

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

IN THE MATTER OF THE CLAIM OF

PETER K. WAERING

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU- 2066

Decision No. CU 6184

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$104,971.00, was presented by PETER K. WAERING based upon the asserted loss of certain real and personal property in Cuba, including concessions, business interests, and debts. Claimant has been a national of the United States since naturalization on December 2, 1935.

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).)

Claimant asserts the following losses:

| | |
|--|-----------------|
| 1. Mineral rights (Oil and Gas), Oriente Province | \$ 30,000.00 |
| 2. Improved real property located at Calzada de Monte #1169, Havana | 27,542.00 |
| 3. Improved real property located at Nos. 665-667 Calle Porvenir, Havana, with two adjoining masonry buildings | 12,000.00 |
| 4. Mortgage interest on land arising from loan to Parcelaciones Industriales Aranda, S.A. | 6,000.00 |
| Interest due claimant on mortgage | 480.00 |
| 5. Office equipment and clothing | 875.00 |
| 6. Cash in Vedado Branch of Chase-Manhattan Bank | 668.71 |
| 7. 2585 shares of Polyplasticos Industriales, S.A. | 2,585.00 |
| Salary due claimant as Manager 1960 | 1,400.00 |
| 8. 1960 Buick Special, 4-door sedan | 2,000.00 |
| 9. Interest in egg and poultry farm venture known as Distribuidora Tahoe, S.A. | 14,000.00 |
| Expenses, loss and salary as manager | <u>7,420.00</u> |
| T O T A L : | \$104,970.71 |

Based on the entire record, including reports from abroad, the Commission finds that claimant herein owned the improved real properties located on Calzada de Monte and Porvenir Streets, Havana, Cuba.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting

of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

Based on the foregoing, the Commission finds that this improved real property was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

Evidence of record, including a report from abroad, establishes that claimant held a mortgage on land owned by the Parcelaciones Industriales Aranda, S.A. in the amount of \$6,000.00; and that the land and debtor business enterprise were taken by the Government of Cuba pursuant to Resolution 383 of July 12, 1966. Article 30 of the Urban Reform Law, supra, made provision for cancellation of all mortgages and the Commission finds that claimant's mortgage totaling \$6,000.00 was so cancelled on October 14, 1960 and that he suffered a loss in that amount within the scope of Title V of the Act. (See Claim of Robert F. Sanchez, Executor of the Estate of Marita Dearing de Lattre, Deceased, Claim No. CU-0116.)

The record further establishes that claimant owned a bank account in the Vedado Branch of the Chase-Manhattan Bank, office equipment, clothing, a 1960 Buick Special Sedan and an interest in an egg and poultry farm known as Distribuidora Tahoe, S.A., for which stock was not issued.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property, rights, shares, stocks and the like of persons who had left the country. Claimant had left Cuba prior to this date and the Commission finds that this law applied to him with respect to the above personalty.

The Commission therefore finds, in the absence of evidence to the contrary, that the bank account, automobile, personal effects and the interest

in the poultry products enterprise were taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; and 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 record includes reports from abroad concerning the value of improved real property, affidavits of persons with personal knowledge and those of claimant herein, including detailed descriptions of the real and personal property, as well as lists of the personalty with asserted values, a record of the savings passbook, correspondence and receipts establishing claimant's investment in the poultry business and other data pertaining to value of the real and personal property.

Based upon the aforesaid evidence of record as well as evidence available to the Commission concerning the value of similar real and personal property in Cuba, the Commission finds that these properties or claimant's interests therein had the following values at the time of loss:

| | |
|---|------------------|
| Improved real property, #1169 Calzada de Monte, Havana | \$27,500.00 |
| Improved real property, Nos. 665-667 Calle Porvenir, Havana | 12,000.00 |
| Mortgage interest (Parcelaciones Industriales Aranda, S.A.) | 6,000.00 |
| Office equipment and clothing | 875.00 |
| Cash in Vedado Branch, Chase-Manhattan Bank | 668.71 |
| 1960 Buick Special Sedan | 2,000.00 |
| Interest in egg or poultry business | <u>14,000.00</u> |
| | \$63,043.71 |

Based upon the evidence of record, including copies of stock certificates, the Commission finds that claimant owned 2585 shares of stock in Polyplasticos Industriales, S.A. which was formed to manufacture polyurethane foam rubber. The corporation started operations in mid-1960 and was nationalized on October 24, 1960, pursuant to Resolution 3 of Law 851.

Claimant asserts a loss of \$2,585.00 on the basis of the par value of the stock. In addition, claimant apparently performed services in acting as manager of the corporation for which he was assertedly to be paid the sum of \$1,400.00. It appears that because Polyplasticos was nationalized shortly after its formation no records are available to show its assets and liabilities, nor is there other evidence of record with the Commission as to the value of its stock.

While the amount invested by claimant has some probative value, it is insufficient in and of itself to establish the value of a stock interest in Polyplasticos on the date of loss. (See Claim of Lucia W. Mendoza, Claim No. CU-3219.)

The Commission finds that claimant has failed to sustain the burden of proof with respect to his stock interest in Polyplasticos or services therefor in that the record fails to establish that Polyplasticos had any value on October 24, 1960. Accordingly, this portion of the claim is denied.

(See also Claim of Harry Wassall, Claim No. CU-0243, and Claim of Arnulfo Arroyo, et al, Claim No. CU-3102.)

With respect to the remaining items of claim, including loss of oil and gas concessions in Oriente Province, interest due on the mortgage and loss of funds or unreimbursed expenses or salary due from the egg-poultry venture, the record fails to establish ownership, loss or value of the oil and gas rights, or that sums were due and payable to the claimant, as asserted.

The Commission made suggestions in several letters to claimant as to the type of evidence proper for submission to establish these portions of the claim. While claimant has responded in part to the Commission correspondence, he has not submitted evidence of probative value which would establish that he owned such oil and gas interests or that other sums were payable to him or that such interests or accounts receivable were nationalized or otherwise taken by the Government of Cuba.

The Commission appreciates the difficulties encountered by the claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. The Commission is constrained to find that claimant herein has not met the burden of proof in that he has failed to establish the ownership and value of rights and interests in the above-described property which were nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, these portions of the claim are hereby denied for the reasons stated. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

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:

CU-2066

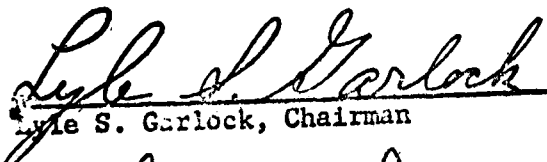
| <u>FROM</u> | <u>ON</u> |
|------------------|------------------|
| October 14, 1960 | \$45,500.00 |
| December 6, 1961 | <u>17,543.71</u> |
| | \$63,043.71 |

CERTIFICATION OF LOSS

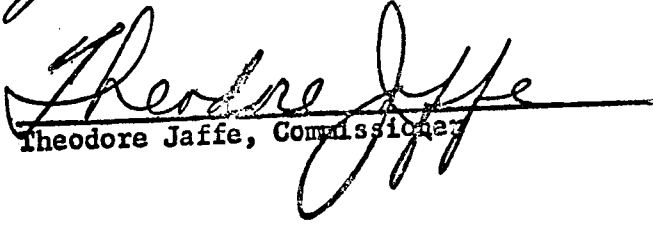
The Commission certifies that PETER K. WAERING suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty-Three Thousand Forty-Three Dollars and Seventy-One Cents (\$63,043.71) with 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 12 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. 51.5(e) and (g), as amended (1970).)