

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

IN THE MATTER OF THE CLAIM OF

OLIVIA LANDO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1121

Decision No. CU- 6180

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 Hubert Lando, in the amended amount of \$109,000.00, based upon the asserted loss of a business and a condominium apartment in Havana, Cuba. Hubert Lando was 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.

The said Hubert Lando died testate in Florida on July 2, 1968. Under the terms of his will, duly probated, his wife was the Executrix and sole beneficiary of decedent's entire interest in the subject claim. Decedent's estate has been closed. The Commission, accordingly, finds that OLIVIA LANDO, a national of the United States since birth, is the sole owner of the claim discussed herein and she is substituted as the proper party claimant.

The evidence in support of the claim includes correspondence with the United States Embassy in Cuba; the original deed of adjudication, No. 1124, issued November 13, 1957, and other pertinent data on which the Commission makes its findings.

Business Enterprise

On December 14, 1953 Hubert Lando purchased at auction in a bankruptcy proceeding most of the assets of "Compania Cruz Blanca de Laboratorios, S.A." He removed the goods to Linea Street 216, Vedado, Havana and set up his own firm registered under the name of White Cross Distributors of Havana, being sole owner thereof. These assets consisted of stock of saleable merchandise (surgical dressing and the like) accounts receivable, furniture and packaging equipment, and machinery. Hubert Lando had been married in 1945 and accordingly his wife, OLIVIA LANDO, (pursuant to the community property law of Cuba) would have had a one-half interest in this property.

The record indicates that the last shipment of materials to the manager of the business in Cuba, occurred on March 13, 1961 and payment on this account was made in cash on March 20, 1961. On or about April 1, 1961 the company was under management of the Cuban Government. All raw material was supplied by the Cuban Government although decedent's manager was still retained said manager was only nominally in charge. The evidence of record reflects that the business was formally intervened thereafter by the Government of Cuba pursuant to Resolution 141 of July 17, 1967 of the Ministry of Labor. The Commission finds that decedent lost all use and control of his property in April 1, 1961 when the business was in fact intervened and said date is found as the date of loss of the business.

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 record establishes that decedent Hubert Lando purchased, as aforementioned, most of the assets of a bankrupt Cuban business in 1953 for approximately 21,000 pesos. The balance of the assets including some accounts receivable and trademarks were deeded to decedent in 1957 for some 3,500.00 pesos. With legal fees included, the total purchase price was 26,000 pesos.

On August 16, 1960 decedent's manager submitted a report to the United States Embassy in Havana listing the assets of the Company as:

Furniture and equipment, undepreciated	\$11,136.70
Merchandise in stock	22,655.35
Accounts receivable	36,888.51
Cash in banks	7,120.33
Miscellaneous Credits	<u>7,200.00</u>
	\$85,000.00

On May 5, 1968 a certain Cuban lawyer and public accountant, issued a statement, reciting among other items, that in the liabilities of the general balance sheet of trade closed December 31, 1966 was found a credit owing to decedent in the amount of 36,730.92 pesos.

The Commission finds that on April 1, 1961, the date of the said intervention, the financial condition of the business herein is best evidenced from an adjustment of the figures reported on August 16, 1960. Accordingly, the Commission finds that at the time of loss the assets of the business herein comprised:

Furniture and equipment(10 years depreciation)	\$ 5,500.00
Stock	22,655.00
Accounts receivable	36,889.00
Cash in banks	<u>7,120.00</u>
	\$72,164.00

At the time of loss the business was indebted to The American White Cross Laboratories Inc. of N. Y. in the amount of \$55,131.94. On June 7, 1965 decedent as personally liable paid \$25,000.00 leaving the balance of \$30,131.94 subject to being paid when and if decedent recovered for his losses in Cuba.

Accordingly the Commission finds that the net worth of the business at the time of loss was \$17,032.06.

As to the payment of the \$25,000.00 the Commission finds that decedent acquired a claim in this amount by subrogation as a result of his payment of the debt of a nationalized Cuban enterprise which payment was determined to have been made by him on June 7, 1965 in the absence of evidence to the contrary.

Accordingly, the Commission finds that claimant, succeeded to and suffered a loss in the amount of \$25,000.00 on June 7, 1965 within the meaning of Title V of the Act.

Apartment

The evidence of record also establishes that claimant and her husband jointly owned a 77% interest in a condominium at No. 51 13th St., Vedado, Havana. The property interest was purchased on March 29, 1963 for \$24,000.00. the apartment was occupied by the owners of the remaining 23% interest until October 19, 1967 when said occupants left Cuba.

On December 6, 1961, the Cuban Government published its Law 989 which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

In the absence of evidence to the contrary, the Commission finds that claimant's interest in the condominium was taken by the Government of Cuba on October 19, 1967 when the part owners left Cuba; (see Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Although the claim for loss of the apartment interest arose subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period. (See Claim of Vivian Lopez Morales, Claim No. CU-8739.)

The Commission concludes that claimant and her husband suffered a loss in connection with the apartment of \$24,000.

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

<u>Item</u>	<u>Amount</u>	<u>Loss</u>
Business	\$17,032.16	April 1, 1961
Debt	25,000.00	June 7, 1965
Real property	<u>24,000.00</u>	October 19, 1967
	\$66,032.16	

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:

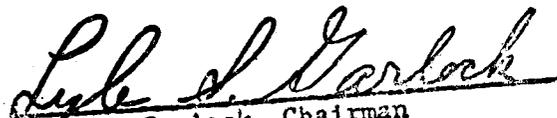
<u>FROM</u>	<u>ON</u>
April 1, 1961	\$17,032.16
June 7, 1965	25,000.00
October 19, 1967	<u>24,000.00</u>
	\$66,032.16

CERTIFICATION OF LOSS

The Commission certifies that OLIVIA LANDO 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-Six Thousand Thirty-Two Dollars and Sixteen Cents (\$66,032.16) 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

MAY 5 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. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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