

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

IN THE MATTER OF THE CLAIM OF

CARL E. MOORE

Claim No. CU-2534

Decision No. CU-6228

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

Rufus King, Esq.

Appeal and objections from a Proposed Decision entered June 16, 1971. Oral hearing requested.

Oral testimony and argument August 11, 1971.

FINAL DECISION

This claim, for \$265,000.00, based upon the asserted loss of personal property, oil concessions and business enterprises, was denied in Proposed Decision of June 16, 1971, for failure of proof. Subsequently, claimant's objections were entered to the Proposed Decision accompanied by additional evidence.

On August 11, 1971, an oral hearing was held and evidence was submitted by the claimant and his brother, Clarence W. Moore (Claim No. CU-2539), including their testimony, followed by oral argument. Since the hearing, claimant has submitted further evidence, including affidavits, correspondence and other material relating to the properties.

Consideration having been given to the entire record, including objections, testimony, argument and documentation, the Commission finds that claimant owned certain interests in personal property, oil concessions and business enterprises in Cuba, as follows:

<u>Property</u>	<u>Interest</u>
Household personalty; clothing	1/1
Editorial Petroleo, S.A.	1/2
The Times of Havana Publishing Co., S.A.	1/4
Perforadora de las Antillas, S.A.	
Esperanza, Bijabo-Muskegon, Ensign, Water, Cienfuegos and other groups; Bucyrus Erie tool rig and equipment	1/4
Petrolera Bolivia del Sur, S.A.	1/2
Petrolera de la Coste Norte, S.A.	1/1
Gaviria Bar	1/3
Petrolera Michigan del Sur, S.A.	1/2

The rights of claimant in some of the aforesaid properties, including Editorial Petroleo, S.A., the Antillas, Bolivia Coste Norte and Michigan companies, were primarily based on oil concessions and exploration for oil. The rights of claimant in these properties were substantially curtailed by the Cuban Government under Law 635, of November 23, 1959. This law effectively cancelled all applications for exploration or exploitation of concessions, regardless of the status thereof. (See Claim of Felix Heyman, Claim No. CU-0412, 1967 FCSC Ann. Rep. 51.) Accordingly, the Commission finds that the rights of claimant with respect to such oil or mining enterprises were effectively nationalized or otherwise taken by the Government of Cuba on November 23, 1959; and that the interests of claimant herein were taken on that date.

With respect to the household furnishings, personal effects, The Times of Havana, and the Gaviria Bar or restaurant, the Commission finds that such properties were taken by the Government of Cuba on December 6, 1961, pursuant to 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.

With respect to the value of the properties, subject of this claim, claimant has submitted voluminous data concerning the acquisition and development of the oil concessions. Generally, however, claimant has submitted no balance sheets or evidence with respect to drilling, number of dry holes, production of oil or barrels produced, if any, or value of the concessions at or about the time of nationalization or other taking of the properties in question. The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba but must be guided by the evidence of record pertaining to such matters as value of the property included in each claim, especially at the time of loss.

With respect to the personal property, publishing firms and Gaviria Bar the record includes balance sheets for the publishing enterprises, affidavits, official reports and secondary evidence, as well as extensive testimony concerning the value of claimant's ownership interests at the time of loss. Additionally, the record includes evidence such as affidavits from affiants with personal knowledge as to the going concern value of The Times of Havana, including booklets, secondary publications, a substantial subscription list and material concerning advertising clientele.

Based upon the entire record, including evidence available to the Commission concerning the value of similar properties in Cuba, the Commission finds that claimant suffered a loss in the total amount of \$159,325.23 within the meaning of Title V of the Act for loss of his interests, as follows:

<u>Property</u>	<u>Ownership</u>	<u>Value</u>
Household furnishings; effects	1/1	\$ 2,400.00
Editorial Petroleo, S.A.	1/2	10,000.00
The Times of Havana Publishing Co., S.A. (Cia. Editorial Los Tiempos de la Habana, S.A.)	1/4	55,862.73
Perforadora de las Antillas, S.A.	1/4	49,312.50
Petrolera Bolivia del Sur, S.A.	1/2	17,625.00
Petrolera de la Coste Norte, S.A.	1/1	7,500.00
Petrolera Michigan del Sur, S.A.	1/2	6,625.00
Caviria Bar	1/3	<u>10,000.00</u>
TOTAL		\$159,325.23

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:

<u>FROM</u>	<u>ON</u>
November 23, 1959	\$ 91,062.50
December 6, 1961	<u>68,262.73</u>
	\$159,325.23

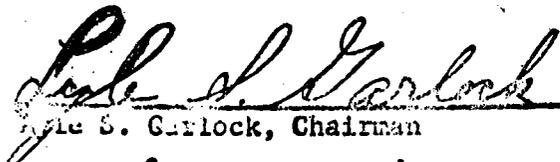
Accordingly, the following Certification of Loss will be entered, and the remainder of the Proposed Decision, as amended herein, is affirmed.

