

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

IN THE MATTER OF THE CLAIM OF

HIGINIO ZAYAS  
MARIA ZAYAS

Claim No. CU-1610

Decision No. CU-6211

Under the International Claims Settlement  
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered June 2, 1971.  
Oral hearing requested.

Oral argument and evidence submitted on September 8, 1971 by Loretta Zayas Revai, daughter of claimants.

FINAL DECISION

Under date of June 2, 1971, the Commission issued its Proposed Decision certifying a loss in favor of HIGINIO ZAYAS in the amount of \$43,158.70, plus interest, for loss of his one-half interest in community property, including improved real property, household furnishings and the assets of a furniture factory, all located at or near Havana, Cuba. Inasmuch as there was no evidence submitted to establish that MARIA ZAYAS was a national of the United States at any time pertinent to the claim, the portion of the claim asserted by MARIA ZAYAS was denied (See Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966].)

The losses sustained by claimant HIGINIO ZAYAS, as set forth in the Proposed Decision, were summarized as follows:

<u>Property</u>	<u>Value</u>	<u>One-half Interest</u>
4919 - 76th Street, Marianao	\$17,500.00	\$ 8,750.00
7410 - 49B Street, Marianao	12,500.00	6,250.00
Household personalty, art	26,590.00	13,295.00
Furniture-cabinet factory	13,000.00	6,500.00
Accounts receivable (factory)	<u>16,727.40</u>	<u>8,363.70</u>
	\$86,317.40	\$43,158.70

Objections were entered to portions of the Proposed Decision concerning evaluations determined by the Commission with respect to improved real property located at 4919-76th Street, corner of 49B Street, and 7410-49B Street, Marianao, Havana, Cuba. Further, claimants objected to the finding of the Commission that ownership interests in the furniture factory and certain accounts receivable were based on community property interests of claimants, stating that such property, with accounts payable thereto, was acquired by HIGINIO ZAYAS prior to marriage to claimant MARIA ZAYAS and was his separate property at the time of loss.

At the oral hearing held on September 8, 1971, evidence was submitted by the daughter of claimants, Loretta Zayas Revai, including her testimony, followed by oral argument.

Consideration having been given to the entire record, including such testimony, argument and other evidence presented prior to and during the oral hearing, the Commission now finds that the improved real property had a higher value at the time of loss, as set forth hereafter; and that the furniture factory and accounts receivable were the separate property of HIGINIO ZAYAS prior to and at the time of loss.

Accordingly, the losses of HIGINIO ZAYAS all as of December 6, 1961 are restated as follows:

<u>Property</u>	<u>Value</u>	<u>Ownership Interest</u>
4919-76th St., Marianao	\$ 35,000.00	1/2 - \$17,500.00
7410-49B St., Marianao	25,000.00	1/2 - 12,500.00
Household furniture, art	26,590.00	1/2 - 13,295.00
Furniture and cabinet factory	13,000.00	1/1 - 13,000.00
Accounts receivable (factory)	<u>16,727.40</u>	1/1 - <u>16,727.40</u>
	\$116,317.40	\$73,022.40

The Commission finds that claimant HIGINIO ZAYAS suffered a loss in the amount of \$73,022.40 within the meaning of Title V of the Act, as a result of the taking of his property by the Government of Cuba on December 6, 1961.

The Commission reaffirms its holding that interest should be allowed, and it shall be included at the rate of 6% per annum from December 6, 1961 to the date of settlement.

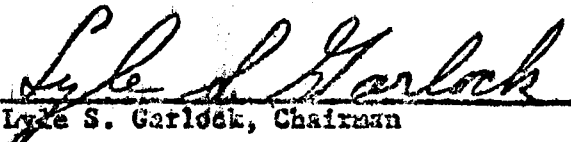
Accordingly the Certification of Loss in the Proposed Decision is set aside, the following Certification of Loss will be entered, and the remainder of the Proposed Decision, as amended herein, is affirmed.

