

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

IN THE MATTER OF THE CLAIM OF

GABRIEL G. GILBERT  
GRACIELA GILBERT NOVO  
ESTELLE CARRIE GILBERT

Claim No. **CU**2401

Decision No. **CU**-0848

Under the International Claims Settlement  
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered December 20, 1967.  
No hearing requested.

Hearing on the record held on September 8, 1971.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on December 20, 1967, denying the same for lack of evidence. Claimant GABRIEL G. GILBERT filed objections and submitted new evidence in support of the claim. Subsequently, claimant's sisters GRACIELLA GILBERT NOVO and ESTELLE CARRIE GILBERT, both nationals of the United States at birth, petitioned to be permitted to join in the claim, since they have an interest in the property which is, in part, the basis of the claim. Upon due consideration, it is

ORDERED that the petition of joinder be and the same is hereby granted.

Based upon the newly submitted evidence, the Commission now finds with respect to the various items of the claim the following:

(1) Finca "La Canoa"

The record shows that Olivia Molina, mother of the three claimants herein, owned a one-third (1/3) interest in land measuring 63 Cuban caballerias (or 2,098.08 acres), located near the town of Magarabomba, Province of Camaguey; that Olivia Molina died intestate in 1939 and that the three claimants herein and another child inherited the property of their

mother; and that each of the three claimants herein became the owner of a one-twelfth (1/12) interest in the aforesaid property.

The record further shows that a substantial part of the Finca "La Canoa" was leased to the Florida Industrial Corporation of New York, operator of the Baragua Sugar Mill; and that the corporation together with the Baragua Sugar Mill and with all their appurtenances were nationalized by the Government of Cuba pursuant to the provisions of Law 851 by Resolution No. 1 published in the Official Gazette of August 6, 1960. The Commission, therefore, finds that the farm known as Finca "La Canoa" was nationalized by the Government of Cuba on August 6, 1960.

The value of the farm remains to be determined. 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 the standard by giving specific bases of valuation that the Commission shall consider.

The evidence submitted by the claimants shows that approximately 17 caballerias of the Finca "La Canoa" consisted of land cultivated for the production of sugar cane, and approximately 46 caballerias were used as pastures, for cattle raising and hog feed. The Commission has determined in previous claims (see Claim of the Estate of Charles R. Burford, Deceased, Claim No. CU-0092) that farms of this type in the central part of Cuba had the following land values: cane land \$7,000 per caballeria, pasture land \$5,000 per caballeria and undeveloped land \$2,000 per caballeria. The

Commission therefore finds that at the time of taking, the land of the Finca "La Canoa" had the following value:

17 cabs. sugar cane land	\$119,000.00
46 cabs. pasture land	<u>230,000.00</u>
Total	\$349,000.00

and that the 1/12th interest inherited by each of the three claimants was worth \$29,083.33. Accordingly, the Commission concludes that GABRIEL G. GILBERT, GRACIELA GILBERT NOVO, and ESTELLE CARRIE GILBERT each suffered a loss in that amount.

(2) Apartment Building in Marianao

The record further shows that Mrs. Winifred Florinda Walton Sanchez, the wife of GABRIEL G. GILBERT, was the record owner of an apartment house located at 13th Street between Avenida 8 and Avenida 9 in the section known as Reparto Ampliacion de Almendares, Municipality of Marianao, near Havana, containing four apartments. The apartment house was erected on a lot numbered 4991 measuring 215.0109 square meters.

Under the community property law of Cuba property acquired during the marriage by one or both spouses from the funds of marriage partnership, or from the industry, salary or work of either of the spouses, or the fruits thereof (but not from inherited property) belongs to both spouses in equal parts (see Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915). The Commission concludes that the above apartment house acquired during marriage, was in community property and that GABRIEL G. GILBERT owned a one-half interest in that property.

On October 14, 1960 the Government of Cuba published in its Official Gazette the Urban Reform Law, under which the renting of urban properties was outlawed. The Commission finds that the above apartment house was subject to the provisions of this law and in the absence of evidence to the contrary, concludes that this property was taken on October 14, 1960.

In adopting the previously described principles of valuation, the Commission finds that at the time of taking the apartment house had a value of \$27,500.00

The record shows that Winifred, wife of claimant GABRIEL G. GILBERT was not a national of the United States at the time of taking. Section 504 of the Act provides, as to ownership of claims

(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 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.

Since Winifred Gilbert was not a national of the United States at the time the loss occurred, her one-half interest in the property cannot be considered here. The Commission therefore confines its determination of the loss to the one-half interest owned by GABRIEL G. GILBERT and concludes that he suffered a loss of \$13,750.00

(3) Residence in Marianao

The evidence discloses that GABRIEL G. GILBERT was the record owner of a building lot numbered 5332 facing 13th Street, between Avenida 8 and Avenida 9, measuring 480.26 square meters, and of a building lot numbered 8587, designated as parcel No. 10 of block 543 measuring 442.0007 square meters, both located at 7806 11th Street in the section known as Reparto Ampliacion de Almendares, Municipality of Marianao, near Havana, with a one-story brick and masonry family residence erected thereon.

