

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

IN THE MATTER OF THE CLAIM OF

HELEN HUNT McMASTERS nee JACKSON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2692

Decision No. CU - 6200

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$1,460,699.30, was presented by HELEN HUNT McMASTERS nee JACKSON based upon the asserted ownership and loss of certain real and personal property 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.

Claimant asserts the following losses:

100% stock interest in Cia. Territorial Omega, S.A.(Omega), a Cuban corporation said to own real properties in Havana, Cuba: Oficios #204	\$160,000.00	
Teniente Rey #9	<u>23,512.70</u>	\$ 183,512.70
100% stock interest in Cia. de Inversiones San Marcos, S.A. (San Marcos), a Cuban corpora- tion said to own real properties in Havana Province:		
Finca Macasa	\$300,000.00	
Granja Macasa	225,000.00	
Vereda Nueva	200,000.00	
Calle O, Nos. 14 and 16	<u>350,000.00</u>	1,075,000.00
Personal property		158,727.00
Loss of rent		32,919.60
Cuban Telephone Company stock interest		2,500.00
Cuban Electric Company bonds		3,000.00
Cash		3,540.00
Havana Biltmore Yacht and Country Club bond		<u>1,500.00</u>
	Total	<u>\$1,460,699.30</u>

The record includes a substantial amount of evidence, on the basis of which the Commission finds that claimant owned certain properties in Cuba, discussed in detail below.

Omega and San Marcos

The evidence includes an acknowledgement from the Cuban Treasury Department to the effect that it had received from claimant the following: stock certificates of Omega and San Marcos, and the stock registers and minute books of the two Cuban corporations; an affidavit from the former President of the two corporations attesting to claimant's sole ownership of all of the outstanding capital stock of Omega and San Marcos; and claimant's statements.

On the basis of the foregoing evidence, the Commission finds that claimant owned all of the outstanding shares of capital stock of Omega and San Marcos.

Since Omega and San Marcos were organized under the laws of Cuba, neither qualifies as a 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 per centum 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 FCSC Ann. Rep. 33.)

The evidence establishes and the Commission finds that the only assets owned by Omega and San Marcos were the following improved real properties, unencumbered by any liens:

Omega:

A building and land at Oficios #204, Havana, Cuba; and

A building and land at Teniente Rey No. 9, Havana, Cuba.

San Marcos:

A building and land at 21217-39th Avenue, Marianao, Havana, Cuba, which was claimant's home in Cuba and was known as Finca Macasa;

A building and land situated on the outskirts of Havana, Cuba, known Granja Macasa;

A building and land situated in the suburbs of Vereda Nueva, Havana, Cuba; and

Two buildings and land at Calle O, Nos. 14 and 16, Vedado, Havana, Cuba.

It appears from a copy of an official document that claimant registered the foregoing properties with the Urban Reform authorities and listed the rental income derived from each of the properties. Claimant states that

this document was a request directed to the Cuban authorities to permit her to continue receiving the rental income from the properties. Apparently, claimant was treated as if she, rather than the two Cuban corporations, owned the properties.

The record includes a copy of a letter of May 10, 1961 from claimant to the Cuban Urban Reform authorities in which she requested an exit permit to go to the United States for 90 days, which was granted. However, claimant never returned to Cuba.

On December 6, 1961, the Cuban Government published Law 989, which effected confiscation of all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimant who had left Cuba in May 1961, and that her properties in Cuba were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989 except as noted hereafter. (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.

Valuations of Omega and San Marcos

Oficios #204

Claimant asserts a value of \$160,000.00 for Oficios #204. She states that the property had been acquired in 1942 at a cost of \$80,000.00; and that

it consisted of 873.60 square meters of land in the commercial section of Havana, improved by a 3-story office building with an elevator, an air conditioning system, and various office furnishings. Claimant has submitted photographs of the interior offices.

The record includes claimant's undated notes headed "List of properties". Those notes recite the following valuations for Oficijos #204:

Land	\$55,000.00
Improvements	15,000.00
Office and furnishings	<u>8,000.00</u>
Total	<u>\$78,000.00</u>

The aforesaid registration, of December 20, 1960, reflects monthly rental income from Oficijos #204 of \$405.00. A copy of a receipt from an insurance company indicates that the building had been insured for \$40,000.00 for the period January 15, 1960 to January 15, 1961.

The record also includes a copy of an appraisal of Oficijos #204 prepared on June 29, 1956, which sets forth that the land had a value of \$74,256.00 at the rate of \$85.00 per square meter; and that the building had a value of \$40,500.00.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property at Oficijos #204 and equitable to the claimant is the appraisal of June 29, 1956. Accordingly, the Commission finds that the value of the improved property at Oficijos #204 was \$114,756.00 on December 6, 1961, the date of loss, and that the value of the personal property therein was \$8,000.00, the aggregate value being \$122,756.00.