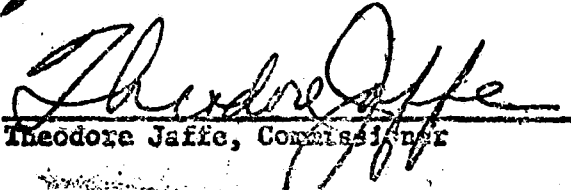
CERTIFICATION OF LOSS

The Commission certifies that HIGINIO ZAYAS 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 Seventy-Three Thousand Twenty-Two Dollars and Forty Cents (\$73,022.40) 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 20 1971**

  
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Lyle S. Garlock, Chairman

  
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Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

HIGINIO ZAYAS  
MARIA ZAYAS

Claim No. CU -1610

Decision No. CU 6211

Under the International Claims Settlement  
Act of 1949, as amended

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 HIGINIO ZAYAS and MARIA ZAYAS for \$161,890.00, based upon the asserted ownership and loss of improved real property, household furnishings, and the assets of a furniture factory. Claimant HIGINIO ZAYAS has been a national of the United States since birth. Claimant MARIA ZAYAS is not a national of the United States.

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) (1970).)

Claimants asserted that for several years prior to the date of loss of the property, subject of this claim, they were married and resided in Cuba; and that they departed from Cuba in June 1961. Claimants stated that they jointly acquired and owned improved real property, with household furnishings, in Marianao, Havana, Cuba; and that they owned a furniture factory with accounts receivable due from the Government of Cuba.

According to the community property laws of Cuba, the properties acquired by one or both spouses during the marriage with money 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 (see Claim of Robert L. Cheaney, et ux., Claim No. CU-0915). Accordingly, the property discussed below will be deemed as having been owned by the claimants as community property since no evidence has been submitted to establish that such property was acquired by either claimant prior to the marriage, or by gift or inheritance. Inasmuch as there is no evidence to establish that MARIA ZAYAS was a national of the United States at any

time pertinent to this claim, the portion of the claim asserted by this claimant is hereby denied. (See Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966].)

Based upon the entire record, including a 1951 purchase document, affidavits and a 1960 Report to the American Embassy in Havana, Cuba, as well as correspondence and other evidence of record, the Commission finds that claimants each owned a one-half interest, pursuant to the community property laws of Cuba, in the following real and personal property:

1. House and improvements on lot at 4919 - 76th Street, corner 49-B, Marianao, Havana
2. House and improvements on lot at 7410 - 49B Street, Marianao
3. Household furnishings and personal effects
4. 22 electric machines, carpentry tools, one truck and miscellaneous equipment utilized in cabinet and furniture factory, Havana
5. Debts due the aforesaid business enterprise from the Government of Cuba

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, shares, stocks, bonds and securities of persons who had left the country. As stated, the record reflects that claimants left Cuba in June 1961.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC 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 evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The claimants have submitted a contract of sale and correspondence concerning the property, including copies of letters written to the Municipal Court of Marianao and to the American Embassy, Havana, Cuba. Further claimants have submitted their own affidavits and statements concerning the properties, subject of the claim, including itemized lists of the personalty, with photographs of house furnishings, a description of the real property, with photographs, as well as affidavits with artistic programs and data from others with personal knowledge of the subject properties.

The Commission has considered the entire record, including evidence available to the Commission concerning the value of similar property in Cuba, and finds that the most appropriate evaluations are those discussed and set forth hereafter, the peso being on a par value with the United States dollar.

#### Real Property

The record includes a description of the property at 4919-76th Street, Marianao, Havana, Cuba, as consisting of 292 square meters of construction with a 1-story house of Spanish style architecture. This lot and the one at 7410-49B Street, Marianao, were purchased in 1951 for \$4,000.00 and were described as consisting of a total of 883 square meters of land. It is asserted by claimants that the construction cost of both houses totaled \$60,000.00. Photographs have been submitted of the house at 4919-76th Street, Marianao, and the rental reports in the record indicate that the net annual rent for this property was \$810.00. On the basis of all evidence, the Commission finds that this property had a value of \$17,500.00 at the time of loss.

The property at 7410-49B Street is described as consisting of 144 square meters of construction, with the building described as a 1-story structure with about five rooms. The land was included in the purchase price of \$4,000.00 for a total of 883 square meters of land (supra). On the basis of all available evidence the Commission finds that this property had a value of \$12,500.00 at the time of loss.

