

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

IN THE MATTER OF THE CLAIM OF

JACK FALL EVERHART and
ADELAIDE EVERHART; and
JACK FALL EVERHART, as Trustee for
JOUETT E. ZUENDT, M. T. EVERHART, JR.,
and JACK FALL EVERHART, d.b.a.
QUARTER CIRCLE ELEVEN RANCH

Claim No. CU-3717

Decision No. CU 3832

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Stone, Bittel, Langer, Blass & Corrigan
By Stephen A. Blass, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended was presented for JACK FALL EVERHART and the San Marcos Land and Cattle Company. It is based on the loss of real and personal property in Cuba and was presented in the original amount of \$1,711,000.00. JACK FALL EVERHART 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 record discloses that the San Marcos Land and Cattle Company was organized as a corporation under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, the United States stockholders are entitled to maintain this claim based upon ownership therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record before the Commission discloses that ADELAIDE EVERHART, a national of the United States at all times pertinent in this claim, has been the wife of JACK FALL EVERHART since about 1947, and owned an interest in property in Cuba. Under the community property law of Cuba, each spouse had an interest in property acquired by the other in Cuba subsequent to their marriage. Accordingly, ADELAIDE EVERHART is joined as a claimant in this matter.

The history of events in this matter discloses, inter alia, that the Compania Territorial San Marcos (San Marcos Land Company) was organized in Cuba on April 26, 1942, with an authorized capital of 200,000 pesos, represented by 2,000 shares each of a par value of 100 pesos. It was engaged in buying, leasing, developing and disposing of personal and real properties. On June 18, 1947 its name was changed to Compania Ganadera y Territorial San Marcos (San Marcos Land and Cattle Company), hereafter referred to as San Marcos. By 1951, the shares were held 50% by JACK FALL EVERHART

individually, and 50% by JACK FALL EVERHART as Trustee equally for M. T. EVERHART, Jr., JOUETT E. ZUENDT and JACK FALL EVERHART. The three trust beneficiaries were doing business as a partnership under the name of Quarter Circle Eleven Ranch. M. T. EVERHART, Jr. and JOUETT E. ZUENDT, as well as JACK FALL EVERHART, have been nationals of the United States since birth. Accordingly, JACK FALL EVERHART, as TRUSTEE, is added as claimant in this matter. (See Claim of J. R. McFarland, et al., d.b.a. The Cuban Plantation Company, Claim No. CU-0093.)

The properties subject of the claim and claimants' respective interests therein are as follows:

(1) JACK FALL EVERHART:

Land and improvements on the San Juan de Sagua and Jicotea Ranches;
50% of San Marcos;

(2) JACK FALL EVERHART and ADELAIDE EVERHART:

Residence in Havana;
Livestock and personalty of the San Juan de Sagua and Jicotea Ranches;
Value of 1,500 pesos "old currency";

(3) JACK FALL EVERHART, TRUSTEE:

50% of the San Marcos properties.

The record contains deeds establishing the 1940 purchase and mortgages by JACK FALL EVERHART of the San Juan de Sagua and Jicotea Ranches, with buildings, fences and similar appurtenances in Consolacion del Norte and Bahia Honda, Piñar del Rio; deeds reflecting partial satisfaction of mortgages on each of the aforesaid ranches, instrument of incorporation of the first San Marcos company showing contributions of property in Piñar del Rio and its subsequent change of name; copies of the Partnership Agreement and the Declaration of Trust; deeds establishing the purchase by San Marcos of various farms in Piñar del Rio, and the exchange of certain properties; and a document reflecting the cancellation of indebtedness on certain parcels of the San Marcos properties.

There is also an inventory of the realty, improvements, cattle and personalty on the ranches of JACK FALL EVERHART, and on the San Marcos properties which was made in November and December of 1961 to establish what properties the Cuban Government had under its control; a copy of the United States News and World Report for March 7, 1960, including an article by JACK FALL EVERHART concerning the taking of the ranch properties; a copy of a letter from Mr. Everhart to the Agrarian Reform Institute (INRA), dated January 25, 1960, reciting an earlier private offer of \$1,700,000 for both the company's properties and his own land, plus \$200,000 for livestock; affidavit of JACK FALL EVERHART reciting the history of the San Marcos company; an article on cattle in Cuba; photographs of various properties; a list of awards won by Mr. Everhart's cattle; affidavits on the prices of cattle; and affidavits valuing grazing land at \$4,000 per caballeria.

There is also of record a deed reflecting the purchase by JACK FALL EVERHART of a lot at 21808 11th Avenue, Biltmore Subdivision of Marianao on September 6, 1955; an affidavit of Mr. Everhart concerning the construction cost of the residence thereon; a list of personalty at the Havana residence; and a list of personalty at the ranch home of Mr. and Mrs. Everhart.

State Department files in this matter include evidence that the San Marcos properties were intervened on October 14, 1959, pursuant to the Agrarian Reform laws; and that the San Juan de Sagua and Jicotea ranches were intervened the next day, October 15, 1959. Also, there is a memorandum of Mr. Everhart's statement of October 22, 1959, estimating the value of the land at \$2,000 per caballeria, exclusive of livestock and equipment, and a memorandum of his statement of November 4, 1959 valuing his cattle at \$125 per head, as well as a statement as to the valuation findings of the Cuban Government, including the San Marcos buildings and fences, the San Juan buildings and other improvements for which claimant has submitted no evaluations. The record also discloses that ADELAIDE EVERHART had an interest in 1,500 pesos in "old" Cuban currency, further discussed below.

