

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

IN THE MATTER OF THE CLAIM OF

THELMA B. GUITO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2866

Decision No. CU - 6799

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 THELMA B. GUITO for \$235,000 based upon the asserted ownership and loss of 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.

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).)

Claimant described the property subject of the claim as follows:

55 acres of land at Guanabacoa)	
30 acres of land at Guira de me Lena)		\$180,000
Buildings		30,000
Cattle		15,000

Elsewhere in the claim form she stated claim is asserted for \$257,000 for loss of property, rents and assured sales.

Claimant stated she inherited this property from her husband, Francisco Hermando Guito upon his death on August 28, 1963; and that in turn he had inherited it from his father.

The record in this case indicates that one Francisco Benito Guito (who died on March 19, 1953, and who had been married to Carmen A. Guito, who in turn died on June 29, 1964) had purchased several properties, further discussed below, for his only child, Francisco Hermando Guito, who was born in the United States, and who died testate on August 28, 1963.

Under the terms of his will, Francisco Hermando Guito made provision, inter alia, for his two daughters (by a first marriage), and for his wife, claimant herein. The record further establishes that under the laws of the State of Florida, Mrs. Guito disclaimed under the will and elected to take dower, one-third of the realty and personalty.

The Commission finds that certain property subject of this claim was the sole property of Francisco Hermando Guito, and was taken by the Government of Cuba on June 3, 1959, pursuant to the Agrarian Reform Law of Cuba. Accordingly, the Commission holds that THELMA B. GUITO has succeeded to a one-third interest in the claim against Cuba.

In the course of processing this claim, claimant submitted several requests for assistance in obtaining evidence on certain properties, as follows:

- (1) 24 acres in Guira de Melena
- (2) 48 acres in Guanabacoa
- (3) house and lot on Fabrica Street, Havana
- (4) Three lots

Documentation was submitted by claimant which discloses, in Escritura No. 289 of September 11, 1920, that Mrs. Josefa Erviti y Loydi, resident of El Rincon owned a property measuring 3/4 of one caballeria in Guira de Melena, San Antonio de los Banos, which she acquired in 1899; and further, she owned a lot equivalent to 776 square meters in Gabriel, also of Guira de Melena, which she acquired from Vicente de la Torre in 1894. This document proceeds to set out that she sold to Francisco Benito Guito the la Torre lot and two other lots separated from the first described property, or a total of three lots measuring 2,329 square meters. Under this document the purchaser did not acquire the 24 acres claimed in Item (1) above, but the three lots in Item (4).

A report from abroad confirms that the three lots were recorded in Francisco Benito Guito. The record also includes copy of the will of Francisco Benito Guito under which his son Francisco Hernando Guito was devised all his father's property.

The record also includes a sales contract of January 20, 1899, (identified as Vol. 1, No. 10) which reflects that one Hipolito Barrios y Alfonso owned a farm in San Miguel del Padron in Guanabacoa, consisting of one and a half caballeria, with buildings, which he acquired in 1894. By this contract he sold this farm to Francisco B. Guito for his minor child, Francisco Hernando Guito. Thus the Commission finds that Francisco Hernando Guito was in fact the owner of a farm in Guanabacoa (Item 2) measuring about 49.9 acres.

With respect to Item (3), no evidence has been received and only a negative report has been received from abroad concerning this item.

The record does not establish that any buildings were on the farm in Item (2) or on the lots in item (4). Further, the record does not establish that any cattle belonging to Francisco Hermando Guito were taken by the Government of Cuba. Neither has any basis been shown for a certification based on rents and assured sales. Accordingly, the burden of proof not having been maintained, these items of claim must be and are hereby denied.

There remains for determination the value of the properties taken from the decedent. 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 no evidence to establish the values of these properties. However, based on evidence available to the Commission as to the value of similar properties in Cuba, the Commission finds that the 49.9 acres had a value of \$2,495.00 and the three lots had an aggregate value of \$2,329.00. Accordingly, the Commission finds that claimant succeeded to a loss in the amount of \$1,608.00 within the scope of Title V of the Act.


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.

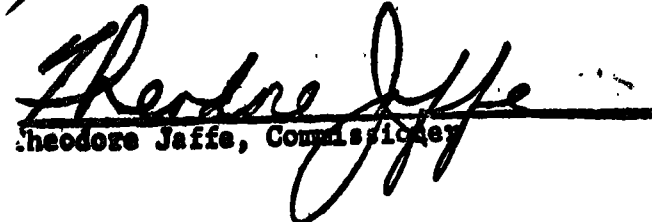
CERTIFICATION OF LOSS

The Commission certifies that THELMA B. GUITO 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 Thousand Six Hundred Eight Dollars (\$1,608.00) with interest at 6% per annum from June 3, 1959 to the date of settlement.

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

SFP 1 1971


Paul S. Carlock, 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).)