Under the community property law of Cuba GABRIEL G. GILBERT and his wife Winifred each owned a one-half interest in their residence.

This property was subject to Cuban Law 989 published in the Official Gazette of December 6, 1961, which effected confiscation, of all goods, chattels, real estate, rights, shares, stock, bonds, securities and other property of persons who left Cuba. Claimant left Cuba in August 1960, and the Commission concludes that this property was taken of December 6, 1961.

The Commission finds that the above described property had the following value at the time of its taking:

Land (total 922.26 square meters)	\$ 9,500.00
Improvements	15,000.00
Total	\$24,500.00

The property appears to have been encumbered with a mortgage of \$5,000, but based upon the evidence submitted, the Commission finds that this mortgage was fully paid and satisfied.

For the reasons stated above the one-half interest owned by Winifred Gilbert cannot be considered here, and the Commission concludes that GABRIEL G. GILBERT suffered a loss in connection with his one-half interest in the property described under this heading in the amount of \$12,250.00.

(4) Woodward, Gilbert & Company

The evidence before the Commission shows that GABRIEL G. GILBERT was one of three partners in the firm of Woodward, Gilbert & Company, manufacturers agents. The record does not show that this company was formally nationalized, intervened, expropriated or otherwise taken, but the Commission holds that claimant's interest in the firm was subject to Law 989 (supra) and that his interest was taken on December 6, 1961.

A balance sheet dated September 30, 1960 discloses that the personal account of GABRIEL G. GILBERT showed a balance of \$3,250.69 in his favor and that he had a further participation of \$1,381.34 in a reserve account of the firm. Thus his interest in Woodward, Gilbert & Company was represented by the sum of \$4,632.03. For the reasons stated, his wife owned a one-half interest in that sum and the Commission concludes that GABRIEL G. GILBERT suffered a loss as partner of Woodward, Gilbert & Company in the amount of \$2,316.02.

(5) Maquinaria Conimar S.A.

Claimant GABRIEL G. GILBERT states that he invested \$30,000 in Maquinaria Conimar S.A., a Cuban corporation with a capital stock of \$51,000 divided in 510 shares of \$100 each.

The evidence shows that GABRIEL G. GILBERT was the owner of 190 shares out of 510 outstanding shares of stock of this company.

Since this corporation was organized under the laws of Cuba, it does not qualify as corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity

organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 percent or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FGSC Ann. Rep. 33).

In support of this portion of the claim GABRIEL G. GILBERT submitted a balance sheet of Maquinaria Conimar S.A. dated September 30, 1960, which shows that the company was indebted to him in the amount of \$2,500 for unpaid salaries, but there is no evidence on record which would show that he invested \$30,000, as stated in the claim.

The Commission finds, in the absence of any evidence to the contrary, that claimant's interest as creditor and stockholder was subject to Law 989 (supra) and that his interest was taken on December 6, 1961.

According to the balance sheet of September 30, 1960, the net worth of the company was \$75,907.01, and one share of the 510 outstanding shares represented therefore a value of \$1,488.37.

The 190 shares of GABRIEL G. GILBERT had consequently the value of \$28,279.03 and the debt claim for unpaid salaries was \$2,500.00 or a total of \$30,779.03.

For the reasons aforestated claimant's wife had a one-half interest in that sum, and the Commission concludes that claimant GABRIEL G. GILBERT suffered a loss in connection with the Maquinaria Conimar S.A. in the amount of \$15,389.52.

#### (6) Personal Property

Claimant GABRIEL G. GILBERT states that he was the owner of one 1955 De Soto; one 1951 Chevrolet passenger automobile; a 14-foot runabout with a 25 HP Johnson outboard motor; a 22-foot Elgin cabin cruiser with a 110 HP Graymarine motor; furniture consisting of a living room, dining room, bedroom, television set, radio, stereo set, silverware and other household goods and personal effects all valued at \$7,885.00.

The Commission finds that this property was subject to Law 989 and taken on December 6, 1961. The Commission further finds that the value of the property as stated is reasonable, having been depreciated substantially.

In view of the community property law, the Commission concludes that at the time of taking the one-half interest owned by GABRIEL G. GILBERT was worth \$3,942.50 and that he suffered a loss in that amount.

(7) Mortgage Notes and Bank Account

GABRIEL G. GILBERT asserts that he was the owner of mortgage notes with a balance of \$1,500 executed by Rosa Pla; and with a balance of \$4,500 executed by Vicente Gomez; and further that he was the owner of a bank account with a balance of \$6,000 in the First National City Bank of New York.

