

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

IN THE MATTER OF THE CLAIM OF

JOSEPH M. PELAEZ

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2774

Decision No. CU 5914

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 \$102,800.00, was presented by JOSEPH M. PELAEZ, based upon the asserted 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:

Land and building	\$ 53,200.00
Loss of rental from date of loss to date of claim	31,600.00
Furniture and personal belongings	8,000.00
100 shares of stock in Cia. Constructora Pelgin, S.A.	<u>10,000.00</u>
Total	<u>\$102,800.00</u>

Land and Building

The evidence includes an original document in the form of a deed, dated December 12, 1955, which recites the following:

1. That claimant, then divorced, owned a lot in the Miramar Residential Club section of Marianao, Havana, Cuba, having an area of 320.44 square meters.

2. That claimant had been divorced from his first wife on March 1, 1955 and that the community property laws of Cuba did not apply to the said lot.

3. That claimant constructed on the lot at his own expense a wood and concrete, three-story building with a basement, which was completed and found habitable on September 13, 1955 when a certificate of occupancy issued by Cuban officials.

4. That each floor of the house has a terrace, living room, two bedrooms, a study, two bathrooms, closets, a kitchen, a utility room, and a service room; and that the basement has a garage and three utility rooms.

4. That the building has a value of \$38,000.00.

5. That the improved real property is encumbered by a mortgage of \$20,000.00 (the peso being on a par with the United States dollar) in favor of the Confederation Life Association of Canada.

On the basis of the foregoing evidence, the Commission finds that claimant owned the said building and lot in Marianao, Havana, Cuba.

Claimant states that the real property was taken in October 1960 pursuant to the Urban Reform Law.

The Commission finds that the improved real property was within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that the improved real property was taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

Claimant, in effect, asserts that his equity in the improved real property had a value of \$53,200.00 on the date of loss. The record includes a copy of a cancelled check indicating that the land was acquired by claimant in February 1955 at a cost of \$11,000.00. The document of December 12, 1955, filed with Cuban authorities, shows that the building then had a value of \$38,000.00. Claimant states that he improved the property by the installation of air conditioning at a cost of \$3,600.00. It further appears from the evidence of record that the three apartments in the building were being rented at \$160.00 per month for each apartment, aggregating an annual rental income of \$5,760.00. Claimant has submitted a copy of a statement from the Canadian mortgagee indicating that as of July 21, 1960 the unpaid balance of the mortgage on the improved real property was \$14,759.92.

Upon consideration of the entire record and in the light of the fact that the rental income from the property was \$5,760.00 per year, the Commission finds that the improved real property had a value of \$57,600.00 on October 14, 1960, the date of loss. Accordingly, claimant's equity in the property was \$42,840.08. It is therefore concluded that claimant sustained a loss of \$42,840.08 with respect to the improved real property.

Rental Income

Claimant is asserting the loss of rental income from the date of loss of the improved real property until the date of filing this claim with the Commission. However, subsequent to October 14, 1960 the property belonged to the Government of Cuba, and not to the claimant. Consequently, rentals as such were not due to him. As indicated below, however, interest is

being allowed on the amount of claimant's loss, \$42,840.08, at the rate of 6% per annum from October 14, 1960 to the date of settlement.

Furniture and Personal Belongings

Claimant asserts the loss of \$8,000.00 for furniture, appliances and other household possessions. He states that upon leaving Cuba on August 17, 1961 he left said personal property at his mother's home in Havana, Cuba, which he had been occupying at the time. He further states that a day later his personal property was seized by the Government of Cuba.

On several occasions, namely, June 15, 1967, July 19, 1967, September 20, 1968, November 20, 1969, December 17, 1969, February 2, 1970 and March 9, 1970, the Commission suggested the submission of evidence to support the portion of the claim for the loss of personal property. The Commission suggested, inter alia, that claimant submit a detailed affidavit itemizing each piece of personal property being claimed, and indicating the approximate cost and the approximate date of acquisition of each such item of property. No evidence in support of this portion of the claim has been submitted to date.

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) (1969).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of his claim based upon furniture and other personal belongings. Accordingly, this portion of the claim is denied.

Cia. Constructora Pelgin, S.A.

Based upon original stock certificates and a copy of the articles of incorporation for Cia. Constructora Pelgin, S.A. (Pelgin), the Commission finds that claimant owned 100 shares of stock in that Cuban corporation. It further appears from the articles of incorporation that while claimant was married at the time he acquired the said stock interest, his second wife owned no interest therein under the community property laws of Cuba by

virtue of a pre-nuptial agreement. The corporation was engaged in construction work primarily, and its outstanding capital stock on November 21, 1958, the date of incorporation, was 90 shares with a par value of \$100.00 per share.

Since Pelgin was organized under the laws of Cuba, it does not qualify 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.)

Claimant asserts a loss of \$10,000.00 on account of his stock interest in Pelgin, based apparently upon the par value of the stock. He states that his stock interest was taken by Cuba on August 18, 1961, a day after he left Cuba.

On December 6, 1961, the Cuban Government published in its Official Gazette its Law 989, which effected the confiscation of all assets, stocks, shares, personal property and other rights of persons who had left the country. The Commission finds that this law applied to claimant who left Cuba prior to that date, and that his stock interest in Pelgin was 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].)

Claimant has submitted a copy of a balance sheet for Pelgin as of December 31, 1959. It appears that no other such financial statements or other evidence respecting the value of a stock interest in Pelgin is available. An examination of that balance sheet shows that Pelgin's assets aggregated \$95,312.65. One of the assets is shown as \$2,000.00 for debts

due Pelgin on account of stock subscriptions. In the absence of evidence to the contrary, the Commission finds that this receivable was not an asset that was taken by the Government of Cuba. The Commission therefore finds that the aggregate value of Pelgin's assets was \$93,312.65.

It further appears from that balance sheet that Pelgin's liabilities aggregated \$58,018.06. Accordingly, the Commission finds that the net worth of Pelgin or the excess of its assets over its liabilities on December 6, 1961, the date of loss, was \$35,294.59.

That balance sheet also discloses that Pelgin's capitalization was \$30,000.00. At a par value of \$100.00 per share, Pelgin had 300 shares of capital stock outstanding on the date of loss. Therefore claimant's stock interest of 100 shares represented a 1/3 interest in Pelgin and had a value of \$11,764.86 on December 6, 1961.

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Land and Building	October 14, 1960	\$42,840.08
Pelgin - Stock interest	December 6, 1961	<u>11,764.86</u>
	Total	<u>\$54,604.94</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:


<u>FROM</u>	<u>ON</u>
October 14, 1960	\$42,840.08
December 6, 1961	<u>11,764.86</u>
Total	<u>\$54,604.94</u>

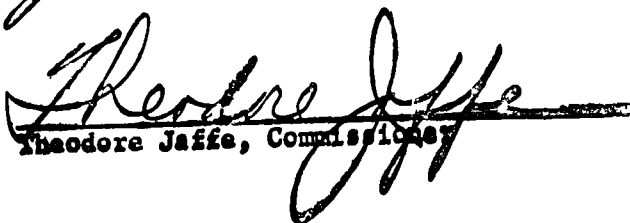
CERTIFICATION OF LOSS

The Commission certifies that JOSEPH M. PELAEZ 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-four Thousand Six Hundred Four Dollars and Ninety-four Cents (\$54,604.94) with interest at 6% per annum from the aforesaid dates of loss to the date of settlement.

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

OCT 21 1970


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, 32 Fed. Reg. 412-13 (1967).)