <u>10,000.00</u> |
| Total   | \$1,386,659.83   |

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

#### (1) Real Property

The record shows that claimant was the owner of two building lots located at the intersection of Calle 90, Avenida Gustavo Menocal and the Highway Havana - Mariel, in the center of the city of Mariel, Province of Pinar del Rio. The aggregate area of the two parcels measured 2,310 square meters.

The Commission finds that the two lots were subject to Cuban Law 989 published in the Official Gazette of December 6, 1961, which confiscated all goods and chattels, rights, shares, stocks, bonds and other property of persons who left Cuba. Claimant and his wife were former residents of Cuba and left that country prior to December 6, 1961. In the absence of evidence to the contrary, the Commission finds that claimant's interest in the two building lots was taken by the Government of Cuba on December 6, 1961.

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". 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.

On the basis of the record the Commission finds that the two lots, at the time of taking, had a value of \$9,240.00.

Pursuant to the community property law of Cuba, claimant's wife had a one-half interest in all property acquired by her husband during the marriage from funds of the marriage partnership, his industry, salary and wages, and from the fruits thereof (not including funds acquired by inheritance or gift).

(See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

Inasmuch as no evidence has been submitted to indicate that claimant's wife was a national of the United States at the time of taking, her interest in the property cannot be considered here and the Commission concludes that claimant suffered a loss in connection with his one-half interest in the real property described above in the amount of \$4,620.00.

#### (2) Stock in Compania Territorial Barker

The record shows that claimant was the owner of 132 shares in the capital stock of Compania Territorial Barker, a corporation organized under the laws in Cuba in 1944 for the purpose of administering and selling certain land holdings which the claimant, and his brothers and sisters inherited upon the death of their father Jacob Barker 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 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.)

The record shows that Compania Territorial Barker had issued 660 shares of stock at \$100.00 each, and that claimant, one of five children of Jacob Barker, acquired as part of his inheritance 132 or one-fifth of all 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 for the use of the Electric Power Enterprise of Mariel by the local authorities; 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 claimant's shares of stock were also subject to Law 989 (supra) and that his stockholder's interest was taken by the Government of Cuba on December 6, 1961.

Claimant submitted a balance sheet of Compania Territorial Barker, dated June 30, 1958, which shows the following (condensed):

| <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> |

Claimant asserts 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 his assertion, claimant 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 545,937 square meters on both sides of the highway Havana - Mariel; he also submitted listings, with data and names of purchasers showing that the company sold in 1957 and 1958, 20 building lots and land tracts 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 was \$1,092,000.00; that the net assets of Compania Territorial Barker 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, claimant suffered a loss, based upon the ownership of 132 shares which he acquired from inherited funds, in the amount of \$242,949.60.

### (3) Mortgage Notes

Claimant owned ten mortgage notes in the aggregate amount of \$10,000.00 signed by the Mariel Terminal Corporation, bearing 5% annual interest. The due date of these notes has not been disclosed, but claimant states that no interest on the notes was paid since February 28, 1958.

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 an enterprise which has been nationalized or taken and debts which are a charge on property nationalized or taken by the Cuban Government, are within the scope of Title V of the Act. The debt of \$10,000 secured by the mortgage notes is in this category and the Commission finds that claimant, considering his one-half interest under the community property law of Cuba, suffered a loss as of the date of nationalization in the amount of \$5,000.00.

The claim for accrued interest from February 28, 1958 to the date of nationalization is not supported by sufficiently convincing evidence and it is hereby denied.

Summary

Claimant's losses are summarized as follows:

| <u>Property</u> | <u>Date of Loss</u> | <u>Amount</u>   |
|-----------------|---------------------|-----------------|
| Realty          | December 6, 1961    | \$ 4,620.00     |
| Stock           | December 6, 1961    | 242,949.60      |
| Mortgage notes  | June 29, 1961       | <u>5,000.00</u> |
|                 |                     | \$252,569.60    |

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 this case it is so ordered as follows:

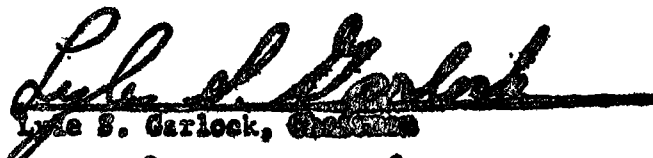
| <u>FROM</u>      | <u>ON</u>       |
|------------------|-----------------|
| December 6, 1961 | \$247,569.60    |
| June 29, 1961    | <u>5,000.00</u> |
|                  | \$252,569.60    |


CERTIFICATION OF LOSS

The Commission certifies that RALPH MAYER BARKER 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 Fifty-Two Thousand Five Hundred Sixty-Nine Dollars and Sixty-Cents (\$252,569.60) with interest 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 11 1971**

  
Lyle S. Carlock, 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).)