

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

IN THE MATTER OF THE CLAIM OF

MARY PERCY ROBERTS MESTRE

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0514

Decision No. CU- 6256

Counsel for claimant:

William E. Henson, Jr., Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$410,604.00, was presented by MARY PERCY ROBERTS MESTRE, based upon the asserted loss of real and personal property, and shares of stock. Claimant has been a national 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.

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.

Claimant states that she was the owner of an improved building lot with a residence erected thereon, located at No. 3416 Avenida 49-A (formerly Avenida Bruselas) in the section known as Reparto Kohly in the Marianao suburb of Havana, of personal property therein, and the following stock interests:

- (1) 230 shares Roberts Tobacco Company
- (2) 92 shares Central Nela S.A.
- (3) 115 shares A.S.C. Corporacion
- (4) 38 shares Compania Comercial Mayajigua S.A.
- (5) 900 shares Compania Constructora Naroca S.A.

In support of the claim, claimant submitted, among other documents, a copy of a written statement which her brother, Eugene Saunders Roberts, delivered to the American Embassy in Havana on October 7, 1960; a copy of a deed showing the purchase of the real property; listings of personal property; and affidavits and statements of family members and other persons concerning several property items.

The various elements of the claim will be discussed under separate headings.

#### Real Property

On the basis of the evidence of record, the Commission finds that on November 29, 1954, claimant, married to Roman Mestre y Gutierrez, acquired a building lot measuring 1,071.96 square meters facing the Avenida Bruselas in the section known as Reparto Kohly in Marianao on which claimant constructed a building as discussed below. The Commission finds that this property was subject to Law No. 989, published by the Cuban Government in the Official Gazette on December 6, 1961, which confiscated all goods, chattels, rights, shares, stocks, bonds and other property of persons who left Cuba. Claimant and her family left Cuba for the United States in December 1960. The Commission, therefore, finds that this real property was taken 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". 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.

The property was free of encumbrances and the purchase price was \$10,000.00. Claimant constructed on the premises a large three-story family residence with all modern facilities.

Based upon the evidence before the Commission, including a statement made by claimant's brother before the American Embassy in Havana, the Commission finds that at the time of taking, the value of land was \$10,000, and the improvements had a value of \$55,000 for a total of \$65,000.

Pursuant to the community property law of Cuba, property acquired during marriage by one or both spouses from funds of the marriage partnership, or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal parts to both spouses. Consequently, claimant's husband had a one-half interest in the above-described property and claimant's interest in that property is limited to \$32,500.00 (see Claim of Robert L. Cheaney et ux, Claim No. CU-0514).

It is noted that the nationality of claimant's husband Ramon Mestre y Gutierrez as of the time of taking has not been disclosed, but the circumstances surrounding this claim indicate that he was not a United States citizen at that time and therefore not eligible as a claimant before the Commission under Section 504 of the Act.

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Personal Property

The record further shows that claimant owned personal property, consisting of furniture, kitchen utensils, appliances, linens, silver, china, clothing and personal effects described in the record. This property was likewise subject to Law 989 and the Commission finds that it was taken by the Government of Cuba on December 6, 1961. On the basis of the evidence before the Commission, including statements made before the American Embassy in Havana by claimant's brother, the Commission finds that at the time of taking the value of the personal property was \$20,000.00.

As stated in the preceding paragraphs, under the community property laws of Cuba claimant's husband had a one-half interest in the property, and claimant's interest therein is therefore limited to \$10,000.00.

Shares of Stock

Based upon the evidence of record, the Commission holds that claimant was the owner of the asserted shares of stock of the corporation named at the outset, which she owned as a result of a family partition, and not in community property.

Since all these corporations were organized under the laws of Cuba, they do not qualify as corporate "nationals 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 cent 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-180, 1967 FCSC Ann. Rep. 33.)

The record shows that the enterprises to which reference is made above, were nationalized, intervened or confiscated on the following dates.