Teniente Rey #9

In claimant's amended claim, she asserts a valuation of \$23,512.70 for Teniente Rey #9 based upon an appraisal of June 29, 1956. The appraisal recites that the land had a value of \$14,012.70 at the rate of \$65.00 per square meter; and that the building had a value of \$9,500.00.

Claimant's undated notes refer to Teniente Rey #9, but indicate no valuation thereof. It appears from a copy of a receipt that the building had been insured for \$15,000.00 for the period January 15, 1960 to January 15, 1961. The registration with the Cuban authorities indicates a monthly rental income of \$155.00.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property at Teniente Rey #9 and equitable to the claimant is the appraisal of June 29, 1956. Accordingly, the Commission finds that the value of the property at Teniente Rey #9 on December 6, 1961, the date of loss, was \$23,512.70.

Inasmuch as Omega had no liabilities on the date of loss, the Commission finds that claimant's stock interest in Omega had a value of \$146,268.70 on December 6, 1961.

Finca Macasa

Claimant asserts that the improved real property at 21217-39th Avenue, Marianao, Havana, Cuba, known as Finca Macasa, which served as her home in Cuba, had a value of \$300,000.00 on the date of loss. She states that in 1957 she offered the property for sale at \$250,000.00 without the furnishings thereof, and that she refused an offer of \$175,000.00 in cash, but is unable to obtain documentary proof thereof.

Claimant describes the property as 7,724 square meters of land with improvements, acquired in 1942 at a cost of \$27,000.00. The property was located at the corner of a very good residential area of Marianao. Between 1942 and 1958, claimant improved the property by adding rooms, modernizing others and installing new equipment. The entire house was air conditioned. In addition, claimant built a 2-story guest house; fully equipped workshop; a stable and corral; a garage with room and other facilities; and a tiled swimming pool.

The record includes photographs of the exterior and interior of the property. Claimant's notes include a description of the property, but no

valuation thereof. A copy of a receipt indicates that the improvements were insured for \$40,000.00 for the period January 15, 1961 to January 15, 1962.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to Finca Macasa and equitable to the claimant is the offer she received in 1957. Accordingly, the Commission finds that the value of the improved real property known as Finca Macasa on December 6, 1961, the date of loss, was \$175,000.00.

Granja Macasa

Claimant asserts that the improved real property situated on the outskirts of Havana, Cuba, known as Granja Macasa, had a value of \$225,000.00. The property originally consisted of about 35 acres of land, improved by a residence, which had been acquired in 1946 for \$25,000.00. Improvements made by claimant included the addition of rooms to the residence, and the construction of other buildings to form a chicken and fruit farm. These included a concrete hatchery, a breeding house, a brooding house and cage laying houses. A refrigerator storage building was also constructed; generators were added as well as other improvements, including fruit trees.

The record includes a copy of a contract indicating that the property had been rented for \$150.00 per month in 1958. A copy of a receipt shows that the improvements were insured for \$40,500.00 for the period February 19, 1957 to February 19, 1958. The evidence also includes photographs of the various houses, the lake, the grounds and the interior of the incubating building. An affidavit of July 27, 1967 from a tenant who had lived on the premises for 3-1/2 years, states that claimant's valuation of the property is reasonable.

Upon consideration of the entire record, the Commission finds that the value of Granja Macasa on December 6, 1961, the date of loss, was \$225,000.00.

Vereda Nueva

Claimant asserts a value of \$200,000.00 for Vereda Nueva, improved real property at the edge of the Vereda Nueva municipality. The property consisted of 8,204 square meters of land improved by a 2-bedroom house, acquired in 1943 at a cost of \$7,000.00.

Between 1944 and 1955, claimant made improvements to the property. A 3-story mill and grain structure of concrete was built, including a dormitory, and other facilities. Substantial equipment was added, such as large scales; a diesel motor; a 300-gallon tank; a nutrition mill; conveyors; a steam boiler; hoists; humidity and recording devices; pressure cookers; tracks; and related equipment. A large warehouse was constructed for storing finished products. Claimant states that on the date of loss the warehouse contained about 100 tons of fish meal valued at \$125.00 per ton. Additionally, claimant installed a well with an automatic pump, electric motor and water tank, and fully furnished the residence.

Claimant's notes indicate a value of \$38,000.00 for the land, measuring approximately 2 acres and \$31,430.00 for machinery and equipment. Although the notes refer to the structures and other improvements, they do not indicate valuations therefor. Claimant states that her notes were incomplete.