The Commission finds that these items have not been supported by appropriate evidence. Moreover, the evidence does not show that the property which served as security for the mortgage notes was nationalized, intervened, expropriated or taken by the Government of Cuba, as required by the provisions of Section 502(3) of the Act.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof in all issues involved in the determination of his claim (FCSC Reg. 45 C.F.R. §531.6(d) (Supp. 1970).)

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership and taking of the property rights upon which his claim for the mortgage notes and the bank account is based. Accordingly, this portion of the claim is denied.

Recapitulation

The losses are summarized as follows:

<u>Property</u>	<u>Date of Loss</u>	<u>Amount</u>
	<u>GABRIEL G. GILBERT</u>	
Finca "La Canoa"	August 6, 1960	\$29,083.33
Apartment building	October 14, 1960	13,750.00
Residence	December 6, 1961	12,250.00
Woodward, Gilbert & Co.	December 6, 1961	2,316.02
Maquinaria Conimar S.A.	December 6, 1961	15,389.52
Personal property	December 6, 1961	<u>3,942.50</u>
		\$76,731.37

GRACIELA GILBERT NOVO

Finca "La Canoa"	August 6, 1960	\$29,083.33
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ESTELLE CARRIE GILBERT

Finca "La Canoa"	August 6, 1960	\$29,083.33
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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:

GABRIEL G. GILBERT

August 6, 1960	\$29,083.33
October 14, 1960	13,750.00
December 6, 1961	<u>33,898.04</u>
	\$76,731.37

GRACIELA GILBERT NOVO

August 6, 1960	\$29,083.33
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ESTELLE CARRIE GILBERT

August 6, 1960	\$29,083.33
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Accordingly, the following Certifications of Loss are entered, and the remainder of the Proposed Decision, as amended, herein, is affirmed.



CERTIFICATIONS OF LOSS

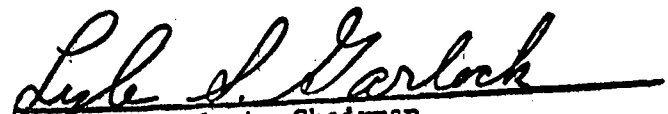
The Commission certifies that GABRIEL G. GILBERT suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-six Thousand Seven Hundred Thirty-one Dollars and Thirty-seven Cents (\$76,731.37) with interest at 6% per annum from the respective dates of loss to the date of settlement;

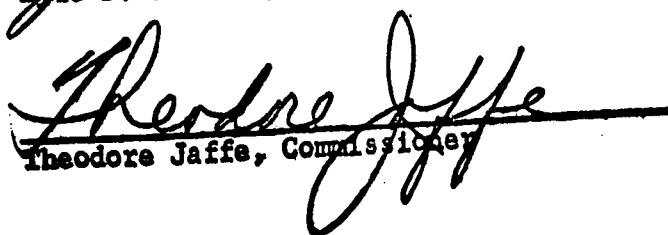
The Commission certifies that GRACIELLA GILBERT NOVO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-nine Thousand Eighty-three Dollars and Thirty-three Cents (\$29,083.33) with interest at 6% per annum from August 6, 1960 to the date of settlement; and

The Commission certifies that ESTELLE CARRIE GILBERT 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 Twenty-nine Thousand Eighty-three Dollars and Thirty-three Cents (\$29,083.33) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

SEP 8 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.

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

IN THE MATTER OF THE CLAIM OF

GABRIEL G. GILBERT

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2401

Decision No. CU -848

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 \$130,400.00, was presented by GABRIEL G. GILBERT and is based upon the asserted loss of certain real property, a bank account, a mortgage, an ownership interest in certain Cuban entities and certain personal property. Claimant stated that he has been a national of the United States since his 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.

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) (Supp. 1967).)

Claimant states that he was the owner of a one-twelfth interest in a farm located in Camaguey Province and that he was the owner of a two-story apartment building, a bank account, a mortgage, a one-story house, certain personal property and an interest in Woodward, Gilbert & Co. and Maquinary Canimar, S.A. Claimant states further that all of this property was taken by the Government of Cuba in August 1960.

By Commission letter of July 28, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. However, no response was received to this correspondence. On September 5, 1967, claimant was invited to submit any evidence available to him within forty-five (45) days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The only evidence of record consists of two affidavits (one being the affidavit of claimant) which were submitted with the claim and which pertain to the farm land located in Camaguey Province. This evidence in and of itself is insufficient to establish this portion of the claim.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

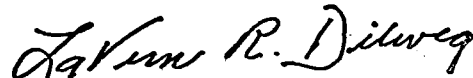
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Edward D. Re, Chairman



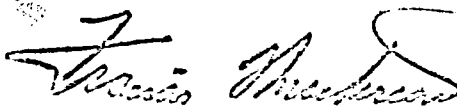
Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

Verification

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on -----



Clerk of the Commission

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).)