

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

IN THE MATTER OF THE CLAIM OF

JAMES W. MILLER
and
CECILIA C. MILLER

Under the International Claims Settlement
Act of 1949, as amended

Claim No CU-2604

Decision No. CU -6442

FINAL DECISION

By Proposed Decision entered August 4, 1971, the Commission certified a loss to each of the claimants in the amount of \$24,207.50 for the loss of personal property taken by the Government of Cuba on September 20, 1960. The remainder of the claim amounting to \$90,575.00 was denied for the failure of claimants to establish their ownership and the value of such property.

Claimants have submitted additional evidence concerning ownership and value of the items claimed.

On the basis of the entire record the Commission now finds that claimants were the owners of a residence with a garage and electric and water supply systems, and four plots of land containing 153.20 acres of land including 40 acres of citrus groves, located near Nueva Gerona, Isle of Pines, Cuba. The Commission further finds that these properties were taken by the Government of Cuba on September 20, 1960 and that the value on that date of the residence, garage and equipment was \$5,375.00 and of the land with citrus groves and pine was \$85,200.00 for a total of \$90,575.00. The Commission concludes that claimants suffered an additional loss on September 20, 1960 of \$45,287.50 each within the meaning of Title V of the Act.

Accordingly, the Certifications of Loss in the Proposed Decision are set aside, the following Certifications of Loss will be entered, and the remainder of the Proposed Decision, as amended herein, is affirmed.


CERTIFICATIONS OF LOSS


The Commission certifies that JAMES W. MILLER 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 Sixty-Nine Thousand Four Hundred Ninety-Five Dollars (\$69,495.00) with interest thereon at 6% per annum from September 20, 1960 to the date of settlement; and

The Commission certifies that CECILIA C. MILLER 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 Sixty-Nine Thousand Four Hundred Ninety-Five Dollars (\$69,495.00) with interest thereon at 6% per annum from September 20, 1960 to the date of settlement.

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

OCT 13 1971


Lytle S. Garfield, Chairman


Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

JAMES WILLIAM MILLER
and
CECILIA C. MILLER

Claim No. CU -2604

Decision No. CU 6442

Under the International Claims Settlement
Act of 1949, as amended

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 \$138,990.83, was presented by JAMES WILLIAM MILLER and CECILIA C. MILLER and is based upon the asserted loss of real and personal property in Cuba.

Pursuant to the community property law of Cuba, spouses have equal interests in property acquired in coverture except that acquired by inheritance or gift. The record disclosing that CECILIA C. MILLER has an interest in some of the properties subject of this claim, she has been joined as claimant herein. Claimants have been nationals of the United States at all times pertinent to this claim.

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 owned 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. §431.6(d) (1970).)

The losses subject of this claim are described as (1) real properties on the Isle of Pines, Cuba, including citrus groves, pine forest, pasture, and river, valued at \$85,200, some of the properties having been acquired by gift and some by purchase; and (2) various agricultural equipment.

Claimants contend that the properties were intervened on September 20, 1960 pursuant to Resolution No. 34 issued by the National Institute for

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Agrarian Reform. The record includes a copy of this Resolution dated September 7, 1960, and which in translation provides that it is resolved --

To proceed towards the intervention of the grapefruit grove owned by Mr. James Miller, located in the agricultural section without name, District of Santa Fe, Isle of Pines, property of James Miller, with all belonging and annexed, including the so called packing house, agricultural equipment, tractors, plows, fumigators, machines, apparatus and accessories of the packing house and everything related to the production and harvest of grapefruit, such as crates, carpentry equipment, etc.

Accordingly, the Commission finds that the properties subject of this claim were intervened by the Government of Cuba on September 20, 1960, as asserted. It is noted that the Resolution No. 34 does not mention property of other members of the Miller family.

REAL PROPERTY

The record includes a listing of the lots by number, with sizes, and the information that some were acquired by gift and some by purchase. There is of record an affidavit by a former real estate broker who recites his acquaintance with the Miller family and his general knowledge of their properties; and his opinion of the sales prices of properties on the Isle of Pines. Claimant has stated that he has in his possession a book listing the properties and the places of registration.

The record does not contain, however, evidence of such probative value as to establish the extent and value of the real properties, and which may have been subject to the community property law of Cuba.

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Under these circumstances the Commission is constrained to hold that claimants have not established the nature and extent of their real properties subject of this claim, and accordingly, this part of the claim is denied.

PERSONALTY

The aforesaid Resolution was accompanied by a copy of an inventory of agricultural equipment and related properties as of the time of intervention. The record also includes claimant's copy of this listing with his estimated values for each item. These total \$48,415. The Commission has examined this listing in the light of information available to it of similar properties taken by the Government of Cuba and finds the asserted values fair and reasonable.

The Commission finds that these properties, in the absence of evidence to the contrary, were subject to the community property law of Cuba and concludes that each claimant suffered a loss in the amount of \$24,207.50.

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.

CERTIFICATIONS OF LOSS

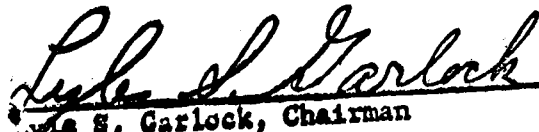
The Commission certifies that JAMES WILLIAM MILLER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Four Thousand Two Hundred Seven Dollars and Fifty Cents (\$24,207.50) with interest at 6% per annum from September 20, 1960 to the date of settlement; and

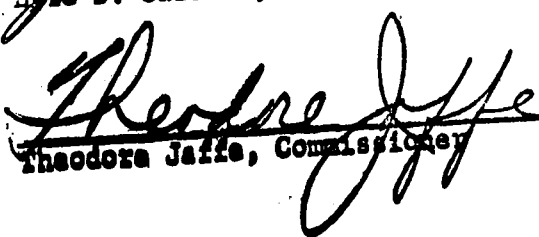
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The Commission certifies that CECILIA C. MILLER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Four Thousand Two Hundred Seven Dollars and Fifty Cents (\$24,207.50) with interest at 6% per annum from September 20, 1960 to the date of settlement.

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

AUG 4 1971


Lyle S. Carlock, Chairman


Theodora 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 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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