

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

IN THE MATTER OF THE CLAIM OF

WILLIAM C. BEHN
CONCHITA GALAN BEHN

Claim No. CU-3314

Decision No. CU - 5854

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Davis, Polk & Wardwell
By Douglas M. Galin, Esq.

Appeal and objections from a Proposed Decision entered April 21, 1971.
Oral hearing requested.

Oral Hearing held on September 15, 1971.

FINAL DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by WILLIAM C. BEHN and CONCHITA GALAN BEHN, in the amount of \$152,783.00 based upon the asserted loss of real and personal property in Cuba and stock interests in the Cuban Telephone Company.

By Proposed Decision dated April 21, 1971 the Commission certified losses of the claimant WILLIAM C. BEHN in the amount of \$89,193.63, for his property interests and stock ownership, and of the claimant CONCHITA GALAN BEHN in the amount of \$33,812.06 for her property interests. The Commission held that all of the claimed property except the Cuban Telephone Company stock was community property under the laws of Cuba.

Claimant WILLIAM C. BEHN objected to the Commission's determination that the real and personal property was community property, to the finding of a lower value for the house than that claimed, and the deduction of a mortgage.

At an oral hearing held on September 15, 1971, claimants through their attorney presented additional evidence and oral argument. The objection to the

deduction of a balance due on the mortgaged property was withdrawn by claimants since information they had received from the mortgagee and the records of the mortgagee contained in its Cuban claim (Claim of United States Life Insurance Company, Claim No. CU-1478) reflected a balance due on the mortgage of \$22,090.68.

Based on the additional evidence, the Commission now finds that the claimant's house had a value of \$68,000.00 on October 14, 1960, the land was worth \$15,000.00 and that the total value of claimants' interest amounted to \$60,909.32 (\$83,000.00 less \$22,090.68).

The Commission reaffirms its finding that the claimed real and personal property are subject to the community laws of Cuba.

Claimants losses within the scope of Title V of the Act are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
WILLIAM C. BEHN		
Cutelco stock	August 6, 1960	\$55,381.57
House and lot	October 14, 1960	30,454.66
Furnishings & clothing	October 14, 1960	19,222.40
Automobile	October 14, 1960	<u>635.00</u>
		\$105,693.63
CONCHITA GALAN BEHN		
House and lot	October 14, 1960	\$30,454.66
Furnishings & clothing	October 14, 1960	19,222.40
Automobile	October 14, 1960	<u>635.00</u>
		\$50,312.06

The Certifications of Loss in the Proposed Decision are set aside, the following Certifications will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATIONS OF LOSS

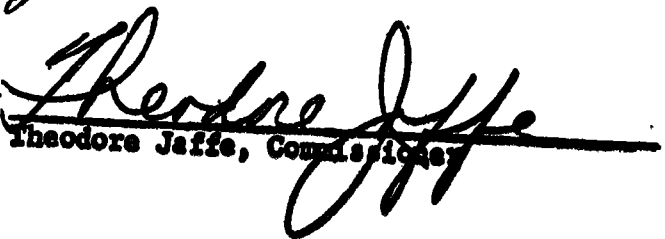
The Commission certifies that WILLIAM C. BEHN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Five Thousand Six Hundred Ninety-Three Dollars and Sixty-Three Cents (\$105,693.63) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that CONCHITA GALAN BEHN 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 Thousand Three Hundred Twelve Dollars and Six Cents (\$50,312.06) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

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

SEP 28 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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IN THE MATTER OF THE CLAIM OF

WILLIAM C. BEHN
CONCHITA GALAN BEHN

Claim No. CU -3314

Decision No. CU - 5854

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Davis, Polk & Wardwell
By Edward V. Atnally, Esq.

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 WILLIAM C. BEHN for \$152,783, based on the asserted ownership and loss of real and personal property in Cuba, and stock interests. As it appears from the record that CONCHITA GALAN BEHN has an interest in some of the properties subject of the claim she has been joined as claimant herein. Claimants have been nationals of the United States at all times pertinent to this claim.

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 losses claimed herein have been described as follows:

(1) Land	\$12,800
(2) Residence on above	68,000
(3) Furnishings	44,106
(4) Clothing	5,000
(5) Personalty in office	200
(6) Citroen	3,000
(7) Cuban Telephone Co. stock	9,200
(8) Insurance Policy #645431	7,377
(9) Insurance Policy #646316	3,100

LOT AND HOUSE

The record includes affidavits, copy of a letter from a Cuban law firm, a mortgage document and a report from abroad on the basis of which the Commission finds that WILLIAM C. BEHN held interests in a lot of about 2,500 square meters, on 134th Street, between 23 and 23-A, Marianao, improved by a 2-story house.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

Based on the foregoing, the Commission finds that claimants' improved real property in Marianao was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette (see Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39).

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 record includes a letter opinion of value by a recognized appraiser, setting the value of the land at \$15,000 and the building to be constructed, at \$35,000; a detailed description; a document granting a loan of \$25,000, to encumber the property; and a report from abroad. On the basis of this record the Commission finds that the improved realty had an aggregate value of \$50,000 encumbered by a mortgage which had been reduced to \$22,090.68, which must be deducted. Accordingly, the claimants' equity is found to be \$27,909.32.

PERSONALTY

House Furnishings and Office Personalty

The record includes affidavits on the basis of which the Commission finds that claimants owned certain personalty in their residence and some in the office of WILLIAM C. BEHN. Further, the Commission finds that this was also taken by the Government of Cuba on October 14, 1960, when the residence was taken.