Upon consideration of the entire record, the Commission finds that claimant's valuation is fair and reasonable. Accordingly, the Commission finds that the value of the property at Vereda Nueva on December 6, 1961, the date of loss, was \$200,000.00.

Calle O, Nos. 14 and 16

Claimant asserts that the aggregate value of the improved real property at Calle O, Nos. 14 and 16, Vedado, Havana, Cuba, was \$350,000.00.

The properties consisted of two 2-story residences situated on 1,558 square meters of land in Vedado, Havana. House No. 14 and lot were acquired in 1943 for \$35,000.00, and house No. 16 and lot were purchased in 1944 for \$40,000.00. Claimant states that in 1958 she rejected an offer of \$300,000.00 for the two pieces of property.

The registration with the Cuban Urban Reform authorities shows that the buildings were being rented for the aggregate amount of \$310.00 per month. Claimant's notes indicate values of \$40,000.00 for each of the two properties, and the fact that she had expended \$10,000.00 in improving property No. 16. A copy of a receipt shows that house No. 16 was insured for \$20,000.00 for the period January 15, 1960 to January 15, 1961.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to these properties and equitable to the claimant is the offer claimant received in 1958. Therefore, the Commission finds that the aggregate value of properties No. 14 and 16 on December 6, 1961, the date of loss, was \$300,000.00.

Inasmuch as San Marcos had no liabilities on the date of loss, the Commission finds that claimant's stock interest in San Marcos had a value of \$900,000.00 on December 6, 1961.

Personal Property

Claimant asserts the loss of \$163,227.00 based upon various items of personal property maintained at her home at Finca Macasa, Marianao, Havana, Cuba.

Based upon the evidence of record, the Commission finds that claimant owned certain items of personal property in her home at Finca Macasa. The Commission further finds that the personal property was taken by the Government of Cuba on December 6, 1961 when the house was taken.

The record includes an itemized list of the personal property which claimant had left with the American Embassy, Havana, Cuba but which contained no valuations. Claimant since submitted a copy of that list with valuations. Her initial claim was in the amount of \$125,000.00, and her itemized list shows the aggregate amount of \$163,227.00. Claimant states that she is unable to corroborate her valuations which were based upon memory alone.

It appears from claimant's statements that some items on her list, aggregating \$3,000.00, belonged to her son, James Lowell McMasters, whose

claim against Cuba (Claim No. CU-2793) will be determined on its own merits. The list also includes the amount of \$1,500.00, for a bond issued by the Havana Biltmore Yacht & Country Club, which is discussed below. Accordingly, the remainder of claimant's itemized list of personal property amounts to \$158,727.00.

The record shows that claimant had lived in Cuba from 1929 to 1961. The various items of personal property had been acquired during that period of time.

The list, consisting of 22 pages, includes the following categories of personal property in addition to a 1958 automobile which is subject to depreciation at the rate of 15% per year:

Various items of furniture which are subject to depreciation at the rate of 5% per year;

Various electrical equipment and appliances which are subject to depreciation at the rate of 10% per year;

Various items of clothing which are subject to depreciation at the rate of 20% per year; and

Oil paintings, silver and antiques which are not subject to depreciation.

Upon consideration of the entire record and in the absence of evidence to the contrary, the Commission finds that the items of personal property should be depreciated by 50%. Accordingly, the Commission finds that the aggregate value of the items of personal property on December 6, 1961, the date of loss, was \$79,363.50.

Loss of Rent

Claimant asserts the loss of rent in the amount of \$32,919.60. She states that upon registering the real properties with the Cuban authorities on December 20, 1960, she was allowed a rental income therefrom in the amount of \$548.66 per month; and that payments were to commence in June 1961 and continue for 5 years. Since claimant left Cuba in May 1961, she states that she did not receive any of the rentals which were to be

deposited to her credit. Accordingly, claimant asserts a loss of \$32,919.60 based upon 60 months of income at \$548.66 per month. No other evidence has been submitted in support of this portion of the claim.

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).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of her claim for the loss of rent. The evidence does not establish that any rent belonging to claimant was taken by the Government of Cuba. Moreover, all income from the properties after December 6, 1961 belonged to Cuba, and not to the former owners, and the Commission has so held consistently. (See the Claim of Enrique L. Valdes, Claim No. CU-1528; and FCSC Dec. & Ann. 50, 111, 231, 490 (1968).)

For the foregoing reasons, the portion of the claim for the loss of rent is denied.

Cuban Telephone Company

Based upon stock certificate No. C04619, the Commission finds that claimant owned 25 shares of common stock in the Cuban Telephone Company.