Ownership

On the basis of the record, the Commission finds that the listed properties were owned by the claimants in the manner set out above.

Nationalization or Other Taking

The Commission finds that the San Marcos properties were intervened on October 14, 1959, pursuant to the Agrarian Reform laws; that the San Juan de Sagua and Jicotea ranches were similarly intervened on October 15, 1959. (See Claim of Council Bluffs Savings Bank, et al., Claim No. CU-1290.) The Havana residence of JACK FALL EVERHART and ADELAIDE EVERHART was taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989, published in the Cuban Official Gazette on that date, which confiscated all goods and chattels of persons not resident in Cuba, both owners having left Cuba prior to that date. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].) Further, the Commission finds that 1,500 pesos in "old" currency was turned in to the Cuban Government on behalf of ADELAIDE EVERHART pursuant to Cuban Law 963 of August 4, 1961. This was not replaced with new currency and was effectively taken on August 9, 1961 pursuant to Law 964. (See Claim of Dorothy G. O'Kieffe, Claim No. CU-1242.)

Accordingly, the Commission finds that the aforesaid claimants suffered the above enumerated losses within the meaning of Title V of the Act as a result of the taking by the Government of Cuba.

Valuation

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.

SAN JUAN DE SAGUA AND JICOTEA

No financial statements or books of record are available for these properties. The Commission, however, based upon other evidence in the record, finds that the San Juan de Sagua and Jicotea properties had the following values on October 15, 1959, the date of loss:

(1) Property owned by JACK FALL EVERHART:

212 Caballeria	\$ 424,000.00	
Structures	<u>20,207.00</u>	\$444,207.00

(2) Property owned jointly by JACK FALL EVERHART and ADELAIDE EVERHART:

Livestock	\$ 135,580.00	
Personalty (in the ranch residence)	<u>14,474.50</u>	\$150,054.50

No allowance though can be made for machinery and equipment on these two ranches because claimants have been unable to furnish detailed inventories of same.

SAN MARCOS

Claimants state that no balance sheets or similar records are available for this corporation. On the basis of the entire record, however, the Commission finds that the San Marcos properties had the following values on October 14, 1959, the date of loss:

Property owned equally by JACK FALL EVERHART and JACK FALL EVERHART, TRUSTEE:

384 Caballeria	\$ 768,000.00	
Buildings	9,590.00	
Fences	37,900.00	
Livestock	381,385.00	
2 Jeeps	<u>400.00</u>	
	\$1,197,275.00	

Again no allowance can be made for machinery and equipment, other than the two jeeps, because the claimants have failed to provide sufficient documentation therefor.

HAVANA RESIDENCE

On the basis of evidence of record, the Commission finds that the jointly owned residence and its contents at 21808 11th Avenue, Biltmore Subdivision of Marianao, Havana, had the following values on December 6, 1961, the date of loss:

Land	\$ 16,893.00
Construction	35,501.83
Additional improvements	16,315.68
Personalty	36,728.00
	<u>\$105,438.51</u>

CURRENCY

The 1,500 pesos were taken on August 9, 1961, when they had a value of \$1,500, the peso being on a par with the United States dollar. (See Claim of International Schools Company, et al., Claim No. CU-0641.)

INTEREST

The Commission has decided that in certification of losses 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case it is so ordered, as follows:

Summary

<u>Claimant</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>JACK FALL EVERHART</u>		
(a) San Juan de Sagua and Jicotea Properties	October 15, 1959	\$ 444,207.00
(b) 50% San Marcos	October 14, 1959	598,637.50
		<u>\$1,042,844.50</u>
<u>JACK FALL EVERHART and ADELAIDE EVERHART</u>		
(a) Livestock and personalty in ranch residences	October 15, 1959	\$ 150,054.50
(b) Havana residence	December 6, 1961	105,438.51
(c) Currency	August 9, 1961	1,500.00
		<u>\$ 256,993.01</u>

<u>Claimant</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>JACK FALL EVERHART, as TRUSTEE</u>		
50% San Marcus	October 14, 1959	<u>\$ 598,637.50</u>
	TOTAL AWARDS	<u>\$ 1,898,475.01</u>

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

CERTIFICATIONS OF LOSS

The Commission certifies that JACK FALL EVERHART 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 Forty-Two Thousand Eight Hundred Forty-Four Dollars and Fifty Cents (\$1,042,844.50) with interest at 6% per annum from October 14, 1959 on \$598,637.50 and from October 15, 1959 on \$444,207.00 to the date of settlement;

The Commission certifies that JACK FALL EVERHART and ADELAIDE EVERHART jointly 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-Six Thousand Nine Hundred Ninety-Three Dollars and One Cent (\$256,993.01) with interest at 6% per annum from October 15, 1959 on \$150,054.50, from August 9, 1961 on \$1,500.00 and from December 6, 1961 on \$105,438.51, to the date of settlement; and

The Commission certifies that JACK FALL EVERHART, AS TRUSTEE FOR JOUETT E. ZUENDT, M. T. EVERHART, JR., AND JACK FALL EVERHART, D.B.A. QUARTER CIRCLE ELEVEN RANCH, suffered a loss, as a result of the 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 Hundred Ninety-Eight Thousand Six Hundred Thirty-Seven Dollars and Fifty Cents (\$598,637.50) with interest at 6% per annum from October 14, 1959 to the date of settlement.

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

AUG 27 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Fredberg
Sidney Fredberg, 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 claimant establishes retention of the securities for 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), as amended, 32 Fed. Reg. 412-13 [1967].)