

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

IN THE MATTER OF THE CLAIM OF

DOLORES DEL PESO OCHS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0465

Decision No. CU 5972

Counsel for claimant:

Robert E. Shuff, 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 DOLORES DEL PESO OCHS for \$40,272.00 based upon the asserted ownership and loss of certain stock and bond interests in Cuba. Claimant has been a national of the United States since her naturalization on January 24, 1946.

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.

Claimant describes her losses as follows:

189 shares of La Estrella, Cuba Industrial y Comercial, S.A., assertedly owned as of October 15, 1960 and 854 (or 754) more recently assigned from her non-United States mother, Mrs. Fe Gonzales Pineda Vda. del Peso

\$2,500 face value of preferred stock of Cuban Telephone Company (Cutelco)

\$18,000 in bonds issued by Fomento de Hipotecas Aseguradas (F.H.A.) guaranteed by assets of La Estrella

159 common shares of La Cubana, Cia. Nacional de Seguros, S.A.

The record in this matter includes statements by the President of La Estrella; copy of a receipt from Banco Financiero for the FHA bonds; copies of accounts pertaining to La Estrella; copies of accounts pertaining to La Cubana; letters from the former presidents of these companies, and other correspondence and affidavits.

On the basis of this entire record, the Commission finds that claimant was the owner of certain bond and stock interests as further discussed below, which were taken by the Government of Cuba on the dates found 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.

La Estrella

On the basis of the aforesaid record, including a statement of the president of the company, and copies of accounts, the Commission finds that claimant was the owner of 189 shares of Estrella. Further, the Commission finds that this company, a chocolate manufacturer, was listed as nationalized by the Government of Cuba, in Law 890, as published on October 13, 1960.

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.

Inasmuch as claimant's mother is not a national of the United States, so much of the claim as is based on the asserted assignment of a claim based on 754 shares said to have been assigned to her from her mother, is not certifiable within the meaning of Title V of the Act, and is accordingly denied.

The Commission finds that claimant suffered a loss in connection with her individually owned 189 shares of La Estrella, on October 13, 1960.

The record includes the statement of the former president of La Estrella that the stock had a value of \$70.00 per share prior to the Castro regime and that during 1959 to October 14, 1960 it was quoted at \$35.00 to \$40.00 a share on the Havana stock exchange. He further states that the physical assets of the plant had a value of more than \$3,000,000.00, that the company had a mortgage of \$450,000.00, backed by FHA (further discussed below), and that the capital was represented by shares of \$100.00 book value. Apparently no balance sheets are available and the former president has stated that he cannot now reconstruct such a balance sheet. The record also includes copies of accounts reflecting that dividends were paid yearly on the stock.

On the basis of this record, and in the absence of evidence of a compelling nature as to a higher value, the Commission finds that on the date of loss, each share had a value of \$35.00 and concludes that claimant thus suffered a loss of \$6,615.00 in this respect.

F.H.A. Bonds

The record includes evidence that La Estrella first issued bonds which were replaced by First Mortgage bonds issued by Fomento de Hipotecas Aseguradas, a Cuban Government agency. As stated above, the mortgage was guaranteed by the assets which exceeded this debt and further guaranteed by FHA. The record includes evidence that claimant was the owner of such bonds in the face amount of \$18,000.00.

The Commission has previously held that debts of a nationalized enterprise are certifiable under Title V of the Act (see Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966]; and Claim of Occidental Life Insurance Co. of North Carolina, Claim No. CU-2353).

Accordingly, the Commission concludes that claimant sustained a loss of \$18,000.00 in connection with these bonds on October 13, 1960.

Cutelco

Based on the record which includes a 1958 letter of a Bank concerning the purchase of Cutelco stock, the Commission finds that claimant was the owner of 25 shares of preferred stock of Cutelco.

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 record shows that the value of a share of preferred stock was \$104.50 on August 6, 1960. The Commission, therefore, finds that on August 6, 1960, the date of loss, the claimant sustained a loss of \$2,612.50.

La Cubana

It appears that this Company was reinsured by Lincoln National Life Insurance Company of Indiana, which indicates that the relationship ceased when

the company was nationalized in October, 1959. Other statements attributed to a former vice president indicate that the company may have been taken much later than other companies, possibly in February 1960. There is no concrete evidence as to the value of this company on any date of taking.

However, without determining the date of taking and value, other grounds are dispositive of this item of claim.

Evidence of the asserted ownership was suggested on several occasions, particularly on September 24, 1970.

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).)

Claimant has submitted through counsel a listing of dividends of La Cubana apparently from 1944 through 1959. Some parts of this documentation do, indeed, reflect claimant's name, and it is accompanied by only a summary translation, which counsel indicates is intended to give a running picture of the situation. The Commission finds that this evidence is not sufficiently probative to establish the asserted ownership of this stock interest, and accordingly this part of the claim is denied.

RECAPITULATION

Claimant's losses within the scope of Title V of the Act may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
189 shares of La Estrella	October 13, 1960	\$ 6,615.00
FHA bonds	October 13, 1960	18,000.00
25 shares of Cutelco preferred	August 6, 1960	<u>2,612.50</u>
		\$27,227.50

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:

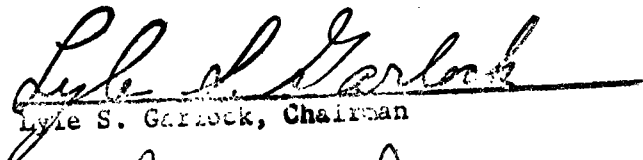
<u>FROM</u>	<u>ON</u>
August 6, 1960	\$ 2,612.50
October 13, 1960	<u>24,615.00</u>
	\$27,227.50

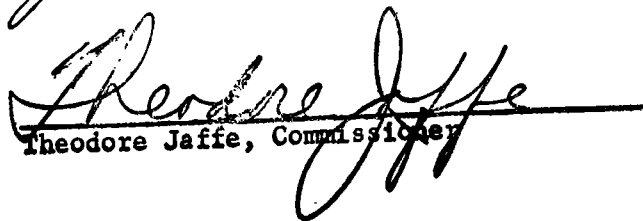
CERTIFICATION OF LOSS

The Commission certifies that DOLORES DEL PESO OCHS 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 Twenty-seven Thousand Two Hundred Twenty-seven Dollars and Fifty Cents (\$27,227.50) 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

NOV 23 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. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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