The Commission has held that a claim based upon stock of the Cuban Telephone Company is within the purview of Title V of the Act because, although the Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. (See Claim of International Telephone and Telegraph Company, Claim No. CU-2615.) In that claim, the Commission found that the assets of the Cuban Telephone Company had been taken by the Government of Cuba on August 6, 1960; and further that the value of each share of common stock of that entity was \$184.0057 on the date of loss. The Commission therefore finds that claimant's 25 shares of stock had a value of \$4,600.14.

Cuban Electric Company

The evidence establishes and the Commission finds that claimant owned 3 mortgage bonds of the Cuban Electric Company in the face amount of \$1,000.00 each. The record shows that interest on the bonds had been paid for the entire period ending December 31, 1960.

The Commission has found that the assets of the Cuban Electric Company, which constituted the security for the bonded indebtedness, were taken by the Government of Cuba on August 6, 1960. (See Claim of Cuban Electric Company, Claim No. CU-2578.) Moreover, claims for debts that were charges on properties taken by the Government of Cuba are within the purview of Title V of the Act.

Accordingly, the Commission finds that claimant sustained a loss on August 6, 1960 in the amount of \$3,000.00 on account of her Cuban Electric Company bonds.

Cash

Claimant asserts a loss of \$3,450.00 in cash. She states that when she left Cuba she entrusted that sum of money to a friend who remained in Cuba; and that the last news she received was that her friend had been imprisoned by the Government of Cuba. Claimant therefore presumed that her cash had been taken by Cuba.

The evidence includes a copy of a letter of July 29, 1961 from her friend in Havana, Cuba. Therein, her friend recited that upon claimant's departure from Cuba, she left with him two sealed envelopes for safekeeping; that he thereafter opened the envelopes and found cash in the amount of \$3,450.00; and that he sealed the envelopes and put them "in a safe place."

It is clear therefore that claimant's friend in Cuba had been holding \$3,450.00 in cash belonging to claimant. However, the record does not disclose where Mr. Gonzalez kept the envelopes, except that it was "a safe place." Even if it were assumed, as suggested by claimant, that her friend's property was confiscated by Cuba upon his arrest, there would

still be no evidence to establish that these envelopes, had also been taken by Cuba.

Upon consideration of the entire record, the Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of her claim based on cash in the amount of \$3,450.00. Therefore, this portion of the claim is denied.

Havana Biltmore Yacht & Country Club

The evidence establishes and the Commission finds that claimant owned 1 bond of the Havana Biltmore Yacht & Country Club in the face amount of \$1,500.00.

The Commission has found that the Havana Biltmore Yacht & Country Club was organized under the laws of Cuba and was intervened by the Government of Cuba March 19, 1960. (See Claim of Arman E. Becker, Jr., Claim No. CU-1094.) Accordingly, the Commission finds that claimant sustained a loss in the amount of \$1,500.00 on March 19, 1960.

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Omega (stock interest)	December 6, 1961	\$ 146,268.70
San Marcos (stock interest)	December 6, 1961	900,000.00
Personal property	December 6, 1961	79,363.50
Cuban Telephone Company (stock interest)	August 6, 1960	4,600.14
Cuban Electric Company (bonds)	August 6, 1960	3,000.00
Havana Biltmore Yacht & Country Club (bond)	March 19, 1960	<u>1,500.00</u>
	Total	<u>\$1,134,732.34</u>

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:

CU-2692

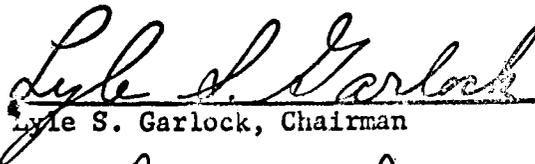
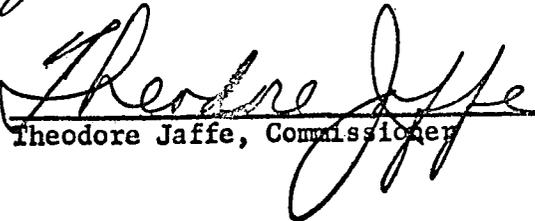
<u>FROM</u>	<u>ON</u>
March 19, 1960	\$ 1,500.00
August 6, 1960	7,600.14
December 6, 1961	<u>1,125,632.20</u>
Total	<u>\$1,134,732.34</u>

CERTIFICATION OF LOSS

The Commission certifies that HELEN HUNT McMASTERS nee JACKSON 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 One Hundred Thirty-Four Thousand Seven Hundred Thirty-Two Dollars and Thirty-Four Cents (\$1,134,732.34) 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 Proposed
Decision of the Commission

MAY 19 1971


 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.

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).)