Claimant has submitted an 11-page listing of the personalty involved, totalling \$44,106, to which is added the \$200 value of personalty in WILLIAM C. BEHN's office. The Commission finds that the average age of this personalty was four years and after appropriate depreciation, finds the residual aggregate value as \$35,444.80.

Clothing

Claimants have asserted \$5,000 as the value of clothing accumulated for the family. The Commission finds that said property was taken on October 14, 1960; that this evaluation of cost is fair and reasonable, but that it had an average life of two years and was subject to depreciation at the rate of 20%. Thus, the residual value of this property was \$3,000.

Citroen

Claimant WILLIAM C. BEHN has described this as a 1958 ID 19 model, which cost \$1,600. The Commission finds that claimants owned such a vehicle and that it was also taken on October 14, 1960. On the basis of the 1960 Guide of the National Automobile Dealers Association, the Commission finds that the vehicle had a value of \$1,270 on the date of loss.

CUBAN TELEPHONE COMPANY STOCK

The record establishes, and the Commission finds that WILLIAM C. BEHN was the beneficial owner, since prior to August 6, 1960, under the will of his father, of 105 shares of preferred stock of Cuban Telephone Company, and 187 shares of common stock of Cutelco.

The Commission has held that a claim based upon stock of the Cuban Telephone Company is within the purview of Title V of the Act because, although the Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. (See Claim of International Telephone and Telegraph Company, Claim No. CU-2615.) In that claim, the Commission found that the assets of the Cuban Telephone Company had been taken by the Government of Cuba on August 6, 1960. We need not detail here the reasons or the method used in determining the value per preferred share as \$104.50 and \$184.0057 as the value of each share of common stock.

Accordingly, the Commission finds that WILLIAM C. BEHN suffered a loss in connection with his preferred stock of \$10,972.50 and \$34,409.07 in connection with his common stock, an aggregate value of \$55,381.57. It may be noted that the Community Property Law of Cuba did not apply in this instance of property devised in trust.

INSURANCE POLICIES

Claimant has asserted claim for two endowment policies issued by United States Life Insurance Co. of New York (Cuba) which he describes as follows:

Policy #645431:

A 10-year endowment policy in the amount of \$10,000; premium first year \$66.16 per month, and for next 9 years \$80 per month; stated to have

been surrendered on October 21, 1960 at which time surrender value assertedly was \$7,377.43 but that the company was intervened on October 24, 1960 and payment not effected. Claim asserted for \$7,477.

Policy #646316:

A 30-year endowment policy annuity life insurance; no surrender value before December 3, 1961, at which time the amount was assertedly held by the Cuban Government. Claim asserted for \$3,100.

The record includes a copy of Policy No. 646316, issued on December 3, 1958, to mature December 3, 1988, in the face amount of \$50,000 with a maturity value of \$79,350 and monthly income of \$500. The insured is stated as WILLIAM C. BEHN, and the beneficiary as CONCHITA GALAN DE BEHN. An endorsement of December 3, 1958 names the Havana Docks Corporation as owner. A change of name endorsement purports to correct the name of the beneficiary, daughter, to Monica Maria Behn. It also appears that the policy provided that amounts payable under the policy would be in pesos, the national currency of Cuba.

A letter of January 30, 1968 from an Assistant Secretary of the United States Life Insurance Company states that on October 24, 1960 the cash surrender value of Policy #645431 was Cuban Pesos 7,377.43 and the cash surrender value of Policy #646316 was Cuban Pesos 9,109.51.

The Commission finds, however, that claimants have not established that they suffered any loss in connection with these policies, within the scope of Title V, as a result of any action of the Government of Cuba, and accordingly, these items of claim are denied.

Recapitulation

Claimants' losses within the scope of Title V of the Act may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
WILLIAM C. BEHN		
Cutelco stock	August 6, 1960	\$55,381.57
House and lot	October 14, 1960	13,954.66
Furnishings & clothing	October 14, 1960	19,222.40
Automobile	October 14, 1960	635.00
		<u>\$89,193.63</u>

CONCHITA GALAN BEHN

House and lot	October 14, 1960	\$13,954.66
Furnishings & clothing	October 14, 1960	19,222.40
Automobile	October 14, 1960	<u>635.00</u>
		\$33,812.06

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>
WILLIAM C. BEHN	August 6, 1960	\$55,381.57
	October 14, 1960	33,812.06
CONCHITA GALAN BEHN	October 14, 1960	33,812.06


CERTIFICATIONS OF LOSS

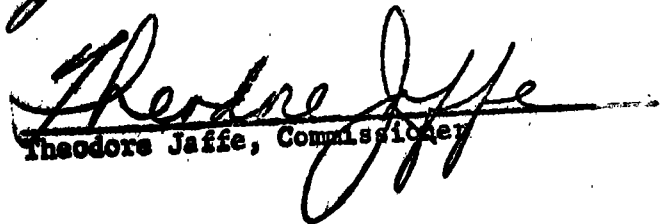
The Commission certifies that WILLIAM C. BEHN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty-Nine Thousand One Hundred Ninety-Eight Dollars and Sixty-Three Cents (\$89,198.63) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that CONCHITA GALAN BEHN 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 Thirty-three Thousand Eight Hundred Twelve Dollars and Six Cents (\$33,812.06) with interest at 6% per annum from October 14, 1960 to the date of settlement.

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

APR 21 1971


Leo 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 claimants establish 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))