Household Furnishings

Claimant originally valued this property at \$12,000.00 and described the furnishings of 11 rooms by categories, including furniture of Cuban wood, lamp and candelabra from France, lamp from Spain and various appliances. Thereafter, in April 1968, claimant submitted an itemized list of personal property for about 10 units, including porch and patio, works of art, with the list totalling \$51,465.00. The date or dates on which the asserted values are applicable are not given. The list is accompanied by photographs taken in 1954.

On the basis of the entire record, the Commission finds that this property had a total value of \$26,590.00, including works of art known as "La Rumbera" and "El Campesino", as of December 6, 1961.

Furniture Factory

The Commission finds that claimant, HIGINIO ZAYAS, operated a furniture-cabinet-making business at 1605 Calzada del Cerro, Cerro, Havana, in rented premises; and that the property consisted of 22 electric machines and motors, carpentry tools, and a truck.

On the basis of the evidence of record, the Commission finds that this property had a value of \$13,000.00 on the date of loss, December 6, 1961.

Debts of Government of Cuba

The Commission finds that claimant made and shipped various pieces of furniture for different services at the Ministry of Education, Government of Cuba. The Ministry was billed for these items on various dates in 1953



and 1954, as itemized and set forth in a letter of claimant HIGINIO ZAYAS to the Minister of Education, dated January 19, 1959, as follows:

October 19, 1953	\$ 4,650.50
December 30, 1953	4,662.90
June 28, 1954	266.00
March 12, 1954	1,503.00
August 3, 1954	845.00
November 11, 1954	<u>4,800.00</u>
TOTAL	\$16,727.40

Accordingly, the Commission finds that the balance of \$16,727.40 was due and payable to the furniture-cabinet factory solely owned by claimants herein at the time of nationalization or other taking on December 6, 1961. These obligations of the Government of Cuba were made pursuant to a contract between the parties herein and the failure of the Government of Cuba to pay such obligations for merchandise received represents an account receivable, which is property within the meaning of Title V of the Act. The Commission concludes that this property was taken on December 6, 1961, and that claimants suffered a loss in the amount of \$16,727.40 within the meaning of the Act. (See Claim of Emma B. Simpson, Executrix, Estate of Clarence J. Simpson, Deceased, Claim No. CU-2873.)

Recapitulation

The losses suffered by claimant HIGINIO ZAYAS are summarized below:

<u>Property</u>	<u>Value</u>	<u>One-half Interest</u>
4919 - 76th Street, Marianao	\$ 17,500.00	\$ 8,750.00
7410 - 49B Street, Marianao	12,500.00	6,250.00
Household personalty, art	26,590.00	13,295.00
Furniture-cabinet factory	13,000.00	6,500.00
Accounts receivable	<u>16,727.40</u>	<u>8,363.70</u>
	\$ 86,317.40	\$ 43,158.70

The Commission finds that claimant HIGINIO ZAYAS suffered a loss of \$43,158.70 within the meaning of Title V of the Act, as the result of the taking of his property by the Government of Cuba on December 6, 1961.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act

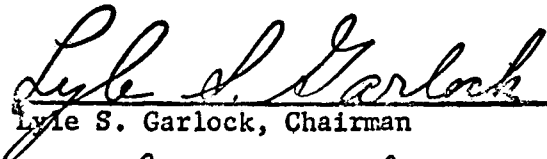
of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

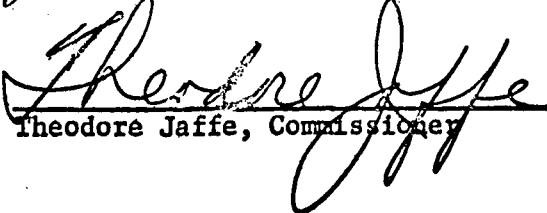
CERTIFICATION OF LOSS

The Commission certifies that HIGINIO ZAYAS 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-three Thousand One Hundred Fifty-eight Dollars and Seventy Cents (\$43,158.70) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

JUN 2 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 (1970).)

CU-1610