

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

IN THE MATTER OF THE CLAIM OF

FROILAN HIDALGO GATO, EXECUTOR  
OF THE ESTATE OF  
TOMAS HIDALGO GATO, DECEASED  
CELIA COMAS HIDALGO GATO

Claim No. CU - 8449

Decision No. CU - 6223

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

William C. Lewis, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$275,476.99 was presented on November 14, 1969 by FROILAN HIDALGO GATO, EXECUTOR OF THE ESTATE OF TOMAS HIDALGO GATO, DECEASED. Its filing is protected by the action of the Commission taken in 1967 on behalf of American nationals then in Cuba. It is based upon the asserted loss of real property, furniture, a bank account, stocks and bonds. The deceased TOMAS HIDALGO GATO was a national of the United States from birth, until his death on November 19, 1968.

The evidence in this claim has established that his widow CELIA COMAS HIDALGO GATO had an interest in certain property, as set forth in more detail below. Accordingly, CELIA COMAS HIDALGO GATO, a national of the United States since birth, has been joined in the 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.

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.

Claimants state that the deceased TOMAS HIDALGO GATO owned the following property which was taken by the Government of Cuba:

- (1) A 1/6th interest plus a 1/72nd interest in real property, known as Hotel Presidente in Havana;
- (2) A house at 43 Refugio, in Santiago de las Vegas;
- (3) A 1/6th interest in real property known as Hotel Pacifico, in Havana;
- (4) A 1/6th interest in two houses, Nos. 106 and 108 Cero, Santiago de las Vegas;
- (5) A 1/6th interest in land, formerly belonging to a farm, known as "La Josefita";
- (6) A 1/6th interest in a house No. 25 Malecon, Havana;
- (7) House No. 5 Gertrudis Street, Havana;
- (8) A 1/6th interest in houses Nos. 110 and 112 San Nicolas Street, Havana;
- (9) House No. 310 Calle 12, Miramar, Marianao-Havana;
- (10) Furniture and furnishings located at No. 310 Calle 12, Miramar;

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- (11) Checking account with the Banco Nacional de Cuba;
- (12) Stocks and bonds deposited with the First National City Bank of New York, Havana Branch.

In support of the claim, claimants have submitted, among other documents, the probated will of the deceased; letters testamentary; an appraisal of the properties, prepared by Rafael Garcia Bango, an appraiser and civil engineer of Havana; copies of documents filed with the Urban Reform authorities in Cuba; a statement of the First National City Bank of New York, Havana Branch; and documents evidencing the United States citizenship of the deceased, his wife, and of the surviving children.

On the basis of the evidence, the Commission makes its findings of fact regarding the various property items under separate headings, as set forth below.

(1) Hotel Presidente, Havana

The record shows that in 1927 the deceased TOMAS HIDALGO GATO inherited from his father Eduardo Hidalgo Gato Badia a 1/6th interest in real property located at the intersection of Calle G (also known as Avenida de los Presidentes) and Calzada (also known as Calle 7), in the Vedado section of Havana, consisting of land measuring 1,133.33 square meters improved with a building known as the Hotel Presidente.

The record further shows that in 1943 the deceased TOMAS HIDALGO GATO acquired an additional 1/72nd share in this inherited property.

The evidence before the Commission discloses that this real property, as well as all the other real property holdings of the deceased were subject to the Cuban Law on Urban Reform published in the Official Gazette of October 14, 1960, and the Commission finds that these properties were taken by the Government of Cuba on October 14, 1960 (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 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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In 1950 this property was appraised by Rafael Garcia Bango in the amount of \$506,000.00. The Commission finds that depreciation of the building since 1950 was fully offset by appreciation of values of unimproved and improved real property in Havana and vicinity during the years 1950 - 1960, and concludes that the value of the property, known as Hotel Presidente at the time of taking was worth \$506,000.00 and that the 1/6th plus 1/72nd interest of the deceased in said property had a value of \$91,361.11.

(2) 43 Refugio, Santiago de las Vegas

The record shows that the deceased inherited a piece of real property consisting of a building lot with a house erected thereon, at No. 43 Refugio Street (now No. 207 Calle Cuatro) in Santiago de las Vegas, province of Havana, approximately 6 miles from the center of the city of Havana.

In 1950 this property was appraised by Rafael Garcia Bango in the amount of \$4,805.00 and for the reasons stated above, the Commission finds that at the time of taking, the property had the same value of \$4,805.00.

