

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

IN THE MATTER OF THE CLAIM OF

MARY ELIZABETH MITCHELL STIMSON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3129

Decision No. CU - 6293

Counsel for claimant:

Louis G. Carres, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$1,347,670.80 (sic) was presented by MARY ELIZABETH MITCHELL STIMSON, 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.

Originally claimant asserted the following losses:

Real Property: Isle of Pines; farm in Santiago de Cuba, Oriente; Town house in Santiago de Cuba			
Land			\$134,000.00
Buildings			20,250.00
Securities:			
Savings, checking and trust accounts		\$ 20,709.73	
Farm operation bank account		56,755.00	
Jewelry, etc., in safe deposit box		10,000.00	
Theft: Gun	\$ 100		
Dress goods	5,000		
Sewing machine	575		
Stamp collection	7,500		
Son's money collection	150	<u>13,325.00</u>	101,189.75 (sic)
Personal property, etc.			54,282.00
Loss of Rents			13,050.00
Loss of income from coffee, hardwood, cocoa farm and grocery store			<u>234,000.00</u>
			\$556,771.75

Subsequently, after consulting counsel, claimant perfected and amended her claim as follows:

Isle of Pines:			
Land and improvements	\$ 27,500		
Residence and other buildings	<u>31,500</u>	\$ 59,000.00	
Livestock	\$1,200		
Vegetable gardens	600		
Fruit orchards	<u>3,700</u>	5,500.00	
Santiago de Cuba farm:			
Land, including 45,000 coffee, rubber, cocoa, and other trees	\$128,750		
Improvements, including houses, other buildings, grocery store and contents	60,000		
Utilities added	10,500		
Livestock	<u>1,500</u>	201,250.00 (sic)	
		[200,750.00]	

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Santiago de Cuba:			
150 acres of hardwood	\$375,000		
Vegetable gardens and fruit trees	<u>2,500</u>		
		\$377,500.00	
Mineral deposit area not claimed			
Santiago town property:			
Land	\$ 15,000		
Two houses	45,000		
Furnishings	12,000		
Tool shed	<u>2,500</u>	<u>74,500.00</u>	\$ 717,750.00
Rental income on two Santiago houses		\$ 39,000.00	
Grocery store income		20,000.00	
Coffee sales income: (picking for 10 years)		212,390.80	
Hardwood sale income		40,000.00	
Other saleable losses		10,000.00	
Profit losses for Isle of Pines property		<u>34,560.00</u>	355,950.80
Bank Accounts			
Savings	\$ 7,200		
Children's accounts	1,250		
Farm income account	8,200		
Farm operations account	255,000		
Trust accounts	<u>9,000</u>		
	\$280,650		
Safety deposit box contents confiscated	<u>25,000</u>	<u>305,650.00</u>	
			\$ 1,347,670.80 (sic)
			[\$1,378,850.80]

Claimant in the same submission has separately listed the personal property used at the Isle of Pines residence which, omitting items claimed above, totals \$34,050 including appliances, furniture, dress materials, two automobiles and three bicycles. Additionally, she asserts theft in July and August 1959 of jewelry, and stamp and money collections now valued at \$30,000. Additionally, she generally lists utility installations at \$3,700

and furnishings at \$8,000. Thus, her total amended claim appears to be in an amount of \$1,454,300.80.

Farm at Santiago de Cuba

Based upon a copy of Deed No. 197 of October 20, 1958, the Commission finds that claimant acquired title to a farm at Bayamo, Santiago de Cuba, Oriente Province, Cuba, subject to a life estate in favor of the seller, a British national who was born on September 28, 1884.

On December 6, 1961, the Cuban Government published Law 989, which effected confiscation of all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimant who had left Cuba prior to that date, and that her farm at Santiago de Cuba 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]; and Claim of Floyd W. Auld, Claim No. CU-0020, id. at 55.)

The record shows that claimant had acquired the farm, then consisting of 5.71 caballerias of land (1 caballerias = 33.162 acres), and structures at an aggregate cost of \$12,600.00. It is clear, however, that the price was extremely low because of the relationship between the seller and claimant. The seller had been a life-long friend of claimant's father, and pursuant to the agreement with claimant the property was encumbered with the life estate described above.

It further appears from the evidence of record that claimant substantially improved the property. The main house was improved by the installation of new plumbing facilities. Two new bedrooms were added and completely furnished. A completely furnished administrator's house was added. Small cottage-type houses were constructed for eight coffee operation employees. Claimant caused to be constructed certain buildings for drying, cleaning and sorting the coffee crops, and a building to be used as a grocery and storage area. All buildings were equipped with electricity. Water and drainage systems were installed.

A new road was constructed to connect the main house with the grocery and storage building. A tractor was acquired, and a variety of livestock and other items of personal property were added to the property.

When the property was taken by the Government of Cuba on December 6, 1961, it consisted of two combined farms. The lower half of the property included, primarily, coffee trees. In addition, it contained orchards of fruit trees and rubber trees; and two fields were devoted to grazing cattle and mules. Apart from the other structures already described, this half of the property also contained a coffee mill.

