

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

IN THE MATTER OF THE CLAIM OF

FRANK MONZON-AGUIRRE and
JOSEPH MONZON-AGUIRRE,
Administrators of the Estate of
FRANK MONZON-AGUIRRE, Deceased
and
JOSEPHINE S. MONZON-AGUIRRE

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU -0252

Decision No. CU 6088

Counsel for claimants:

Philip Goodheim, 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 revised amount of \$212,292.00, is based upon the asserted loss of real and personal property, money deposited in a bank, a life insurance policy and loss of pensions.

The claim was presented by FRANK MONZON-AGUIRRE, a national of the United States since his birth, who died on May 19, 1970. Upon his death, his sons FRANK MONZON-AGUIRRE and JOSEPH MONZON-AGUIRRE, were appointed Administrators of the Estate of FRANK MONZON-AGUIRRE, Deceased, and are substituted as claimants in lieu of the deceased. JOSEPHINE S. MONZON-AGUIRRE, a national of the United States by virtue of her marriage on December 17, 1913, to FRANK MONZON-AGUIRRE, has been joined in the claim as party claimant.

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 aspects of the various properties included in the claim and their value are discussed under separate headings below.

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 claimants". 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.

The record includes supporting evidence to which reference is made under the heading of the property item to which it relates.

Real Property

Claimants have submitted the original notarized instrument dated May 15, 1947, which shows that FRANK MONZON-AGUIRRE, now deceased, purchased in the section called "Reparto Playa Alegre" in the city of Cienfuegos, Cuba, land of an area of 10,000 square "varas" (approximately 1-3/4 acres) for the price of 500 pesos. This land was suitable for building purposes. Claimants state

that the purchase price did not reflect the true value of the land, because the deceased was rendering certain professional services as an engineer to the sellers and the sale at the low price was, in part, a remuneration for such services rendered.

The Government of Cuba published its Law on Urban Reform in the Official Gazette of October 14, 1960. Under this law the renting of urban properties and all other transactions involving transfer or use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business properties (Article 15). (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

Based upon the entire record, the Commission finds that the deceased was the owner of the land in Cienfuegos and that such land was taken by the Cuban Government on October 14, 1960.

The deceased had described the property as consisting of 10 building lots each with an area of 1,000 square "varas". He asserted that in 1958 two physicians offered for the land \$20,000.00, because their intention was to build a physicians' settlement on the premises, which were located along the seashore overlooking the Cienfuegos harbor. However, the events of the year 1959 suspended all negotiations.

The Commission records disclose that at the time of taking building lots in the center of the city of Cienfuegos were worth approximately \$3.00 per "vara". The land described here was outside of the center of the city, but in a desirable section on the waterfront near the harbor of Cienfuegos, and while it was still undeveloped, it was nevertheless suitable for building purposes and the Commission finds that it had a value of \$15,000.00 at the time of taking by the Cuban Government.

Under the community property laws of Cuba, the wife of the original owner acquired a one-half interest in the property claimed herein. (See Claim of Robert L. Cheaney and Marjorie Cheaney, Claim No. CU-0915.) Accordingly, the Estate of FRANK MONZON-AGUIRRE, Deceased, and JOSEPHINE S. MONZON-AGUIRRE each suffered a loss within the meaning of Title V of the Act in the amount of \$7,500.00.

Personal Property

The deceased FRANK MONZON-AGUIRRE stated in the claim that he owned in his home in Cienfuegos furniture, household goods, silverware and other personal property which was confiscated by agents of the Cuban Government on March 20, 1963, the date of his and his wife's departure from Cienfuegos for the United States. He submitted a detailed list of all the belongings and declared that the value of the property was \$19,988.00 or rounded \$20,000.00, based upon replacement costs.

The Commission finds that the deceased and his wife were the joint owners of this personal property and that it was taken by the Cuban Government, as stated, on March 20, 1963.

With respect to the value, however, the Commission has consistently held that "cost of replacement" means replacement in kind, taking into consideration the age and condition of the property on the date of the loss. Here, the personal property was in use for many years and a deduction for wear and tear of 30% from the estimated value of \$20,000.00 appears justified. Accordingly, the Commission finds that at the time of the loss the value of the property was \$14,000.00 and that the Estate of FRANK MONZON-AGUIRRE, Deceased, and JOSEPHINE S. MONZON-AGUIRRE each suffered a loss within the meaning of Title V of the Act in the amount of \$7,000.00.

