

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

IN THE MATTER OF THE CLAIM OF

JOSE M. DIAZ, III  
and  
RUTH FRANCES DIAZ

Claim No. CU -0795

Decision No. CU-1501

Under the International Claims Settlement  
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered April 10, 1968.  
Oral hearing requested.

Oral argument September 15, 1971 by Francis P. Noonan, Esq.

FINAL DECISION

The Commission issued its Proposed Decision in this matter on April 10, 1968, denying the claim for failure of proof. Since that time claimant has submitted additional evidence, and testified in his own behalf at the oral hearing held on September 15, 1971 at the offices of the Commission.

On the basis of the evidence of record, including testimony of claimant, the Commission now amends the decision in this matter. Both claimants have been nationals of the United States since birth,

Pursuant to the community property law of Cuba, spouses have equal interests in property acquired during the marriage, except that received by gift or inheritance. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915).

The Commission now finds that claimants owned equal interests in the property listed below, with the values shown, and that these properties were taken by the Government of Cuba on December 6, 1961, pursuant to Cuban Law 989:

<u>Item</u>	<u>Aggregate Value</u>
Lot of 1,000 square meters, Varadero	\$20,000
Improved realty, Yacht Club Section, Varadero	37,500
Personalty in penthouse, Calixto Lopez Building	11,939
Personalty in residence at Varadero	<u>11,884</u>
	\$81,323

Accordingly, the Commission finds that each claimant suffered a loss in the amount of \$40,661.50 within the meaning of Title V of the Act.

The Commission further finds that portions of the claim based on asserted loss of cash in a bank account in the amount of \$3,760.15, and cash said to have been entrusted to an agent, in the amount of \$15,000, must be denied as these items of claim have not been substantiated.

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.

Accordingly, the following Certifications of Loss will be entered, and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATIONS OF LOSS

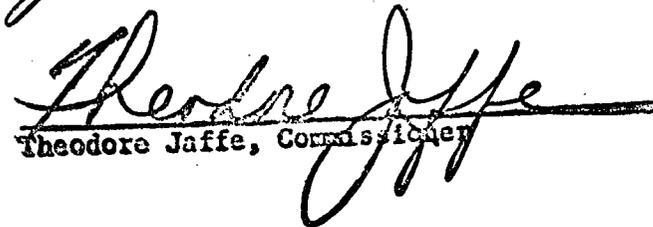
The Commission certifies that JOSE M. DIAZ, III suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty Thousand Six Hundred Sixty-One Dollars and Fifty Cents (\$40,661.50) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that RUTH FRANCES DIAZ 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 Forty Thousand Six Hundred Sixty-One Dollars and Fifty Cents (\$40,661.50) with interest thereon 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 6 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.

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IN THE MATTER OF THE CLAIM OF

JOSE M. DIAZ, III

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0795

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Counsel for claimant:

Francis P. Noonan, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$100,083.15, was presented by JOSE M. DIAZ, III, and is based upon his asserted interest in improved real property and personalty located in Cuba. Claimant has not submitted evidence to establish his nationality.

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 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) (Supp. 1967).)

Claimant has asserted the ownership and loss of interests in improved real property located in Veradero, Mantanzas, Cuba and personal property located within an apartment at 702 Zulueta, Havana, Cuba. By Commission letter of August 15, 1966, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act; specifically, evidence of nationality, ownership of the property claimed, the loss thereof and its value. Thereafter in a letter dated December 7, 1967, claimant through counsel was advised that reply to the Commission's letters of August 15, 1966, October 26, 1966 and November 30, 1966, requesting evidence in support of this claim, had not been received and that evidence in support of this claim should be submitted within thirty (30) days. On January 5, 1968, counsel advised that the suggested evidence would be submitted.

On January 9, 1968, claimant, through his counsel of record, was invited to submit the evidence within 45 days from that date, and he

was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. Neither the evidence requested nor a reply to the Commission's letter has been received to date.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

APR 10 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

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).)

CU-0795