

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

IN THE MATTER OF THE CLAIM OF

M. W. ALBRECHT
and
DORIS L. ALBRECHT

Claim No. CU-2183

Decision No. CU-5968

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Krystow, Gay & Claiborne
By Robert C. Claiborne, Esq.

Appeal and objections from an Amended Proposed Decision entered on
April 14, 1971.

Hearing on the record held on June 8, 1972.

FINAL DECISION

Under date of April 14, 1971, the Commission issued its Amended Proposed Decision certifying a loss in the amount of \$70,112.98 in favor of M. W. ALBRECHT based upon an unpaid debt due from three Cuban corporations.

Counsel filed objections to the Amended Proposed Decision. In conjunction with the objections, counsel submitted a written request from claimant's wife to join the claim, accompanied by proof of her United States nationality since birth.

Upon consideration thereof, it is

ORDERED that the request be granted and that DORIS L. ALBRECHT be joined as party claimant.

Counsel's objections appear to be repetitions of earlier statements. It is contended that the said three Cuban corporations, which owed a debt to the claimants in the amount of \$140,225.96, had defaulted in their payments; that claimants were pledgees of all of the outstanding capital stock of the three Cuban corporations; and that in lieu of foreclosing on that stock an agreement was concluded in 1959, by which claimants acquired a 67% stock interest in each of the three Cuban corporations. On this basis,

counsel urges that a certification of loss be entered in the amount of \$631,618.54 in favor of both claimants.

Upon consideration of the entire record, the Commission is constrained to reject the objections as they appear to be without merit. The record includes a copy of a letter of June 29, 1965 from counsel to the Commissioner of Internal Revenue on behalf of claimants. In that letter counsel recites that on December 11, 1957 claimants had sold 36 shares of stock in one of the three Cuban corporations for \$261,500.00 "to persons residing in Cuba" on the installment plan; that a promissory note was given as consideration for the sale; that \$121,274.04 had been paid by the purchasers; and that as a result of intervention by the Government of Cuba, the "said note is uncollectible and worthless."

The Commission notes that counsel's letter of June 29, 1965 did not urge a tax deduction on the basis of stock interests in the three Cuban corporations, but rather on the basis of an unpaid debt. Moreover, the Internal Revenue Service allowed claimants a tax deduction of \$4,175.70 for a "nonbusiness bad debt".

For the foregoing reasons, the Commission finds no valid basis for altering the Amended Proposed Decision previously entered on this claim, except for the joinder of DORIS L. ALBRECHT. The Commission reaffirms its finding that claimants jointly sustained a loss on May 24, 1960 in the amount of \$140,225.96 based upon an unpaid debt of three related Cuban corporations; namely, Piensos Tropical, S.A., Productos Agricolas Orion, S.A., and Incubacion Tropical de Cuba, S.A.

Accordingly, the following additional Certification of Loss will be entered, and in all other respects the Amended Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that DORIS L. ALBRECHT 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 Thousand One Hundred Twelve Dollars and Ninety-Eight Cents (\$70,112.98) with interest thereon at 6% per annum from May 24, 1960 to the date of settlement.

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

JUN 16 1971

Lyle S. C. ..., Chairman

Theodore Jaffe, Commissioner

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IN THE MATTER OF THE CLAIM OF

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Counsel for claimant:

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By Robert C. Claiborne, Esq.

AMENDED PROPOSED DECISION

Under date of November 17, 1970, the Commission issued its Proposed Decision denying this claim for failure to sustain the burden of proof. Subsequently, additional supporting evidence was submitted.

Upon consideration of the new evidence in the light of the entire record, the Commission now finds as follows:

The record shows that on December 11, 1957 claimant sold 36 shares of stock in Incubacion Tropical de Cuba, S.A., a Cuban corporation, to certain Cuban individuals and three related Cuban corporations, Productos Agricolas Orion, S.A., Incubacion Tropical de Cuba, S.A. and Piensos Tropical, S.A. The stock was sold for \$261,500.00 and thereafter, in 1958 and 1959, payments were made which reduced the debt to \$140,225.96. Shares of stock of the three Cuban corporations were pledged to claimant as security for payment. The Commission finds that claimant owned a one-half interest in the debt pursuant to the community property laws of Cuba. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.)

No claim has been filed by or on behalf of claimant's wife although the Commission suggested on several occasions that her interest in the claim may be considered upon written request accompanied by proof of her

United States nationality at all pertinent times. Accordingly, counsel was advised that only claimant's one-half interest in the claim would be considered in this proceeding.

Claimant asserts that upon failure of the debtors to make further payments after those in 1958 and 1959 he succeeded to ownership of the pledged stock. His claim is in the amount of \$631,618.54 based upon asserted 67% stock interests in each of the three Cuban corporations. The record shows, however, that the Internal Revenue Service allowed claimant and his wife tax deductions for their Cuban losses on the basis of a bad debt. Moreover, the Commission has held consistently that the interest of a pledge in pledged shares of stock is limited to the extent of the unpaid indebtedness. (See Claim of Michael Leon, Claim No. CU-1465, citing Claim of Helen Sigman, Trustee, Claim No. PO-5955, appearing at FCSC Dec. & Ann. 497 (1968).) Therefore, the Commission finds that claimant's interest is limited to one-half of the unpaid indebtedness, amounting to \$70,112.98.