On the upper half of the property there was a dense hardwood forest and three small structures. Claimant describes this part as a virgin forest.

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 record includes a translated copy of a letter written by the life tenant, apparently in 1961, to the Cuban National Institute of Agrarian Reform (INRA). In that letter the life tenant set forth in detail the values of all items of property on the farm. However, it appears that the life tenant mentioned merely has his original investment in the property, namely, \$93,000.00.

Upon consideration of the entire record, the Commission finds that on

December 6, 1961, the date of loss, the aggregate value of the properties constituting the Farm at Santiago de Cuba was as follows:

Main house, as improved, including original cost of the farm	\$ 22,500.00
Administrator's house, furnished	5,000.00
Small cottage-type houses for eight employees	4,000.00
Buildings for drying, cleaning and sorting coffee	20,000.00
Buildings for grocery store and storage, including contents of grocery store	8,500.00
New water and drainage system	1,600.00
Complete electrical wiring of all structures	3,000.00
New road	4,250.00
Tractor, depreciated at 15% per year for two years (70% of \$1,650.00)	1,155.00
Livestock	1,500.00
Vegetable gardens, etc.	2,500.00
Coffee farm area, including 45,000 coffee trees, 65 to 70 rubber trees, 30 to 35 cocoa trees and other trees. Claimant asserts a valuation of \$128,750.00, but has submitted no evidence to support her valuation. The Commission notes that life tenant stated in his communication to the INRA that his cost was \$1.20 per coffee tree. Considering the entire record, and in the absence of evidence to the contrary, the Commission, finds that the value of each tree was \$2.00.	90,210.00
Hardwood forest. Claimant asserts the following: "Cedar trees, pine trees, and teakwood, and so very numerous types of exotic hardwood trees of which I do not know their names. This forest was so dense and	

the trees so tall that sunlight hardly penetrated into any of this area. I could not give an accurate, precise number of trees there were, however, it extended over at least 150 acres. Estimated value - \$375,000.00." Claimant has submitted no evidence to support her valuation. It is noted that the life tenant indicated to the INRA that his cost of the hardwood forest was \$6,000.00, and that the cedar plantation of approximately 8,000 trees had a value of \$3.00 per tree. He further added that he had increased the forest by the addition of 8,000 cedars and other trees. Considering the fact that such a forest had increased in value over the years, and in the absence of evidence to the contrary, the Commission finds that the forest contained 16,000 trees having a value of \$4.50 per tree

\$ 72,000.00

Total

\$236,215.00

With respect to the values of life estates and remainder interests, the Commission has adopted the Makehamized mortality table used by the United States Treasury Department in connection with the collection of gift and estate taxes. (See Claim of Richard Franchi Alfaro and Anna Alfaro, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71.) Pursuant to that method of valuation, a life estate in property of a person 77 years of age is valued at 19.670% of the estate. Since the encumbered properties had an aggregate value of \$236,215.00, the aggregate value of claimant's remainder interest (80.330%) was \$189,751.51 on December 6, 1961, the date of loss.

Town Houses at Santiago de Cuba

The Commission finds that pursuant to Deed No. 197 of December 10, 1958, claimant acquired title to a town house and lot at Santiago de Cuba, and two small houses in the rear of the town house. Said properties were also encumbered by a life estate in favor of the seller. The Commission further finds that said properties were taken by the Government of Cuba on December 6, 1961.

Claimant states that the main house was furnished and that it had produced a rental of \$150.00 per month.

Upon consideration of the entire record, including the values of similar houses in the same general area, the Commission finds that the value of the furnished town house was \$21,000.00, and that the two small houses had an aggregate value of \$4,000.00.

As already noted, the life tenant was 77 years of age on the date of loss and his life estate had a value of 19.670% of the encumbered properties. Therefore, claimant's remainder interest of 80.330% in the properties had a value of \$20,082.50.

Farm at Nueva Gerona, Isle of Pines

Based upon a copy of Deed No. 462 of October 20, 1956, the Commission finds that claimant acquired title to a farm at Nueva Gerona, Isle of Pines, Cuba. The Commission further finds in the absence of evidence to the contrary, that the farm and all property situated thereon were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, supra.

The record shows that the farm originally consisted of 15.40 acres which claimant had acquired at a cost of \$1,000.00. Claimant subsequently made substantial improvements to the property. She constructed a house of nine rooms which she used as her residence and furnished it appropriately. Additionally, claimant redirected, in part, a river which ran through her property so that there would be an adequate supply of water for a swimming pool she constructed. An orchid house was erected next to the residence, and a patio was built, surrounded by palm trees.

Claimant also provided for the construction of a guest house consisting of two rooms and a patio; a garage and a laundry room; maid's quarters, and a storage and tool house; an incubator house that could accommodate 500 chickens. The land was cleared; main gates were installed; fencing was erected for newly acquired livestock and the garden plots; fruit trees, shrubs and vegetable gardens were planted; wells were dug and pumps were installed for a watering system and two water towers were added. Electricity was provided and the houses were completely wired. Various items of personal property were acquired.

