

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

IN THE MATTER OF THE CLAIM OF

JAMES HENRY CARPENTER  
and  
RUBY STEPHENS CARPENTER

Claim No. CU -1133

Decision No. CU 4451

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Roger R. Phillips, 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 JAMES HENRY CARPENTER and RUBY STEPHENS CARPENTER for \$105,000.00 based upon the asserted loss of improved real property and personal property in Havana, Cuba. Claimants, JAMES HENRY CARPENTER and RUBY STEPHENS CARPENTER, 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.

The claim is based upon improved real property at 19004 Calle 13, Reparto Biltmore in Havana and personal property consisting of the furnishings of claimants' former residence at the above address in Havana.

The evidence establishes and the Commission finds that pursuant to the community property laws of Cuba, each of the claimants acquired a one-half interest in the above-mentioned property, subject of this claim. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

The Commission finds that the real property was within the purview of the Cuban Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that this property was taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The claimants moved from their former residence at No. 19004 Calle 13 in Reparto Biltmore, Havana, to France in May 1957 and rented their home, partially furnished. A portion of the furnishings of their residence, packed into crates and vans, was handed over to The Security Packers & Storage Co. in Havana for shipment to a destination outside of Cuba. However, the shipment could not be made for lack of permission by the Government of Cuba. According to the last information which the claimant obtained, the personal property in question was in storage with the above-mentioned mover in Havana on December 21, 1960.

Another portion of the furnishings of claimants' above-mentioned residence in Cuba remained in the residence and was rented along with the real property.

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The Commission finds that the portion of claimants' personal property which remained at No. 19004 Calle 13 in Havana was taken by the Government of Cuba in connection with the taking of the real property on October 14, 1960, pursuant to the Urban Reform Law (supra).

On December 6, 1961, the Government of Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, property rights, shares, stocks, bonds, bank accounts and other securities of persons who left Cuba. The claimants had left Cuba before that date and the Commission finds that this law applied to their personal property in storage, and that it was taken on December 6, 1961, by the Government of Cuba. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FGSC Semiann. Rep. 53 [July-Dec. 1966].)

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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimants are those set forth hereafter, the Cuban peso being on a par with the United States dollar.

Real Property

The improved real property at No. 19004 Calle 13 in Reparto Biltmore, Havana, consisted of a corner building parcel of about 700 square meters and was improved by a one-story residence having 4 main bedrooms, 3 full baths, living and dining rooms, kitchen, pantry, servants' room and bath, two-car garage, full air conditioning, and a swimming pool of approximately 75 feet by 30 feet. The property was rented in 1958 for \$7,200.00 per annum.

Claimants assert that the property was purchased in 1955 for \$85,000.00.

The record includes affidavit of claimant JAMES HENRY CARPENTER, photographs of the property, copy of an affidavit and a letter by the lessees of the property, and statements by business associates.

On the basis of all evidence of record, including evidence of value of similar properties in Havana, the Commission finds that the real property at No. 19004 Calle 13 in Reparto Biltmore, Havana, had a value of \$80,000.00 on October 14, 1960, the date of loss, of which the value of a one-half interest amounted to \$40,000.00.

Personal Property

The personal property consisted of the furnishings of claimants' former residence at No. 19004 Calle 13 in Reparto Biltmore, Havana. The record includes descriptions and detailed listings of said items of property consisting of valuable antique furniture as well as of common household items. The values, indicated by claimants, are corroborated by persons who were residing in Cuba and had personal knowledge of the pertinent facts on the basis of their close association with the claimants.

The claimants value the personal property for a total of \$27,125.00. The Commission has customarily applied a depreciation factor of 5% per annum for such property, except antiques. In the absence of evidence to the contrary, the Commission finds that the value of the personal property should be depreciated by 20%.

On the basis of the foregoing, the Commission finds that claimants' personal property had a total value of \$21,700.00, of which the properties left at the former residence and the properties in storage had the values of \$5,000.00 and \$16,700.00, respectively. The value of a one-half interest amounted to \$2,500.00 and \$8,350.00, respectively.

It is concluded that each of the claimants sustained loss of interests in the real and personal property mentioned above within the purview of Title V of the Act in the total amount of \$50,850.00.

Claimants assert that Internal Revenue Service allowed a deduction of \$105,000.00 in connection with their losses in Cuba.

The Commission has decided that in certification of losses 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>
October 14, 1960	\$42,500.00
December 6, 1961	<u>8,350.00</u>
	\$50,850.00

CERTIFICATION OF LOSS

The Commission certifies that JAMES HENRY CARPENTER sustained 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 Fifty Thousand Eight Hundred Fifty Dollars (\$50,850.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

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The Commission certifies that RUBY STEPHENS CARPENTER sustained 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 Fifty Thousand Eight Hundred Fifty Dollars (\$50,850.00) with interest thereon 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

29 JAN 1970

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, 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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