(3) Hotel Pacifico, Havana

The record shows that the deceased inherited a 1/6th interest in a building lot measuring 509.30 square meters with a house erected thereon, numbered 516 and 518 San Nicolas Street, Havana, which also was known as the Hotel Pacifico. This property was appraised by Rafael Garcia Bango at \$111,430.00 and the Commission finds, for the reasons set forth above, that at the time of taking the 1/6th interest of the deceased was worth \$18,571.67.

(4) Nos. 106 and 108 Cero, Santiago de las Vegas

The record show that the deceased inherited a 1/6th interest in two

houses erected on land measuring 9,651 square meters numbered 106 and 108 Calle Cero in Santiago de las Vegas, province of Havana.

In 1950 this property was appraised by Rafael Garcia Bango in the amount of \$20,276.50, and the Commission finds that at the time of taking the 1/6th interest of the deceased was worth \$3,379.40.

(5) La Josefita

The record does not indicate that at the time of taking TOMAS HIDALGO GATO owned an interest in land formerly constituting part of a farm known as "La Josefita". The Commission records show that Eduardo Hidalgo Gato Badia, the father of the deceased, at one time owned this farm; that after his death the major part of the farm was sold; and that a smaller part consisting of land in the town of Santiago de las Vegas was divided among the heirs of Eduardo Hidalgo Gato Badia; but claimant has failed to establish that at the time of taking TOMAS HIDALGO GATO still owned any portion of this property. In the absence of such evidence, this portion of the claim must be and it is hereby denied.

(6) 25 Malecon, Havana

The record shows that the deceased inherited a 528/10,000 share in property consisting of a building lot measuring 193.61 square meters with a house numbered 25 Malecon (General Maceo Avenue) in the center of the city of Havana. The deceased was also the beneficiary by inheritance of 63.292% of all the income from this property, based upon a usufruct, established in his favor.

In 1950 the property was appraised by Rafael Garcia Bango at \$40,270.00. The Commission finds that the 528/10,000 interest of the deceased had a value of \$2,126.26, and that the usufruct, based upon the declared monthly income of \$135.00 capitalized at 10 per cent had a value of \$10,253.30; the total interest of the deceased in this property was therefore \$12,379.56.

(7) No. 5 Gertrudis St., Havana

The record shows that the deceased inherited the real property located at No. 5 Gertrudis Street in Havana. In 1950 Rafael Garcia Bango appraised

this property in the amount of \$8,776.80. For the reasons stated, the Commission finds that at the time of taking this property had the same value of \$8,776.80.

(8) 110 and 112 San Nicolas St., Havana

Claimants state that the deceased was the owner of a 1/6th interest in real property located at Nos. 110 and 112 San Nicolas Street in Havana. An examination of the record shows that this property is identical with the property described above under (3) as Hotel Pacifico, and that the former numbers 110 and 112 San Nicolas Street have been changed to 516 and 518 San Nicolas Street.

Since the claim for this property has already been determined, it cannot be considered again, and it is hereby denied.

(9) No. 310 Calle 12 Miramar

The evidence shows that the deceased was the record owner of the real property located at No. 310 Calle 12 in the Miramar section of Havana where he and his wife maintained their residence. Pursuant to the community property laws of Cuba, CELIA COMAS HIDALGO GATO, the wife of the deceased, acquired a one-half interest in the property purchased by her husband during the marriage with funds from the marriage partnership, or by the industry, salary or work of either or both spouses, or from the fruits thereof (see Claim of Robert L. Cheaney and Marjorie Cheaney, Claim No. CU-0915).

Claimants have failed to submit a detailed description or an appraisal of the property; they have merely presented evidence to show that prior to 1960 the property was mortgaged in an amount of \$33,000 and that this alone indicates the high value of their residence.

The Commission has compared the value of this property with the established values of land and improved property of other claimants in the Miramar section of Havana and finds that the land area at No. 310 Calle 12, without the improvements, at the time of taking was worth \$36,000.00. The Commission further finds that the improvements, 30 years old at the time of taking, had a value of \$30,000.00, and that the entire property was therefore worth \$66,000.00.

Accordingly, the deceased suffered a loss with respect to this property in the amount of \$33,000.00, and CELIA COMAS HIDALGO GATO a loss in the amount of \$33,000.00.

(10) Furniture and furnishings

It appears that the deceased and his wife were permitted to live in their residence at No. 310 Calle 12 Miramar until the death of TOMAS HIDALGO GATO. The evidence indicates his widow left Cuba on or about July 15, 1969.

This furniture and the personal effects were subject to Cuban Law 989 published in the Official Gazette on December 6, 1961, which ordered the confiscation of all goods and chattels, rights, shares, stock, bonds and other property of persons who left Cuba. In the absence of evidence to the contrary, the Commission finds that the furniture and personal effects in the residence at No. 310 Calle 12 Miramar were taken on July 15, 1969.