Roberts Tobacco Company: October 5, 1961  
Central Nela S.A. together with A.S.C.  
Corporacion and Cia. Comercial Mayajigua S.A. by  
Resolution No. 5 published in the Official  
Gazette of August 19, 1960  
Cia. Constructora Naroca S.A.  
nationalized October 15, 1959

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Roberts Tobacco Company

The capital stock of this corporation was \$500,000 divided in 1,000 shares of \$500 each. The principal business activity consisted in the importation to Cuba of American cigarettes and other smoker's articles, as well as chewing gum and razor blades. No balance sheets nor any other financial statements of the company have been submitted to the Commission. Claimant's father and brother who managed the company state that the company had sales in excess of \$6,000,000 and a net profit before taxes of \$250,000 per year. In the absence of other specific information concerning the assets and liabilities of the company, the Commission holds, on the basis of the record, including claims of American suppliers of the Roberts Tobacco Company, that at the time of taking the net worth of the corporation was \$500,000 and the value of each share \$500. Accordingly, the value of claimant's 230 shares was \$115,000.00.

Central Nela S.A.

At the time of nationalization this corporation had a paid-up capital stock of \$1,143,000 divided in 1,143 shares of \$1,000 each. The company owned a sugar mill with storage facilities at Mayajigua, Las Villas Province, and sugar cane land of 12,000 acres. The average production of sugar during the last three years before nationalization was 115,000 bags of 250 Spanish pounds (253-1/2 American pounds) each. In the absence of any financial statement concerning the net worth of the company, the Commission finds that the corporation's assets, consisting of land, improvements, machinery, and other equipment had a value of \$1,340,000.00, the declared liabilities to be deducted were \$539,780.00 resulting in a net worth of \$800,220.00. Thus, the value of one share was \$700.10. Accordingly, the value of claimant's 92 shares was \$64,409.20.

Compania Comercial Mayajigua S.A.

This company had a capital stock of \$25,000 divided in 500 shares of \$50.00 each. The record reflects that certified public accountants, having checked the inventory, assets, liabilities, etc., found that this

company, at the time of taking, had a net worth of \$53,686.93. Thus the value of one share was \$107.37. Accordingly, the value of claimant's 38 shares was \$4,080.06.

Compania Constructora Naroca S.A.

This company had a capital stock of \$500,000 divided in 5,000 shares of \$100 each. The record shows that at the time of taking, the assets of the company, consisting of construction equipment, a repair shop, and a warehouse, had a value of \$725,000, while the company was indebted to Alexander M. Roberts in the amount of \$833,308.68 plus interest. In the absence of any further information regarding the value of the company, the Commission finds that the known liabilities of the corporation exceeded the value of the assets, and that from an accounting view the shares of stock were without value. Accordingly, the portion of the claim relating to these shares of stock is denied.

A.S.C. Corporacion

This company had a capital stock of \$150,000 divided in 1,500 shares of \$100 each. It was in the business of leasing land and dealing in the storage of sugar. No information whatsoever has been furnished concerning the assets and liabilities of this company and the record does not indicate that the company owned any substantial fixed or current assets.

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) (1970).)

The Commission finds that claimant has failed to meet the burden of proof with respect to property owned by A.S.C. Corporacion, and this portion of the claim is therefore also denied.

Summary

The Commission finds that claimant suffered the following losses within the meaning of Title V of the Act:

<u>Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Residence	December 6, 1961	\$ 32,500.00
Personal property	December 6, 1961	10,000.00
Roberts Tobacco Company	October 5, 1961	115,000.00
Central Nela	August 19, 1960	64,409.20
Cia. Comercial Mayajigua S.A.	August 19, 1960	<u>4,080.06</u>
	Total	\$225,989.26

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 19, 1960	\$ 68,489.26
October 5, 1961	115,000.00
December 6, 1961	<u>42,500.00</u>
	\$225,989.26

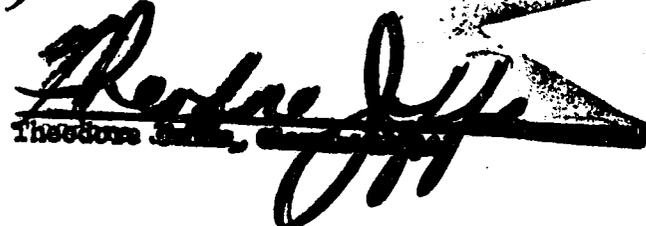
CERTIFICATION OF LOSS

The Commission certifies that MARY PERCY ROBERTS MESTRE 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-Five Thousand Nine Hundred Eighty-Nine Dollars and Twenty-Six Cents (\$225,989.26) 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

**JUL 7 1971**

  
J. S. Curlock, Chairman

  
Theodore J. Hoff

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).)