

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

IN THE MATTER OF THE CLAIM OF

WILLARD A. DEANE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU- 2252

Decision No. CU-5977

Appeal and objections from a Proposed Decision entered on November 23, 1970;
no oral hearing requested; hearing on the record.

Hearing on the record held on June 8, 1971.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on November 23, 1970, certifying a loss in the amount of \$9,127.48 for loss of claimant's stock interest in Cuban corporations known as Compania Inmobiliaria Bargasch, S.A. and Compania Territorial Unix, S.A. The Commission determined that the most appropriate basis for evaluating the shares of these corporations, both owning land on either side of Rancho Boyeros Highway, near Havana, was a June 1957 balance sheet prepared for both firms which reflected a net worth of the corporations as \$342,280.57, including cash and unsold land. Thus a share of stock was worth \$228.187 at the time of loss, and claimant's 40 shares or 2.66% interest had a value of \$9,127.48

Claimant objected to the Proposed Decision in letter of December 7, 1970, stating that the Commission improperly limited the evaluation reached with respect to the shares of these corporations to a consideration of the balance sheet rather than considering the consideration received for a small portion of the land sold by the firms prior to loss; and by not according a fair market value to certain unsold land included in the assets of the firms.

Prior to the issuance of the Proposed Decision several suggestions were made in Commission correspondence to claimant toward the submission of evidence pertaining to the value of the land held by the corporations in question or information pertaining to the value of such enterprises. The claimant has not submitted documentation to establish a higher value of the assets other than a general statement concerning the value of land sold in that area and a general affidavit of the former President of Compania Inmobiliaria Bargasch, S.A. as to the value of land in that area and sums paid for such tracts of land.

However, based upon evidence received by the Commission from sources abroad as well as evidence concerning the value of similar land in this area of Havana Province, being near the City of Havana and the airport, the Commission finds that unsold land owned by the corporations herein had a total value of \$1,152,981.76, and, at the time of loss the combined assets of the corporations had a total value of \$1,324,518.00, with no corporate liabilities. Accordingly, with 1500 shares of stock outstanding, issued by both corporations, a share of stock in either corporation had a value of \$883.0126 at the time of loss. The Commission concludes that claimant herein, owner of 40 shares of stock, suffered a loss of \$35,320.50 within the meaning of Title V of the Act.

Full consideration having been given to the objections of the claimant and the entire claim and general notice of the Proposed Decision having been given by posting for 30 days, it is

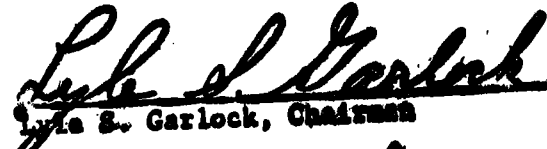
ORDERED that the Certification of Loss as restated below be entered and in all other respects the Proposed Decision is affirmed.

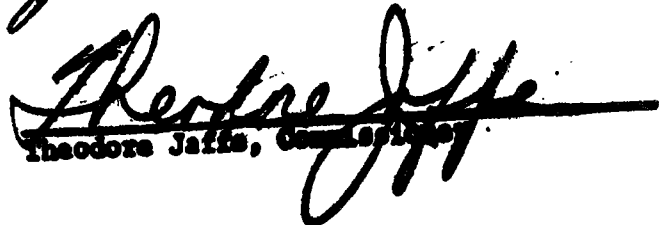
CERTIFICATION OF LOSS

The Commission certifies that WILLARD A. DEANE 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 Thirty-Five Thousand Three Hundred Twenty Dollars and Fifty Cents (\$35,320.50) with interest at 6% per annum from March 8, 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. Garlock, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

WILLARD A. DEANE

Claim No. CU -2252

Decision No. CU 5977

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 WILLARD A. DEANE, in the amount of \$55,000.00, based upon asserted losses in connection with ownership of stock in two Cuban corporations, known as Compania Inmobiliaria Bargasch, S.A. and Compania Territorial Unix, S.A. 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.

The record includes stock certificates issued by the subject Cuban corporations, a financial statement, affidavits, material in a related State Department file, correspondence, data concerning losses as filed in an income tax return, excerpts from the Cuban Official Gazette, and documents regarding the nationalization of such enterprises. On the basis of this evidence the Commission makes its findings of fact regarding the ownership, loss and value of the stock interests included in this claim, as further discussed below.

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 evidence of record establishes that Compania Inmobiliaria Bargasch, S.A., hereafter known as Bargasch, and Compania Territorial Unix, S.A., hereafter known as Unix, were organized under the laws of Cuba on August 20, 1951, with Bargasch having 1,200 shares of stock outstanding with a par value of \$100.00 per share, and Unix having 300 shares outstanding, with a par value of \$100.00 per share. The evidence also establishes that claimant purchased in 1952, or thereabouts, 32 shares of Bargasch and 8 shares of Unix, for a total consideration of \$4,000.00.

The evidence discloses that both corporations were formed for the purpose of buying and selling real property.

Evidence of record also discloses that the aforesaid corporations were nationalized or otherwise taken on March 8, 1960, pursuant to Resolution 3027 of the Ministry for the Recovery of Misappropriated Assets, which was promulgated in connection with the ownership of certain stock interests in these corporations.

The primary evidence of record pertaining to the value of the assets and stock interests of the Cuban firms is contained in a combined balance sheet, for both corporations, dated June 30, 1957, reflecting that the total assets of the corporations were in the amount of \$342,380.57, the principal asset being a tract of land, measuring 96,078.48 square meters, located on both sides of the Rancho Boyeros Highway, situated between Havana and the airport. The authorized and paid in capital was \$150,000.00, and no liabilities are shown. Claimant has submitted the statement of an official of the corporations in question, tending to show a higher value of the land at the time of loss in 1960. Consideration has also been given to evidence available to the Commission concerning the value of similar properties in this area near the City of Havana, Cuba. The Commission however finds that the information contained in the balance sheet, with notes thereto, is the most appropriate for the evaluation of the subject property.

Thus, the Commission finds that the net worth of the Cuban corporations, subject of this claim, was in the total amount of \$342,280.57; that a share of stock in either Bargasch or Unix had a value of \$228.187 at the time of loss; and that claimant's 40 shares in these corporations, had a value of \$9,127.48, and concludes claimant sustained a loss in that amount within the meaning of Title V of the Act.

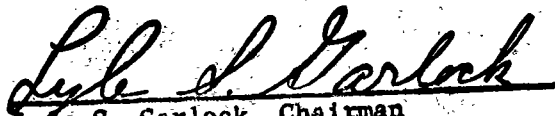
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.


CERTIFICATION OF LOSS

The Commission certifies that WILLARD A. DEANE 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 Nine Thousand One Hundred Twenty-seven Dollars and Forty-eight Cents (\$9,127.48) with interest at 6% per annum from March 8, 1960 to the date of settlement.

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

NOV 23 1970


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.

ICE: Pursuant to the Regulations of the Commission, if no objections 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. 1.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)