

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

IN THE MATTER OF THE CLAIM OF

FREDERICK L. SWETLAND, JR.
ANITA FELLNER SWETLAND

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3067

Decision No. CU 5907

Counsel for Claimants:

Wead & Aultman

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 FREDERICK L. SWETLAND, JR. and ANITA FELLNER SWETLAND, in the amended amount of \$2,021,880.00, and is based upon the asserted loss of real and personal property on the Isle of Pines, Cuba. 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.

The record before the Commission discloses that ANITA FELLNER SWETLAND, the wife of FREDERICK L. SWETLAND, JR. since 1942, owned an interest in the property, subject of this claim, pursuant to the community property law of Cuba. Accordingly, ANITA FELLNER SWETLAND has been joined as claimant in this matter.

Claimants describe their losses as follows:

Land, 9510 acres, at \$200.00 per acre \$1,902,000.00

Buildings:

House	\$20,000.00
Water tower building	5,000.00
Storage building	4,000.00
Servants' quarters	5,000.00
Improvements 1957	1,030.00
" 1958	861.00
" 1959	<u>1,050.00</u>

Total Buildings 36,941.00

Personal Property:

Cattle	\$55,743.00
D4 Tractor	4,500.00
Hobart Welder	817.00
Mower	195.00
Disk	1,396.00
Fencing & post-hole digger	918.00
Sawmill & Pick-up	743.00
Fencing	102.00
Sawmill Equipment	150.00
Lathe	375.00
Cultivator & Tractor Sprayer	8,000.00
Home furnishings (including antiques)	<u>10,000.00</u>

Total Personal Property 82,939.00

TOTAL CLAIM \$2,021,880.00

The record contains copies of deeds, contracts of sale and other evidence establishing that in 1956 FREDERICK L. SWETLAND, JR., purchased "San Francisco de las Piedras" from Pauline W. Swetland and the Isle of Pines Investment Company; that the property included 9,510.71 acres of land (286.795 caballerias), with buildings and other improvements on the land, as well as cattle and certain personal property. Claimants have also submitted correspondence and affidavits describing the real and personal property; a brochure describing the guest ranch facilities; an inventory and lists of the subject real and personal property; maps showing location of the property with improvements, photographs, plans and drawings of the improvements. The record also includes a State Department file as well as correspondence and copies of acts of the Government of Cuba.

Based upon the entire record, the Commission finds that claimants herein, FREDERICK L. SWETLAND, JR. and ANITA FELLNER SWETLAND, owned respective one-half interests in the property known as "San Francisco de las Piedras", near Nueva Gerona, Isle of Pines, Cuba; and that the property was intervened by the Government of Cuba on January 20, 1960, pursuant to the Agrarian Reform Law of June 3, 1959.

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.

The property of "San Francisco de las Piedras" is described as a rolling upland plain with pine woods and fruit groves, with the Mal Pais River on the southeast boundary and the San Francisco River flowing through the middle of the property. The grounds and land, comprising 9,510.71 acres, were fenced, with iron gates. The improvements on the land included a 10-bedroom house situated around a patio area, with formal gardens and swimming pool. The auxiliary buildings included a water tower-laundry complex, garage with 3 bays, storage and living quarters as well as sheds. The claimants have submitted evidence to establish that the property was utilized both as a guest house-hotel and a ranch, with approximately 800 head of cattle, with certain areas being planted for crops, fruit or pasturage.

This land is near Nueva Gerona, Isle of Pines, with shopping and travel facilities. There are three paved roads in the vicinity, electricity, citrus groves and extensive areas with river frontage. Additionally, the evidence indicates that there was increased land speculation on the Isle of Pines between 1955 and 1960, resulting in the development of several subdivisions and many transactions involving lots or tracts of land.

Based upon the entire record, the Commission finds that the most equitable basis for evaluation of the land and improvements is that submitted by claimants and evidence available to the Commission concerning the value of similar property on the Isle of Pines, Cuba. The Commission concludes that the subject land had a value of \$200.00 per acre at the time of loss, the 9,510.71 acres thus having a total value of \$1,902,142.00; and that the improvements, including the 10-bedroom house, tower-laundry complex, garage and other improvements to the land, had a total value of \$50,000.00, all as follows:

House	\$25,000.00
Water tower-laundry	5,000.00
Garage-storage	4,000.00
Employees' quarters	5,000.00
Other improvements	<u>11,000.00</u>
TOTAL	\$50,000.00

This leaves for determination the portions of the claim asserted for the loss of personal property, including cattle, farming equipment and home furnishings. It is noted that claimants omitted certain items from their recapitulation of claim but otherwise included these items in the inventories or lists of property taken by the Government of Cuba. Such items include 33 horses, oil, storage and saddle room personalty, machinery, vehicles and miscellaneous personal property.

Claimants have submitted a detailed list of the personal property, itemizing the various pieces of furniture or equipment and other property situated at "San Francisco de las Piedras", giving depreciated values.

The Commission finds that the personal property had the following values at the time of loss:

Approximately 800 head of cattle	\$56,000.00
Approximately 33 horses	4,950.00
Farming equipment	17,196.00
Home furnishings	10,000.00
Oil, storage and saddle rooms; miscellaneous machinery; vehicles (7)	<u>7,750.00</u>
TOTAL	\$95,896.00

The Commission concludes that the claimants herein suffered a loss in the aggregate amount of \$2,048,038.00 within the meaning of Title V of the Act, as the result of the taking of their property by the Government of Cuba.

It will be noted that the total amount of loss found herein is in excess of the amended amount asserted by the claimants. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimants as the extent thereof. (See Claim of Eileen M. Smith, Claim No. CU-3038.)

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 claim it is so ordered.

CERTIFICATIONS OF LOSS

The Commission certifies that FREDERICK L. SWETLAND, JR. 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 Twenty-four Thousand Nineteen Dollars (\$1,024,019.00) with interest thereon at 6% per annum from January 20, 1960 to the date of settlement; and

The Commission certifies that ANITA FELLNER SWETLAND 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 Twenty-four Thousand Nineteen Dollars (\$1,024,019.00) with interest thereon at 6% per annum from January 20, 1960 to the date of settlement.

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

OCT 14 1970

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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, 32 Fed. Reg. 412-13 [1967].)