

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

IN THE MATTER OF THE CLAIM OF

NORMA LEMBERG
and
LEON LEMBERG

**Under the International Claims Settlement
Act of 1949, as amended.**

Claim No. CU-2995

Decision No. CU 5982

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 NORMA LEMBERG based on the asserted ownership and loss of personal property and stock interests in Cuba. Inasmuch as LEON LEMBERG would have an interest in the subject matter of this claim, under the community property law of Cuba, he has been joined as a claimant in this matter. Claimants have been nationals 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.

Personal Property

Claim has been asserted for the loss of personal property at claimants' former residence at 120 Calle 18, Miramar, Havana, Cuba. Based on the record, including affidavits of those familiar with claimants' residence, the Commission finds that claimants owned certain personal property in Cuba, including a 1958 Plymouth station wagon.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and other interests of persons who left the country. As it appears claimants had left prior to that time, the Commission finds that claimants' personal property was taken on December 6, 1961 pursuant to the provisions of Law 989. (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.

Claimants have submitted a detailed list of the personal property involved, with approximate dates of purchase and costs, totalling \$18,125.00. The Commission has considered this list, and evidence of value of similar properties in Cuba, and finds the asserted cost figures appropriate, but that the usual depreciation rates are applicable. The Commission applies a rate of depreciation of 5% for appliances and furniture, 10% for furnishings such as drapes and curtains, cameras and the like, and 20% for clothing, making suitable allowances in cases where it appears that application of such rates would result in total depreciation of the item's value. Value for the

automobile is derived from the National Automobile Dealers Association Guide for 1961. Accordingly, the Commission finds that the value of the properties on the date of loss was \$10,106.25 and concludes that claimants sustained losses in the amounts of \$5,053.13 and \$5,053.12, respectively, within the meaning of Title V of the Act, as the result of the taking of this property by the Government of Cuba on December 6, 1961.

Noray Trading Co.

NORMA LEMBERG has asserted a 90% interest in Noray Trading Co. In June, 1960, she reported to the American Embassy in Havana that the entity was owned by Solomon J. Rediker, Rae K. Rediker and herself; that the capitalization of the company was \$21,000.00 paid in, represented by purchase of land and building at Calle Ermita 231, on which there remained a mortgage of \$30,000.00.

Claimant has submitted the affidavit of one Gabino Valcarce who states that he and his brother sold a building to Noray Trading Co. for \$21,000.00 over the mortgage of \$30,000.00 and that he knows NORMA REDIKER LEMBERG was one of the stockholders. He does not state the basis for this knowledge.

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 the evidence of record is not sufficiently probative to find that claimant had an ownership in Noray Trading Company. Suggestions in this respect were made to claimant on several occasions. Accordingly the Commission has no alternative but to deny this item of claim. It deems it unnecessary to make determinations with respect to other elements of this part of the claim.

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.

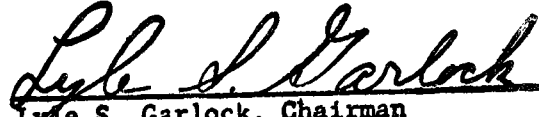
CERTIFICATIONS OF LOSS

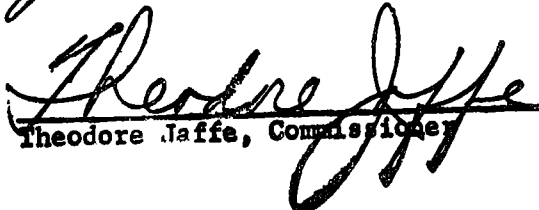
The Commission certifies that NORMA LEMBERG suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Thousand Fifty-three Dollars and Thirteen Cents (\$5,053.13) with interest at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that LEON LEMBERG 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 Five Thousand Fifty-three Dollars and Twelve Cents (\$5,053.12) with interest at 6% per annum from December 6, 1961 to the date of settlement.

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

DEC 2 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY DEPARTMENT: These claimants may be the subject of another certification of loss in CU-2740 involving asserted losses not covered under this Proposed Decision.

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).)