Bank Accounts

The record shows that at the end of 1962 the deceased FRANK MONZON-AGUIRRE had on deposit with the Banco Nacional de Cuba, Cienfuegos Branch, an amount of 4,339.00 pesos. Claimants state that as a result of withdrawals in March, 1963, the balance was 3,800.00 pesos.

On December 6, 1961, the Cuban Government published its Law No. 989 which effectively confiscated all assets, real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds, on the basis of the record, that FRANK MONZON-AGUIRRE and his family left Cuba from the airport of Rancho Boyeros near Havana on March 22, 1963, and that the above-described balance

of the deposit of 3,800.00 pesos, considered to be on par with United States currency, was taken on that date. Accordingly, the Commission concludes that as a result of the taking of this deposit, owned jointly by the husband and wife, the Estate of FRANK MONZON-AGUIRRE, Deceased, and JOSEPHINE S. MONZON-AGUIRRE, each suffered a loss in the amount of \$1,900.00.

Life Insurance Policy

The deceased stated in the claim that in 1923 his employer, the Cuban Electric Company, insured his life for \$20,000.00 with the Metropolitan Life Insurance Company of New York, whereby one-half of the premium was paid by the employer and one-half by the employee. Upon retirement, the total premium was to be paid by the Cuban Electric Company. The deceased retired in 1960, but at that time the Cuban Electric Company was nationalized, and the Government of Cuba cancelled all insurance policies. Instead, new policies issued by the Confederation Life Insurance Company of Canada were substituted for the old policies, but after 1961 the Government of Cuba defaulted in the payment of the premiums, and the life insurance policies allegedly lapsed. The deceased stated that through this deliberate inaction of the Cuban Government he was deprived of his rights as a policyholder and suffered a loss in the amount of \$20,000.00.

No evidence, however, has been submitted in support of this portion of the claim. Moreover, claimants have failed to show that the deceased, during his lifetime, or the surviving beneficiaries of the policy, approached the Canadian Insurance Company and that payment of the insured amount was refused by the company on any grounds which might give rise to a claim against the Government of Cuba.

In the absence of such evidence, this portion of the claim must be and it is hereby denied.

Pensions

The deceased FRANK MONZON-AGUIRRE stated in the claim that he lost
(1) \$90,300.00 on account of the confiscation by the Cuban Government of the Caja de Retiros de Empleados de Electricidad, Gas y Aguas (Pension Fund of

Electrical, Gas and Water Supply Employees), and (2) \$60,000.00 as a result of the confiscation of the Seguridad Social del Colegio de Ingenieros Civiles (Pension Fund of the College of Civil Engineers).

With respect to the Pension Fund of Electrical, Gas and Water Supply Employees the record shows that this Fund was created in 1933 and that the Cuban Electric Company, the employer of the deceased, was one of the major contributors. Under the regulations, annuities were payable to retired employees upon reaching the age of 65, and the deceased was entitled to a pension of \$500.00 per month until his death; upon his death his widow became eligible; and upon her death a disabled child would become eligible; both entitled to reduced annuities.

With respect to the Pension Fund of the College of Civil Engineers the deceased asserted that he was entitled to an additional annuity of \$200.00 per month, and after his death his wife and child might have become eligible, but no evidence was submitted in support of these assertions.

By Resolution No. 1225 of February 8, 1961 the Direccion de Seguridad Social del Ministerio del Trabajo (Social Security Administration of the Labor Ministry) provided for an allowable pension of 400 pesos per month month (see Claim of Lawrence A. Soper, Jr., et al., Claim No. CU-0054). Accordingly, the deceased received a pension of 400 pesos from the date of the decree, as the record shows.

Previously, on May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Security Bank of Cuba) as an agency of the Government to supervise and administer social security as well as to direct the policy in all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information available to the Commission shows that retired employees continued to receive monthly annuities from that bank until their departure from Cuba. Thereafter the pensions became subject to Law No. 989 (supra) which provided for the confiscation of property belonging to persons who left Cuba.