The Commission finds on the basis of the evidence of record that the three Cuban corporations were intervened by the Government of Cuba on May 24, 1960. The Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of nationalization within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) Accordingly, the Commission finds that claimant sustained a loss of \$70,112.98 on May 24, 1960.


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.

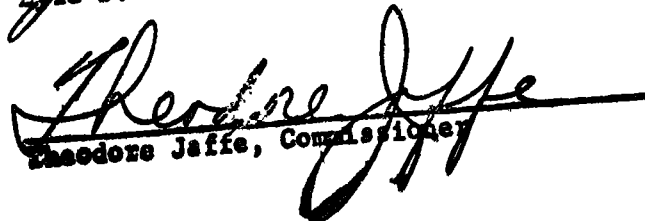
CERTIFICATION OF LOSS

The Commission certifies that M. W. ALBRECHT 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 Thousand One Hundred Twelve Dollars and Ninety-Eight Cents (\$70,112.98) with interest at 6% per annum from May 24, 1960 to the date of settlement.

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

APR 14 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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 Amended 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).)

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IN THE MATTER OF THE CLAIM OF

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Under the International Claims Settlement
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Claim No. CU -2183

Decision No. CU 5968

Counsel for claimant:

Krystow, Gay & Claiborne
By Robert C. Claiborne, Esq.

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 \$631,618.54, was presented by M. W. ALBRECHT based upon the asserted loss of stock interests in three Cuban corporations. Claimant has been 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.

Claimant asserts the loss of 70% stock interests in Piensos Tropical, S.A. (Piensos), Productos Agricolas Orion, S.A. (Productos) and Incubacion Tropical de Cuba, S.A. (Incubacion), three Cuban corporations. In support of his claim, claimant submitted a copy of an agreement, dated December 11, 1957, stock certificates and balance sheets for the three corporations.

Pursuant to the said agreement, claimant sold 36 shares of stock in Incubacion to the three Cuban corporations, Piensos, Productos and Incubacion, for the sum of \$261,500.00; and all the stock of these three Cuban corporations was pledged to claimant "as a guarantee for the faithful performance of the terms of this agreement."

An examination of the copies of the stock certificates of Incubacion shows that each share of stock had a par value of \$20.00, the Cuban peso being on a par with the United States dollar. A copy of Incubacion's balance sheet as of April 30, 1957 indicates that the total outstanding capital stock was \$20,000.00, and that the net worth of Incubacion as of April 30, 1957 was \$256,091.87. It further appears from a consolidated balance sheet as of April 30, 1957 for the three Cuban corporations that the aggregate net worth of the corporations was \$629,585.98. Since Incubacion had 1,000 shares of outstanding capital stock, it appeared from the agreement of December 11, 1957 that claimant had sold approximately a 1/30 stock interest in Incubacion to the three Cuban corporations, including Incubacion, for an amount in excess of the net worth of Incubacion alone.

In claimant's official application he stated that his claim for a tax deduction of \$140,225.96 for his asserted Cuban losses had been disallowed, and that \$174.94 plus interest was refunded on taxes paid for 1960 to

claimant and his wife. Claimant submitted copies of his tax returns in response to Commission suggestions. In a letter of June 29, 1965 written on behalf of claimant and his wife, counsel for claimant stated to the Commissioner of Internal Revenue, as follows:

The taxpayers sold 36 shares Incubacion Tropical de Cuba, S.A. on December 11, 1957 to persons residing in Cuba on the installment plan for the sum of \$261,500.00

In view of the foregoing, the Commission communicated with counsel for claimant under date of August 10, 1970 and suggested the submission of the following:

1. A detailed affidavit from claimant setting forth in full the circumstances surrounding the asserted sale of 36 shares of Incubacion to the three Cuban corporations for \$261,500.00.

2. A full explanation as to why it was represented to the Commissioner of Internal Revenue that claimant had sold his 36 shares of Incubacion "to persons residing in Cuba on the installment plan," whereas the claim before the Commission is based on an asserted sale of the 36 shares of stock to the three Cuban corporations.

3. On the basis that claimant was owed debts by private persons in Cuba, as stated to the Commissioner of Internal Revenue, evidence to establish that the Government of Cuba took any property belonging to claimant.

When no response was received, a "follow-up" communication was directed to counsel for claimant on September 17, 1970. There has been no reply to the Commission's inquiries.

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) (1969).)

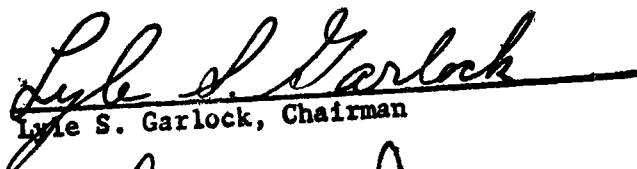
The Commission finds that claimant has failed to sustain the burden of proof with respect to his claim against the Government of Cuba. The record does not establish that claimant sustained a loss within the meaning

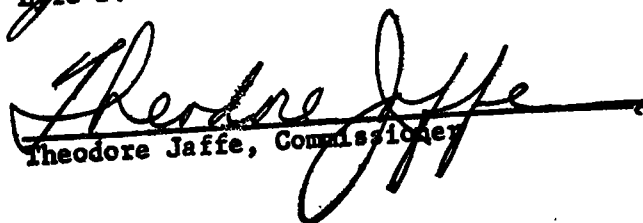
of Title V of the Act as a result of the nationalization or other taking of property by the Government of Cuba.

Accordingly, this claim is denied in its entirety.

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

NOV 17 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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