

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

IN THE MATTER OF THE CLAIM OF

DAVID HUNTER FLANAGAN
and
GERTRUDE CATHERINE FLANAGAN

Claim No. CU-0606

Decision No. CU -6040

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Rufus King, Esq.

Appeal and objections from a Proposed Decision entered on February 3, 1971;
oral hearing requested.

Oral Hearing held on March 29, 1971.

FINAL DECISION

Under date of February 3, 1971, the Commission issued its Proposed Decision certifying losses in favor of claimants in the amounts of \$28,022.75 and \$28,022.74, respectively, plus interest.

Claimants objected to the Commission's valuations (of the real properties) in the Proposed Decision and requested an oral hearing which was held on March 29, 1971. At that hearing, Mr. Flanagan gave oral testimony, counsel argued on his behalf, and further supporting documentation was submitted. Subsequently, additional material was filed by counsel.

Upon consideration of the evidence presented at the oral hearing and filed subsequently pursuant thereto in the light of the entire record and upon consideration of valuations for similar properties in the same general area of the Isle of Pines, Cuba, the Commission finds that the values of the real properties herein on the respective dates of loss were as follows, the identifying symbols for the properties being those of the claimants:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Claimants' Equity</u>
Estate - improved real property	March 4, 1961	\$ 21,500.00
1. Hotel Site	March 4, 1961	6,500.00
2, 2a, 2b. Motel Site	March 4, 1961	19,500.00
3. Town lots	March 4, 1961	350.00
4. Ten Acres - Highway	March 4, 1961	2,500.00
5. Town lots	March 4, 1961	1,250.00
6. Farm and improvements Less mortgage of \$1,350.00	March 4, 1961	5,400.00
6a. Riverfront	March 4, 1961	5,000.00
7. Town lots Less mortgage of \$9,052.50	March 4, 1961	21,447.50
8. Commercial property Less mortgage of \$4,930.00	October 8, 1960	15,420.00
Amended claim - 10 acres	March 4, 1961	<u>2,500.00</u>
	Total	<u>\$101,367.50</u>

The Commission affirms its finding of loss by claimants of personal property in an aggregate amount of \$19,784.17.

Accordingly, the Certification of Loss in the Proposed Decision is set aside and the following Certifications of Loss will be entered, and the Proposed Decision is affirmed in all other respects.


CERTIFICATIONS OF LOSS

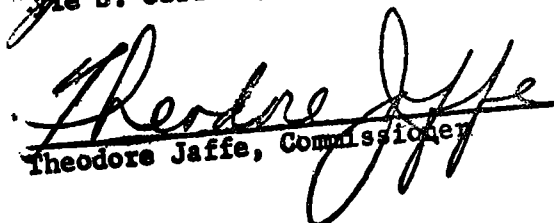
The Commission certifies that DAVID HUNTER FLANAGAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty Thousand Five Hundred Seventy-Five Dollars and Eighty-Four Cents (\$60,575.84) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that GERTRUDE CATHERINE FLANAGAN 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 Sixty Thousand Five Hundred Seventy-Five Dollars and Eighty-Three Cents (\$60,575.83) 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 Final
Decision of the Commission

MAY 5 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

DAVID HUNTER FLANAGAN
and
GERTRUDE CATHERINE FLANAGAN

Claim No. CU-0606

Decision No. CU - 6040

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Rufus King, 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 amended amount of \$374,951.43, was presented by DAVID HUNTER FLANAGAN and GERTRUDE CATHERINE FLANAGAN based upon the asserted loss of certain real and personal property on the Isle of Pines, Cuba. 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 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.

Claimants assert the following losses; the identifying data being those of claimants:

	<u>Fair Market Value</u>	<u>Claimants' Equity</u>
Estate:		
Land	\$16,850.00	
Buildings	<u>40,950.00</u>	\$ 57,800.00
1. Hotel Site - land	\$50,000.00	50,000.00
2. Motel Site - land	22,500.00	22,500.00
2a. Motel Site - land	18,500.00	18,500.00
2b. Town Lots - land	98,350.00	98,350.00
3. Town Lots - land	2,050.00	1,950.00
4. 10 Acres Hwy. - land	6,500.00	6,350.00
5. Town Lots	7,300.00	7,100.00
6. Imp. Farm 27A:		
Land	8,775.00	
Buildings	<u>5,725.00</u>	12,915.00
6a. 20A River Frt. - land	\$ 8,000.00	7,750.00
7. Town Lots - land	39,400.00	30,097.50
8. Commercial Property:		
Land	15,000.00	
Buildings	<u>20,850.00</u>	30,920.00
9. Bldg. Mat. & Office Equip.		3,214.39
Personal Effects		24,004.54
10 Acres of land (amended part of claim)		<u>3,500.00</u>
Total		<u>\$374,951.43</u>