The claimants have failed to submit any documentary evidence with respect to the claim for pensions. However, on the basis of the entire record, including statements showing that the deceased FRANK MONZON-AGUIRRE was employed by the Cuban Electric Company from 1923 to 1960 as an engineer, and later as district manager for the district of Cienfuegos, the Commission finds that he was entitled to the payment of a monthly pension of \$400.00 under Resolution No. 1225 and that his rights to retirement benefits were taken by the Government of Cuba on March 22, 1963, the date of his departure to the United States.

The reduction of the pension from 500 to 400 pesos under Resolution No. 1225 is not a taking under international law, because this measure was not discriminatory and was more in the nature of an adjustment such as is frequently adopted when due to economic conditions salaries, wages and pensions are temporarily reduced.

The pension rights accrued to the deceased as a member of the College of Civil Engineers cannot be considered here, since no evidence whatsoever has been submitted in support of these asserted pension rights.

There remains for determination the value of the pension rights which had accrued to the deceased as a former employee of the Cuban Electric Company.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of the United States Life Tables and Actuarial Tables 1939-1941, published by the United States Department of Commerce, Bureau of Census, as prescribed by United States Treasury Department Regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-2037.) According to that method of valuation, the value of an annuity for a person of the age of 75 amounts to 6.2148 times the yearly sum of the annuity. Since on the date of taking, the deceased FRANK MONZON-AGUIRRE was 75 years old and the annuity amounted to \$4,800.00 (the peso being considered on a par with the United States dollar), the value of the annuity was \$29,831.04.

Claimants contend that JOSEPHINE S. MONZON-AGUIRRE and one daughter are also entitled to separate compensation for the loss of pensions, because upon the death of their husband and father, respectively, they would be entitled to reduced retirement benefits under the Regulations of the Pension Fund. The Commission, however, holds, that the retirement benefits, in the absence of evidence to the contrary, at the time of taking were vested in FRANK MONZON-AGUIRRE, now deceased, and that additional benefits had not yet accrued to the widow and the daughter. Consequently, at that time, no rights had been taken by the Government of Cuba from the widow and daughter.

Summary

The certifiable losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Estate of FRANK MONZON-AGUIRRE, Deceased</u>	<u>JOSEPHINE S. MONZON-AGUIRRE</u>
Real property	October 14, 1960	\$ 7,500.00	\$ 7,500.00
Personal property	March 20, 1963	7,000.00	7,000.00
Bank accounts	March 22, 1963	1,900.00	1,900.00
Pension	March 22, 1963	<u>29,831.04</u>	<u> </u>
		\$46,231.04	\$16,400.00

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 FRANK MONZON-AGUIRRE, DECEASED</u>	
October 14, 1960	\$ 7,500.00
March 20, 1963	7,000.00
March 22, 1963	31,731.04

<u>JOSEPHINE S. MONZON-AGUIRRE</u>	
October 14, 1960	\$ 7,500.00
March 20, 1963	7,000.00
March 22, 1963	1,900.00

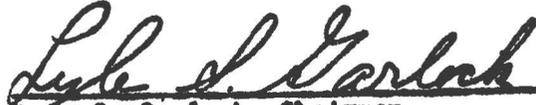
CERTIFICATIONS OF LOSS

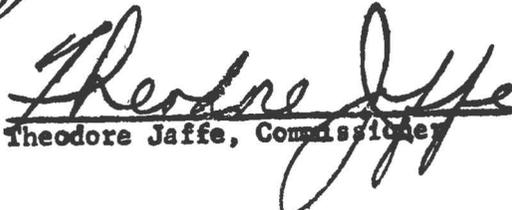
The Commission certifies that FRANK MONZON-AGUIRRE and JOSEPH MONZON-AGUIRRE, Administrators of the Estate of FRANK MONZON-AGUIRRE, Deceased, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-six Thousand Two Hundred Thirty-one Dollars and Four Cents (\$46,231.04) with interest thereon at 6% per annum from the respective dates of taking to the date of settlement; and

The Commission certifies that JOSEPHINE S. MONZON-AGUIRRE 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 Four Hundred Dollars (\$16,400.00) 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 Proposed
Decision of the Commission

MAR 3 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.

NOTE: 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. 101.5(e) and (g), as amended (1970).)