Although the claim for loss of the personalty arose in 1969, subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period. (See Claim of Vivian Lopez Morales, Claim No. CU-8739.)

Claimants have been unable to submit a detailed description of this personal property, which they value at \$10,000.00. Considering the size of the residence, and the background of the family of the deceased, the Commission finds that the adequate and equitable value of the personal property in the residence was \$10,000.00, and that in view of the community property laws, the Estate of the deceased and CELIA COMAS HIDALGO GATO each suffered a loss in the amount of \$5,000.00.

(11) Account with Banco Nacional de Cuba

No evidence has been submitted to show that the deceased had with the Banco Nacional de Cuba an account with a balance of \$3,000.00, as asserted in the claims application. In the absence of such evidence, this item of the claim also is denied.

(12) Stock and Bonds

The evidence discloses that the deceased was the record owner of 88 shares of stock of the Cuban Electric Company. The Commission has determined that the Cuban Electric Company qualifies as a national of the United States and its claim No. CU-2578 was allowed by Final Decision No. CU-4122 of August 19, 1970. Section 505(a) of the Act provides that a claim based upon an ownership interest in any corporation, association or other entity which was organized in the United States, shall not be considered. Accordingly, this item of the claim must be and it is hereby denied.

The evidence further discloses that the deceased was the record owner of 46 common and 83 preferred shares of stock of the Cuban Telephone Company. 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.

Further, the Commission found that at the time of nationalization, the value of a common share was \$184.0057 and of a preferred share \$104.50. Accordingly and in view of the community property laws of Cuba, the Commission finds that the deceased and his wife suffered a loss of \$8,464.26 as joint owners of the common shares, and of \$8,673.50, as the joint owners of the preferred shares, or together \$17,137.76. The Commission, therefore, determines that the Estate of the decedent suffered a loss of \$8,568.88 and CELIA COMAS HIDALGO GATO an equal loss of \$8,568.88.

The deceased was also the holder of \$3,000 4-1/2% Bonds of the External Debt of the Republic of Cuba 1937/1977. The Commission has held that the failure of the Government of Cuba to make payment on December 31, 1960 and its continued refusal to make payments under its bond obligation, constituted a taking on that date of the property of the bondholders within the meaning of the Act and gave rise to a claim for the amount of the unpaid indebtedness as of that date in the amount of \$1,022.50 for each \$1,000 bond. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68). Accordingly, the Commission finds that the deceased and his wife suffered jointly a loss of \$3,067.50, or \$1,533.75 each.



The record further discloses that the deceased was the holder of \$6,300 4-1/4% First Mortgage Bonds, due January 1, 1980, and of \$5,800.00 4-1/2% Income Debenture Bonds, due January 1, 1985, of the Cuban Electric Company. With respect to the 4-1/4% First Mortgage Bonds, the Commission has held that the bonds were secured by property in Cuba of the Cuban Electric Company, a corporation qualifying as a United States national, and that the properties of the Cuban Electric Company were nationalized by the Government of Cuba effective August 6, 1960 (see Claim of Ebasco Industries, Inc., Claim No. CU-3548, 1969 FCSC Ann. Rep. 66). The Commission therefore finds that the deceased and his wife suffered a loss of \$3,150.00 each.

With respect to the \$5,800 4-1/2% Income Debentures of the Cuban Electric Company, the Commission has held that these obligations were not secured by any mortgage, lien or charge of the property of the company and that these debentures are excluded from consideration under Section 505(a) of the Act. (See Claim of Frank Steinhart, Jr. Claim No. CU-0231.) The claim based upon these debentures is therefore denied.

Claimants further state that the deceased was the holder of \$1,000 4% Sinking Fund Bonds of the Kingdom of Norway, due 1963, which were on deposit with the National City Bank of New York, Havana Branch, and remained unpaid. The Commission finds that claimants have failed to establish that these bonds were taken or otherwise affected by actions of the Government of Cuba. Even though the bond certificates may have been under the control of the Cuban Government, this fact alone, without evidence of taking of the proceeds of the bonds, is insufficient to establish a valid claim under the Act. In the absence of such evidence, this item of the claim also is denied.

