

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

IN THE MATTER OF THE CLAIM OF

OSCAR EVAR HEIMER

Claim No. **CU** - 8284

Decision No. **CU**-6063

Under the International Claims Settlement  
Act of 1949, as amended

Petition to reopen; Proposed Decision dated and entered February 11, 1971.  
Final Decision entered March 18, 1971.

AMENDED FINAL DECISION

The Commission issued a Proposed Decision in this claim on February 11, 1971, certifying that claimant suffered a loss of \$16,060.00 resulting from the taking by the Government of Cuba of certain improved real property, known as "Finca El Modelo" near Caney, Province of Oriente. A portion of the claim for the loss of a tract of unimproved sugar cane land, known as "Colonia Bayate" was denied for lack of proof. No objections to the Proposed Decision having been filed, the same was entered as the Final Decision in the claim on March 18, 1971.

Subsequently, claimant submitted additional documentation and requested that the claim be reopened in order to include the loss of claimant's interest in "Colonia Bayate".

On the basis of the newly submitted evidence, the Commission now finds that claimant and one Nametallah Haber were the co-owners of a tract of sugar cane land, known as "Colonia Bayate" or "Colonia La Guira" in the area of Palma Soriano, Province of Oriente, measuring approximately 2-1/2 caballerias or 80 acres. The Commission further finds that this sugar cane colony participated under long term contracts with the Miranda Sugar Estates, S.A. in the production of sugar ground in the Miranda mill. Miranda Sugar Estates S.A., a wholly owned subsidiary of West Indies Sugar Corporation was nationalized by

the Government of Cuba on August 6, 1960 under Resolution No. 1 pursuant to Cuban Law 851 (see Claim of West Indies Sugar Corporation, Claim No. CU-0665). The Commission concludes that "Colonia Bayate", being a dependency of the sugar mill, was also nationalized on August 6, 1960.

The Commission has compared claimant's estimated value of the sugar cane land of \$25,000.00 with the evaluation of similar land in the same area by various subsidiaries of the West Indies Sugar Corporation and finds that at the time of nationalization, such land, measuring 2-1/2 caballerias, together with the planted cane stools, was worth \$20,000.00. Claimant was the owner of a one-half interest, but considering the provisions of the community property law of Cuba, and the fact that claimant's wife was not a national of the United States, his certifiable loss within the meaning of Title V of the Act is limited to \$5,000.00.

Accordingly, the determination of loss, previously established in the amount of \$16,060.00 is now increased to \$21,060.00.

The Commission affirms its holding that accrued interest shall be included in the certification of loss as follows:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$ 5,000.00
October 15, 1960	16,060.00

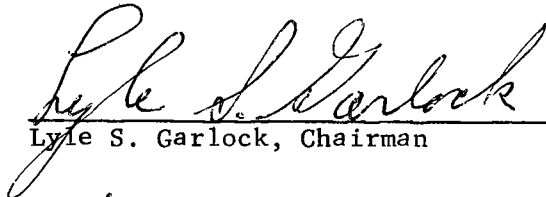
Accordingly, the Certification of Loss in the Proposed and Final Decisions is set aside, the following Certification will be entered, and in all other respects the Proposed and Final Decisions, as amended herein, are affirmed.

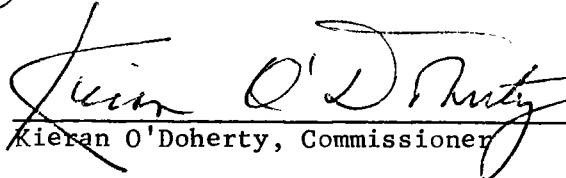
CERTIFICATION OF LOSS

The Commission certifies that OSCAR EVAR HEIMER 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 Twenty-One Thousand Sixty Dollars (\$21,060.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

**JUN 30 1972**

  
\_\_\_\_\_  
Lyle S. Garlock, Chairman

  
\_\_\_\_\_  
Kieran O'Doherty, Commissioner

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

IN THE MATTER OF THE CLAIM OF

OSCAR EVAR HEIMER

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -8284

Decision No. CU

**6063**

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented on August 8, 1968, in the amended amount of \$44,620.00. Claim is based on the asserted ownership and loss of two farms in Oriente province, Cuba. Claimant has been a national of the United States since birth.

The Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967 (FCSC Reg., 45 C.F.R. Sec. 531.1(d) (1969)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (Reg., Sec. 531.1(g))

No claim was filed with this Commission by or on behalf of claimant within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning his asserted losses.

The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.) This is such a claim.

Pursuant to the community property law of Cuba, in properties acquired after marriage, except inherited properties or gifts, spouses own equal interests. Claimant states the properties subject of this claim were acquired subsequent to his marriage in 1933. His spouse is a Cuban national, and cannot qualify under the provisions of Title V of the Act. So much of the claim as may be based on her interests is therefore denied.

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 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).)

Claimant describes his losses as follows:

- |  |             |
|--|-------------|
| (1) 100% of Finca El Modelo, Caney,<br>Oriente, with various<br>improvements | \$32,120.00 |
| (2) 50% of Colonia Bayate, Bayate,<br>Oriente, sugar cane plantation         | 12,500.00   |

The evidence of record, further discussed below, establishes that claimant suffered certain real estate losses in Cuba.

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.

(1) Finca El Modelo

Claimant has submitted copy (with translation) of the purchase document whereby he acquired this property consisting of several lots, in 1948.

The Commission finds that this property was taken on October 15, 1960, pursuant to the provisions of the Agrarian Reform Law. (See Claim of Council Bluffs Savings Bank, Claim No. CU-1290.)

The record includes a detailed listing of the costs concerning this property, including the price of the 24 acres at \$8,000.00, clearing and plowing of land; planting of grass and trees -- avocado, banana, lemon, orange, grapefruit; fencing, laying pipe lines, bringing in electricity;

erecting a house of 11 rooms with all facilities, and various other buildings such as a cow barn and sheds. The listing also includes \$1,500.00 for furniture, tools, stove, refrigerator; also other farm equipment.

After consideration of this record, and considering the value of similar properties in Cuba, the Commission finds that the asserted value of \$32,120.00 is fair and reasonable, and concludes that claimant suffered a loss of \$16,060.00 in this connection, within the scope of Title V of the Act.

(2) Colonia Bayate

Claimant states that he owned this 80-acre sugar cane plantation, with a quota, in partnership, his interest being 50%. Further, he states that it was necessary to leave all papers in connection with this property with the partner.

The Commission has attempted to obtain evidence of ownership on behalf of the claimant. No report has been received, nor is there any certainty such a report will be received.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Thus, the Commission finds that claimant herein has not met the burden of proof in that he has failed to establish ownership of rights and interests in Colonia Bayate. Accordingly, the Commission is constrained to deny this portion of the claim and it is hereby denied.

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.

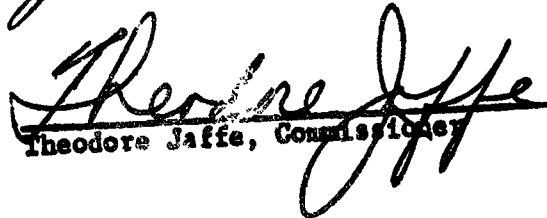
CERTIFICATION OF LOSS

The Commission certifies that OSCAR EVAR HEIMER 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 Sixteen Thousand Sixty Dollars (\$16,060.00) with interest thereon at 6% per annum from October 15, 1960 to the date of settlement.

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

**FEB 11 1971**

  
Lyle S. Gerlock, 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. 1.5(e) and (g), as amended (1970).)