

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

IN THE MATTER OF THE CLAIM OF

DAVID W. FLESH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2697

Decision No. CU 6163

Counsel for claimant:

Herbert Wall, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by DAVID W. FLESH for \$115,000 based upon the asserted loss of agricultural equipment, office equipment, and accounts receivable 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 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.

Pursuant to the community property laws of Cuba, properties acquired during coverture are held equally by the spouses, except for inherited properties or gifts. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim. No. CU-0915.) The record reflects that claimant was married prior to entering upon his business enterprise in Cuba. His spouse became a national of the United States in 1969, subsequent to the loss of the property, as shown below. Accordingly, her interests will not be considered herein.

Claimant has described his loss as agricultural equipment, \$107,008.60; office equipment, \$2,991.40; and accounts receivable, \$5,000.00.

The claimant relates that in 1950 he commenced a heavy agricultural equipment rental business in Florida, Camaguey. The business consisted in selling the services of his heavy agricultural equipment in several ways, such as by the hour, or under prearranged contract per unit area for the work performed. This work was performed for sugar cane plantation owners, rice farmers, ranchers, sugar mills, and the like.

On June 6, 1959 the Government of Cuba enacted its Agrarian Reform Law, which provided for the expropriation of rural properties in the course of agrarian development of the country. (See Claim of Council Bluffs Savings Bank, Trustee, Estate of Grenville M. Dodge, Deceased, Claim No. CU-1290.) Pursuant to this law, the National Institute for Reform, by Resolution of May 6, 1960, intervened and seized the agricultural equipment and machinery owned by claimant.

Accordingly, the Commission finds that claimant owned and operated an agricultural enterprise in Cuba, including agricultural equipment and machinery, which was seized by the Government of Cuba on May 6, 1960, and that he thereby suffered a loss 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 submitted a detailed list of the equipment which was taken by the Government of Cuba including bulldozers, graders, tractors, harrows, compressor, pumps, tools and other supplies, as well as a Chevrolet pick-up truck, giving the estimated fair value as of the time of loss.

In arriving at the value of this property, consideration has been given to all of the evidence, including the detailed description referred to above, claimant's report to the American Embassy in September 1960, affidavits, and evidence as to the value of similar properties in other claims before the Commission.

On the basis of this record, the Commission finds that the asserted values are fair and reasonable, except that as to the Chevrolet pick-up truck, the Commission finds that according to the Guide of the National Automobile Dealers Association, its value on the date of loss was \$2,160.00 rather than the asserted \$2,500.00.

Accordingly, the Commission finds that the value of the equipment, machinery, supplies, and vehicle, on the date of loss was \$106,668.60.

With regard to the office equipment, the Commission finds that the asserted value of \$2,991.40, as of the date of loss, is fair and reasonable, and that the furnishings had such value.

Claim is also asserted for \$5,000.00 in accounts receivable. Claimant has been unable to submit original documentation of these accounts, but has affirmed that according to the custom or way of doing business in rural Cuba, it was often necessary to wait for collection of the value of the services, until the recipients were able to harvest crops or sell cattle. The Commission has noted that such enterprises were generally intervened or seized in the summer of 1960. The Commission has held that debts of intervened or nationalized Cuban enterprises owed to American claimants constitute losses occurring on the date of intervention or nationalization within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) Accordingly, the Commission finds that the loss suffered on May 6, 1960 included debts in the amount of \$5,000.00.

Thus the Commission concludes that claimant suffered a loss in the amount of \$57,330.00 within the meaning of Title V of the Act as the result of the taking of his one-half interest in the above-mentioned property by the Government of Cuba.


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.

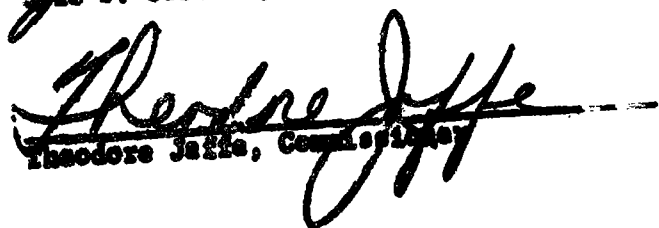
CERTIFICATION OF LOSS

The Commission certifies that DAVID W. FLESH 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 Fifty-seven Thousand Three Hundred Thirty Dollars (\$57,330.00) with interest thereon at 6% per annum from May 6, 1960 to the date of settlement.

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

APR 14 1971


Dale S. Carlisle, 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, (1970).)