#### Recapitulation

TOMAS HIDALGO GATO died, as stated above, on November 19, 1968, leaving a last will, duly probated by the County Judge's Court of Monroe County, Florida. According to the terms of the last will, the deceased gave and devised his personal and real property in equal shares to his five

sons and daughters with the exception of the residence in Miramar which he devised to his wife. The record shows that the widow and all children were nationals of the United States; however, one of the daughters (Celia) predeceased the testator. Her children, who inherited their mother's share by representation: Enrique Manuel, Eduardo Alonso and Celia Maria Ervesun, at the time of the death of their grandfather were not nationals of the United States. The Commission is therefore constrained, pursuant to the provisions of Section 504 of the Act, to limit the certification of the loss suffered by the Estate to the extent the claim of the Estate was held by United States nationals at the time of the death of TOMAS HIDALGO GATO, namely to 4/5 of the loss suffered by the decedent's estate.

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

ESTATE OF TOMAS HIDALGO GATO, DECEASED

<u>1</u> <u>Item of Property</u>	<u>2</u> <u>Date of Loss</u>	<u>3</u> <u>Value of Decedent's Interest</u>	<u>4</u> <u>Certifiable Loss (4/5 of 3)</u>
(1) Hotel Presidente, Havana	October 14, 1960	\$ 91,361.11	\$ 73,088.89
(2) 43 Refugio, Sgo. de las Vegas	October 14, 1960	4,805.00	3,844.00
(3) Hotel Pacifico, Havana	October 14, 1960	18,571.67	14,857.34
(4) 104/108 Cero, Sgo. de las Vegas	October 14, 1960	3,379.40	2,703.52
(5) 5 Malecon, Havana	October 14, 1960	12,379.56	9,903.65
(6) 5 Gertrudis, Havana	October 14, 1960	8,776.80	7,020.44
(7) 310 Calle 12, Miramar	October 14, 1960	33,000.00	26,400.00
(8) Furniture	July 15, 1969	5,000.00	4,000.00
(9) Stocks Cuban Telephone Co.	August 6, 1960	8,568.88	6,855.11
(10) Cuban Government Bonds	December 31, 1960	1,533.75	1,227.00
(11) Cuban Electric Co. Bonds	August 6, 1960	3,150.00	2,520.00
			<u>\$152,419.95</u>

CELIA COMAS HIDALGO GATO

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
(1) 310 Calle 12, Miramar	October 14, 1960	\$33,000.00
(2) Furniture	July 15, 1969	5,000.00
(3) Stock Cuban Telephone Co.	August 6, 1960	8,568.88
(4) Cuban Government Bonds	December 31, 1960	1,533.75
(5) Cuban Electric Company Bonds	August 6, 1960	3,150.00
		<u>\$51,252.63</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 as follows:

<u>FROM</u>	<u>ON</u>
<u>ESTATE OF TOMAS HIDALGO GATO, DECEASED</u>	
August 6, 1960	\$ 9,375.11
October 14, 1960	137,817.84
December 31, 1960	1,227.00
July 15, 1969	<u>4,000.00</u>
	\$152,419.95

<u>CELIA COMAS HIDALGO GATO</u>	
August 6, 1960	\$11,718.88
October 14, 1960	33,000.00
December 31, 1960	1,533.75
July 15, 1969	<u>5,000.00</u>
	\$51,252.63

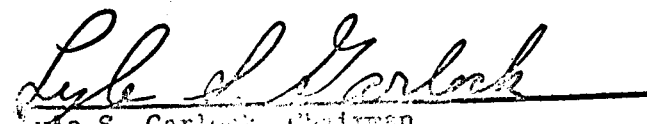
CERTIFICATION OF LOSS

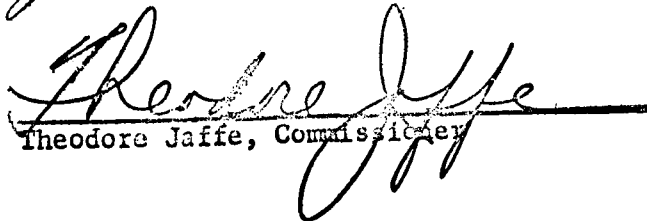
The Commission certifies that FROILAN HIDALGO GATO, EXECUTOR OF THE ESTATE OF TOMAS HIDALGO GATO, DECEASED, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Fifty-Two Thousand Four Hundred Nineteen Dollars and Ninety-Five Cents (\$152,419.95) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement, for the benefit of MERCEDES HIDALGO GATO SOLIS, THOMAS HIDALGO GATO, JR., FROILAN HIDALGO GATO, Individually, and SYLVIA HIDALGO GATO VILA; and

The Commission certifies that CELIA COMAS HIDALGO GATO 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-One Thousand Two Hundred Fifty-Two Dollars and Sixty-Three Cents (\$51,252.63) 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 Proposed  
Decision of the Commission

JUN 16 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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