

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

IN THE MATTER OF THE CLAIM OF

THE UNIVERSITY OF CHICAGO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2590

Decision No. CU-5921

Counsel for claimant:

Shearman & Sterling
By Charles G. Parlin, Jr., Esq.

Appeal and objections from a Proposed Decision entered October 28, 1970;
oral hearing requested.

Argument February 24, 1971 by Wesley Kirtley, Esq.

FINAL DECISION

By Proposed Decision issued October 28, 1970, the Commission certified a loss to the claimant in the amount of \$1,650,000.00 for its property in Cuba which had been determined to have been taken by the Government of Cuba on October 24, 1960.

Claimant objected to the Proposed Decision of the Commission and requested an oral hearing before the Commission which was held on February 24, 1971. Additional evidence concerning the value of the property owned by claimant in Havana, Cuba was submitted and at the hearing Wesley Kirtley, Esq. presented an argument concerning the date of taking of claimant's property.

Based upon all the evidence of record, including counsel's oral argument, the Commission now finds that claimant suffered a loss of \$2,500,000.00 for its property in Cuba on April 27, 1961 when the Cuban Government physically took possession of the claimed premises. During his oral argument claimant's counsel stated no claim was made for rents due to April 27, 1960 and no finding concerning the loss of such rents is made by the Commission.


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

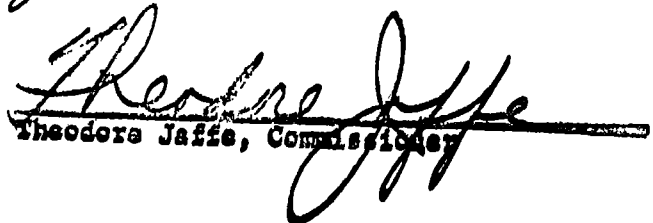
CERTIFICATION OF LOSS

The Commission certifies that THE UNIVERSITY OF CHICAGO 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 Two Million Five Hundred Thousand Dollars (\$2,500,000.00) with interest thereon at 6% per annum from April 27, 1961 to the date of settlement.

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

MAR 17 1971


Lyle S. Gardner, Chairman


Theodore Jaffe, Commissioner

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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 \$5,333,333.34, was presented by THE UNIVERSITY OF CHICAGO based upon the loss of certain real property in Cuba, the rent derived therefrom and attorneys fees.

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 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized as a non-profit organization under the laws of the State of Illinois for educational purposes and no shares of stock were issued. The Commission holds that claimant is a national of the United States within the meaning of Section 503(1)(B) of the Act. (See Claim of Independence Foundation, Claim No. CU-2152.)

The claim is based upon the loss of claimant's Administrative Concession for public use of docks and warehouses in Havana and the lands, docks and warehouses included therein, the unpaid rents on a lease running to December, 1984, and attorneys fees. The record establishes and the Commission finds that claimant was the owner of an Administrative Concession with lands, docks and warehouses located between Desamparados Street and Havana Bay in Havana, Cuba, purchased by claimant from the New York and Cuba Mail Steamship Company in 1955. At the time of purchase, the property was leased back to the New York and Cuba Mail Steamship Company, which lease was in turn assumed by Ward Industries Corporation, on March 15, 1956, and then, on July 2, 1956, the property was subleased to South American Investment Corporation, a Liberian corporation.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, the 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) and contracts for the renting of said properties were declared null and void (Article 5). The law covered residential, commercial, industrial and business office properties (Article 15). The law further provided that the property could be sold to the occupant, whether a tenant or subtenant, in the manner outlined in Article 9 of the Law. Citizens of foreign countries who did not have the status of legal residents were excluded from the rights and benefits conferred by this law.

Based on the foregoing and the evidence of record, the Commission finds that claimant's real property in Havana, Cuba, was taken by the Government of Cuba on October 14, 1960 pursuant to the provisions of the Urban Reform Law. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) Accordingly, the Commission concludes that claimant sustained a loss of its real property within the meaning of Title V of the Act.

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.

Claimant has valued its property at \$2,500,000.00 based upon an appraisal by Ebasco Services Incorporated performed prior to claimant's purchase of the property. However, the price paid by claimant was \$1,650,000.00 and, since there is no evidence showing that the value of the property increased after purchase, the Commission finds that the value of the real property on October 14, 1960 was \$1,650,000.00 and concludes that claimant suffered a loss in that amount within the meaning of Title V of the Act.

Claim is also asserted for \$2,783,333.34 for the loss of rent for a period extending to December, 1984 under a lease dated December 20, 1955, and for \$50,000.00 for attorneys fees.

Under the terms of the December 20, 1955 lease, claimant leased the claimed premises to the New York and Cuba Mail Steamship Company for a term of 29 years with an annual rental of \$200,000.00 for the first 15 years and \$100,000.00 for the last 14 years with an advance rental of \$450,000.00 for the ninth, tenth and first three months of the eleventh years. The advance rent was paid to claimant, and subsequently, on July 2, 1956, the property was subleased to South American Investment Corporation with the same provisions for the annual rent and advance rent.

With respect to the rent assertedly due claimant after October 14, 1960, it is to be noted that the property no longer belonged to the claimant but to the Government of Cuba. Accordingly, the claim for rent must be and hereby is denied. However, the Commission has decided that in certification of losses 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).

The Commission concludes that the amount of loss suffered by claimant shall be increased by interest thereon at the rate of 6% per annum from October 14, 1960 to the date on which provisions are made for the settlement thereof.

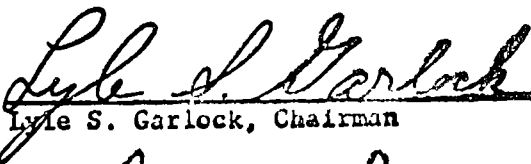
Concerning the claim for attorneys fees, no specific provision is made in the statute for the inclusion in the certification of loss for attorneys fees or other expenses incurred by claimants in pursuing claims. After consideration of the statute and the legislative history of the Act, the Commission finds that attorneys fees were not intended by Congress to constitute a loss resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against property of nationals of the United States by the Government of Cuba within the meaning of Section 502(3) of the Act. (See Claim of E. R. Squibb & Sons Inter-American Corporation, Claim No. CU-2469.) Accordingly, this portion of the claim is also denied.

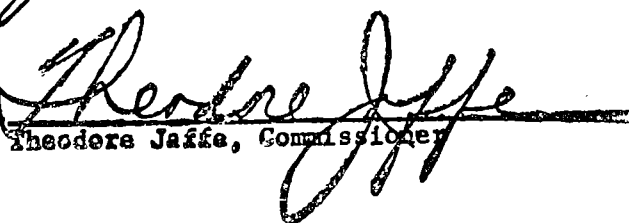
CERTIFICATION OF LOSS

The Commission certifies that THE UNIVERSITY OF CHICAGO 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 Million Six Hundred Fifty Thousand Dollars (\$1,650,000.00) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

28 OCT 1970


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. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)