The evidence includes original deeds, contracts, receipts, contemporary correspondence, and statements of claimants and counsel. On the basis of the entire record, the Commission finds that claimants, husband and wife, jointly owned certain real and personal property on the Isle of Pines, Cuba, discussed in detail below. Based upon contemporary correspondence from Cuba, including a telegram, the Commission finds that the commercial property, item 8 above, was taken by the Government of Cuba on October 8, 1960, by seizure by Cuban militia; and that all of the other properties of claimants in Cuba were taken on March 4, 1961, as asserted by claimants.

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.

An examination of the record shows the costs of acquiring the various items of real property on the Isle of Pines, Cuba as follows:

Estate:

Pursuant to a written option of September 2, 1955 and a deed No. 70 of April 9, 1956, claimants acquired 6,060 square meters of land:

Lots 2, 3, 4 and 5, each lot having an area of 615 square meters.

Lots 12, 13 and 14, each lot having an area of 697 square meters.

Lot 15, having an area of 836 square meters.

Lot 9, having an area of 673 square meters.

On lot 15 was situated a two-story frame house of about ten rooms and usual facilities. The lot was also improved by a garage and a "pump house."

According to records maintained by Mr. Flanagan, the aggregate cost of all of the foregoing items of real property, including travelling and related expenses, was \$13,664.37; and subsequent improvements, such as a new water pump, fencing, landscaping and painting, amounted to \$1,743.53. The aggregate cost, therefore, was \$15,407.90.

1. Hotel Site:

Pursuant to the same option of September 2, 1955 and deed No. 70 of April 9, 1956, claimants also acquired 27,337 square meters of land at a cost of \$4,000.00 (the Cuban peso being on a par with the United States dollar). Later improvements amounted to \$689.40. The aggregate cost, therefore, was \$4,689.40.

2. Motel Site; 2a. Motel Site; 2b. Town Lots:

Pursuant to deed No. 49 of June 21, 1955, claimants acquired various lots having an aggregate area of 19.5 acres or 78,913 square meters, an acre being equivalent to approximately 4,047 square meters. Claimants' records show that the aggregate cost of the property was \$3,369.40.

3. Town Lots:

Pursuant to an agreement of January 22, 1958, claimants acquired two lots, identified as lots 1 and 2, Manzana, Block 8, at a cost of \$100.00. The area of the land is not shown.

4. Ten Acres - Highway:

Claimants' records show that they acquired on August 8, 1956, ten acres of land fronting on Santa Barbara Highway, at a cost of \$500.00.

5. Town Lots:

Pursuant to an agreement of July 8, 1958, claimants acquired lots 1, 2, 3, 11, 12, 13, 19 and 20, Block 13, Manzana, at a cost of \$500.00. The area of the land is not shown.

Improved Farm:

Claimants' records show that they acquired in 1959 a tract of land along the riverfront, with an area of 27 acres improved by a house and a citrus grove. The purchase price was \$4,200.00, of which they paid \$2,850.00 plus expenses, aggregating an investment of \$2,885.20.

6a. Riverfront Acreage:

Claimants' records show that they acquired in 1956, twenty acres of land, known as tracts 631 and 632, at a cost of \$335.00.

7. Town Lots:

Pursuant to a number of contracts executed on June 20, 1956, claimants acquired various parcels of land in which their payments on account of the purchase prices aggregated \$1,165.00.