It is noted from claimant's statements that her original claim sets forth costs while her amended claim consists of her estimates. However, it is conceded by claimant that she has no documentary evidence to support either set of valuations.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate in this case and equitable to the claimant are those set forth by claimant originally, except as noted hereafter. Accordingly, the Commission finds that the properties constituting claimant's farm in Nueva Gerona, Isle of Pines, Cuba, had the following values on December 6, 1961:

Land - 15.4 acres at \$500.00 per acre, based upon valuations of similar property in the same area	\$ 7,700.00
Improvements to the land other than buildings (including clearing, fencing, planting, installation of utilities and the like)	14,850.00
Main residence	10,650.00
Wooden guest house with two rooms	1,700.00
Garage, maid's quarters and laundry room	2,400.00
Chicken and storage house	1,500.00
Livestock	750.00
Saddles, tools, washer, dryer, freezer, and 2 refrigerators, \$1,100.00 less 10% depreciation for 1 year	990.00
1958 Chevrolet station wagon costing \$5,500.00, less 15% depreciation per year for 3 years	3,025.00
Tractor and English station wagon, 1953 models, \$1,400.00 less 15% deprecia- tion for 1 year	1,190.00
Furniture acquired in 1957, costing \$7,000, less depreciation of 5% per year for 4 years	<u>5,600.00</u>
Total	<u><u>\$50,355.00</u></u>

Loss of Income

As amended, claim is asserted for \$335,950.80 for the asserted loss of rental income, and income and profit from other items of property covering the ten-year period following the date of loss.

The Commission has consistently held that after property has been taken by Cuba, all income and profit from the property thereafter belongs to Cuba, not to the former owner. (See Claim of Enrique L. Valdes, et ux., Claim No. CU-1528; and Claim of Metro-Goldwyn-Mayer, Inc., Claim No. CU-2225.)

The evidence fails to establish that any profit or income belonging to claimant was taken by the Government of Cuba. Accordingly, this portion of the claim is denied.

Bank Accounts

The evidence submitted in support of this portion of the claim consists of the following:

A copy of a page from a passbook for bank account No. 346 maintained at Banco Financiero showing a balance of \$259.73 as of November 21, 1960 in favor of claimant, the Cuban peso being on a par with the United States dollar.

Copies of four deposit slips in 1957 and 1958 by the life tenant in the Trust Company of Cuba.

A copy of a deposit on September 24, 1957 of \$5,000.00 with the Trust Company of Cuba by the life tenant indicated as being for the benefit of claimant upon his death,

No evidence has been submitted with respect to any of the other claimed bank accounts although appropriate suggestions were made.

The Commission finds that claimant owned a bank account in the Banco Financiero, Cuba, having a credit balance of \$259.73. The Commission further finds that said bank account was taken by Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Floyd W. Auld, supra.)

The Commission also finds that the life tenant, Claud D. Bingham, owned a bank account at the Trust Company of Cuba with a credit balance of \$5,000.00; and that said account was also taken by the Government of Cuba on December 6, 1961. The record shows that the life tenant was a British national who died on October 3, 1963, at which time claimant succeeded to his claim against Cuba for the bank account.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Since the claim for the loss of the deposit of \$5,000.00 was owned by a nonnational of the United States on the date of loss, pursuant to the express provisions of section 504(a) of the Act, it cannot be considered. (See Claim of Sigridur Einarisdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 [July-Dec. 1966].) Therefore, that item of claim is denied.

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).)

With respect to the balance of the portion of the claim based upon bank deposits and the contents of a safety deposit box, the Commission finds that claimant has failed to sustain the burden of proof. Accordingly the balance of that portion of the claim is also denied.

Claimant's losses on December 6, 1961 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Farm at Santiago de Cuba	\$189,251.51
Town houses at Santiago de Cuba	20,082.50
Farm at Nueva Gerona	50,355.00
Bank account	<u>259.73</u>
Total	<u>\$259,948.74</u>

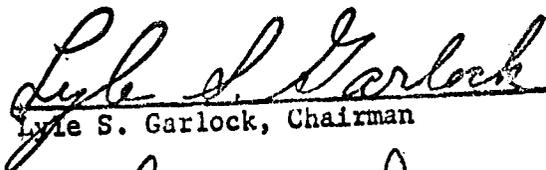
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

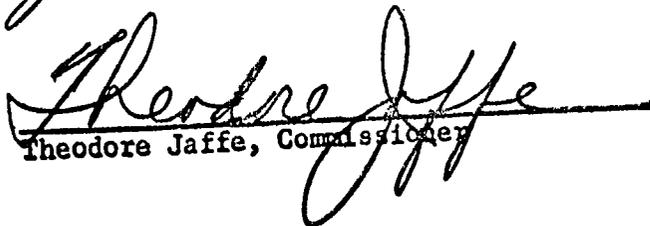
CERTIFICATION OF LOSS

The Commission certifies that MARY ELIZABETH MITCHELL STIMSON 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 Two Hundred Fifty-Nine Thousand Nine Hundred Forty-Eight Dollars and Seventy-Four Cents (\$259,948.74) 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

AUG 4 1971


Lyle S. Garlock, 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).)

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