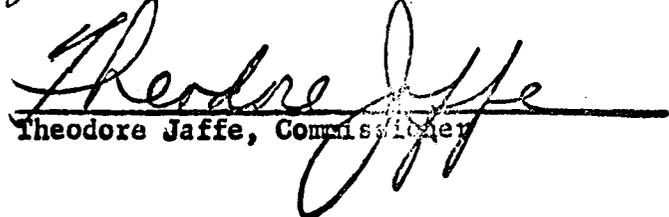
CERTIFICATION OF LOSS

The Commission certifies that CARL E. MOORE 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 One Hundred Fifty-Nine Thousand Three Hundred Twenty-Five Dollars and Twenty-Three Cents (\$159,325.23) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 20 1971


Philip 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.

CU-2534

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IN THE MATTER OF THE CLAIM OF

CARL E. MOORE

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Act of 1949, as amended

Claim No. CU - 2534

Decision No. CU 6228

Counsel for claimant:

Rufus King, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, filed on April 28, 1967, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$265,000.00, was presented by CARL E. MOORE and is based upon the asserted loss of personal property, oil and mining concessions and interests in business enterprises in Cuba. 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.

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 describes the property subject of this claim, with asserted interests and claimed amounts, as follows:

<u>Property</u>	<u>Ownership Interest</u>	<u>Claimed Amount</u>
1. Editorial Petroleo, S.A.	1/2	\$ 10,000.00
2. Times of Havana Publishing Co., S.A.	1/4	125,000.00
3. Cia. Perforadora de las Antillas, S.A.	1/4	55,500.00
4. Cia. Petrolera Bolivia del Sur, S.A.	1/2	37,500.00
5. Cia. Perforadora Michigan del Sur, S.A.	1/2	15,000.00
6. Petrolera de la Costa Norte, S.A.	1/1	12,000.00
7. Gaviria Bar	1/3	<u>10,000.00</u>
	TOTAL:	\$265,000.00

Claimant submitted statements of claim to the State Department in 1962 concerning a portion of his claim. The record herein also includes the statements of claimant describing the nature of the properties in his claim and asserted valuations of such properties. There is also a "Survey" or comment of the subscribers to The Times of Havana, and the Havana Post, as well as a balance sheet dated December 31, 1959, pertaining to the Times of Havana. This balance sheet shows a deficit of that publishing enterprise in the amount of \$144,108.47. Further, claimant has submitted publications of

the Government of Cuba appearing in the Official Gazette, maps, material concerning oil drilling activities by various companies in Cuba and a list in the Spanish language of inventories which were purportedly owned by the Times of Havana Publishing Company.

The evidence of record does not include sufficient information or evidence to establish ownership and value of such property on the date or dates of loss. Accordingly, in numerous Commission letters to claimant, through counsel, dated from 1967 to 1970, claimant was advised as to the type of evidence proper for submission under the Act to establish the claim.

Further, by Commission letter of February 3, 1970, claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine this claim on the basis of the existing record.

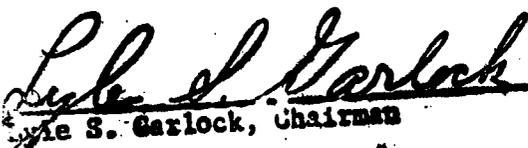
Although claimant has submitted the evidence discussed above, the record does not include evidence of sufficient probative value to establish how or when he acquired the properties, subject of this claim, or that he owned such properties at the time of loss. No evidence has been submitted as to the number of shares which were issued by the subject enterprises and which were outstanding at the time of loss; nor is there evidence to establish the value of the asserted interests in the aforesaid properties at the time of nationalization or other taking.

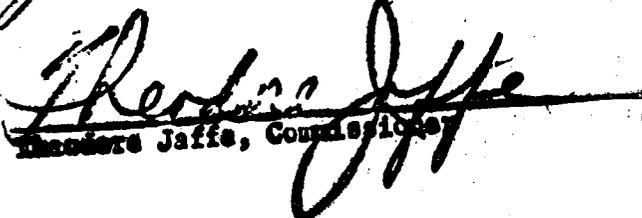
The Commission appreciates the difficulties encountered by the claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. The

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 property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied for the reasons stated. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

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

JUN 16 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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-2534