8. Commercial Property:

Pursuant to deed No. 68 of February 19, 1958, claimants acquired certain improved real property in Nueva Gerona, Isle of Pines, consisting of a lot having

an area of 1,393.52 square meters, improved by a wooden house, a garage and other cement buildings. The purchase price was \$11,000.00. According to claimants' records, \$6,809.42 was paid by them in connection with the purchase as follows:

Payments and expenses on account of purchase price		\$4,230.88
Payments on account of one mortgage on the property (Roy Kerr)		1,440.00
Payments on account of another mortgage on the property (Guillermo Rodriguez)		538.27
<u>Improvements:</u>		
Treasure Chest Restaurant	\$225.00	
Small Cottage	132.00	
Small frame house	<u>243.27</u>	<u>600.27</u>
Total		<u>\$6,809.42</u>

It further appears from claimants' records that on the date of loss, the unpaid balances of the two mortgages were \$1,530.00 and \$3,400.00, respectively.

9. Building Material and Office Equipment:

Claimants' records show that they owned at their real estate office on the Isle of Pines, Cuba, certain building material and office equipment consisting of office furniture and sales materials, costing \$778.00 in about 1955; and equipment to be used in future guest houses, aggregating \$2,436.39 in value.

Personal Effects:

Claimants' records show that they owned certain personal effects in Cuba, primarily house furniture, furnishings and other personal belongings, including clothing. The record includes a detailed list, showing the aggregate amount of \$24,004.54.

Amended Claim - 10 Acres of Land:

Pursuant to deed No. 367 of August 23, 1956, claimants acquired 10 acres of land at a cost of \$500.00.

Valuation

Counsel's letter of December 22, 1967 indicated that Mr. Flanagan is a highly experienced and well-qualified real estate dealer and appraiser.

Mr. Flanagan's letter of February 23, 1968 recited that he had made a "comparison value analysis" of the properties herein with other properties on the Isle of Pines, and that his asserted values are fully supported by his study. However, Mr. Flanagan failed to set forth the details that constituted the basis for his opinion.

In view of the disparities between the amounts claimed and the purchase prices for the properties in question, the Commission suggested that Mr. Flanagan set forth his qualifications as an appraiser of real property, and indicate the bases for his evaluations. However such information has not been submitted.

As already noted, claimants purchased the "Estate" in 1956 at an aggregate cost of \$13,664.37, including all expenses. The only improvements they made were minor in nature, costing \$1,743.53. However, claimants assert the following valuations:

Main house	\$30,800.00
Servants' quarters and other houses	3,000.00
Power house	2,750.00
Land	16,850.00
Groves	<u>4,400.00</u>
Total	<u>\$57,800.00</u>

The hotel site (1 above) was acquired by claimants in 1956 at an aggregate cost of \$4,689.40, including \$689.40 for improving the well, constructing a patio, fencing, clearing, etc. Claimants assert that this property had a value of \$50,000.00.

The motel sites and town lots (2, 2a, and 2b above) were acquired by claimants in 1955 at an aggregate cost of \$3,369.40, including all expenses. The amount asserted on account of said properties aggregates \$139,350.00.

The town lots (item 3 above) were acquired by claimants in 1958 for \$100.00. The amount asserted as the aggregate value of their interests is \$1,950.00.

The ten acres (item 4 above) and the town lots (item 5 above) cost claimants \$500.00 for each piece of property in 1956 and 1958, respectively. The amounts asserted by claimants are \$6,350.00 and \$7,100.00, respectively.

Claimants acquired the improved farm (item 6 above) in 1959 and the riverfront acreage (item 6a above) in 1956 with payments aggregating \$2,885.20 and \$335.00, respectively. The amounts asserted by claimants are \$12,915.00 and \$7,750.00, respectively.

Claimants invested \$1,165.00 in the town lots (item 7 above) in 1956. They claim a loss of \$30,097.50.

The commercial property (item 8 above) was acquired by claimants in 1958 for an investment of \$6,809.42, including expenses, the aggregate purchase price being \$11,000.00. Claimants assert a loss of \$30,920.00.

The amended claim for 10 acres of land involved an investment of \$500.00 in 1956. A loss in the amount of \$3,500.00 is asserted.

Evidence to support claimants' valuations was suggested by the Commission originally on July 25, 1966 and after several extensions and in light of the foregoing analysis, details were suggested on October 28, 1969 and a "follow-up" letter of December 2, 1969 was dispatched. An extension of time was granted and another letter was directed to counsel on February 3, 1970. Counsel responded by forwarding to the Commission a copy of his letter to Mr. Flanagan, dated March 5, 1970, which alerted claimant to the need for evidence as suggested.

A complete re-examination of the claim having been made, counsel was apprised of the results and specific suggestions were made by letter of November 25, 1970.

No reply or further evidence has been submitted, and it does not appear that any additional supporting evidence will be filed.

Upon consideration of the entire record, the Commission finds no valid basis for accepting Mr. Flanagan's asserted valuations. The Commission, therefore, finds that the valuations most appropriate to the properties and equitable to the claimants are their costs, except as noted below. Accordingly, the Commission finds that the values of the properties on the respective dates of loss were as follows, the identifying symbols for the properties being those of the claimants:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Claimants' Equity</u>
Estate	March 4, 1961	\$15,407.90
(It is noted that the house which was situated on the "Estate" had been purchased by claimants' predecessor in interest on July 18, 1943; and that said house and the lot on which it was located was appraised at \$2,500.00 in the deed of April 9, 1956.)		
No. 1	March 4, 1961	4,689.40
Nos. 2, 2a and 2b	March 4, 1961	3,369.40
No. 3	March 4, 1961	100.00
No. 4	March 4, 1961	500.00
No. 5	March 4, 1961	500.00
No. 6	March 4, 1961	2,885.20
No. 6a	March 4, 1961	335.00
No. 7	March 4, 1961	1,165.00
No. 8	October 8, 1960	6,809.42
No. 9	March 4, 1961	2,980.99
(The office furniture (No. 9) was depreciated at the rate of 5% per year for 6 years, in the absence of evidence to the contrary.)		
Personal Effects	March 4, 1961	16,803.18
Considering that primarily these items (personal effects) consisted of furniture and that claimants had listed their original costs, the total was depreciated at the rate of 5% per year for 6 years, in the absence of evidence to the contrary. This conclusion is deemed fair and reasonable, particularly since some of the items, such as clothing, were subject to depreciation at the rate of 20% per year)		
Amended Claim	March 4, 1961	<u>500.00</u>
Total		<u>\$56,045.49</u>

Claimants' losses within the scope of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>DAVID HUNTER FLANAGAN</u>		
No. 8	October 8, 1960	\$ 3,404.71
All the other properties	March 4, 1961	<u>24,618.04</u>
Total		<u>\$28,022.75</u>

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>GERTRUDE CATHERINE FLANAGAN</u>		
No. 8	October 8, 1960	\$ 3,404.71
1 the other properties	March 4, 1961	<u>24,618.03</u>
	Total	<u>\$28,022.74</u>

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>
<u>DAVID HUNTER FLANAGAN</u>	
October 8, 1960	\$ 3,404.71
March 4, 1961	<u>24,618.04</u>
Total	<u>\$28,022.75</u>

<u>GERTRUDE CATHERINE FLANAGAN</u>	
October 8, 1960	\$ 3,404.71
March 4, 1961	<u>24,618.03</u>
Total	<u>\$28,022.74</u>

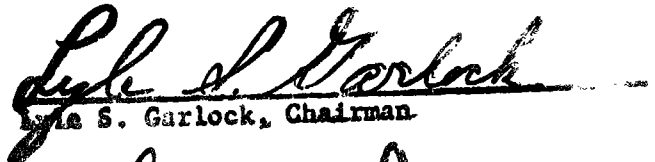
CERTIFICATIONS OF LOSS

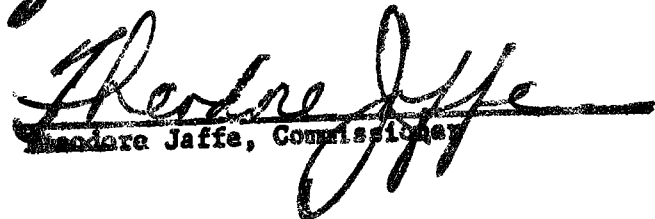
The Commission certifies that DAVID HUNTER FLANAGAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-eight Thousand Twenty-two Dollars and Seventy-five Cents (\$28,022.75) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that GERTRUDE CATHERINE FLANAGAN 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-eight Thousand Twenty-two Dollars and Seventy-four Cents (\$28,022.74) 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

FEB 3 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.

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

CU-0606