

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

IN THE MATTER OF THE CLAIM OF

ALBERT M. MALLIN

JAY MALLIN

Claim No. CU - 0287

Decision No. CU - 973

Under the International Claims Settlement
Act of 1949, as amended

AMENDED PROPOSED DECISION

By Proposed Decision issued January 17, 1968, the Commission denied the claim of ALBERT M. MALLIN, based upon the loss of a business partnership and personal property for the reason that claimant failed to establish ownership in property which was nationalized, expropriated or otherwise taken by the Government of Cuba.

Claimant objected to the Proposed Decision and submitted additional evidence. On the basis of the new evidence and the entire record, the Commission finds that claimant's son JAY MALLIN, a national of the United States by birth, has an interest in this claim, and JAY MALLIN has therefore been joined in the claim.

The evidence discloses that ALBERT M. MALLIN, a national of the United States since his naturalization on May 1, 1919, had a 40% partnership interest in two commercial companies in Havana, Cuba, conducted under the name of Mallin & Lengyel, located at No. 365 Pajarito Street, and under the name of Lengyel & Mallin, located at the Cristina Railroad Yards of the Consolidated Railroads of Cuba. The two firms were engaged in the purchase and sale of scrap iron, scrap metal, rags and other waste material.

The evidence further discloses that claimant and his partner's agent left Cuba for the United States on or about June 2, 1961; that before their departure an inventory of the companies' assets was set up; that these assets were left in the custody of a local employee with a view of returning after a change of the political situation in Cuba; but both companies were intervened by the Cuban Government on August 17, 1961, and formally nationalized on June 27, 1962.

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.

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The Commission finds that at the time of the intervention the assets of the two companies had the following value:

MALLIN & LENGYEL

62,500 lbs.	of #1 Copper Scrap - - - - -	\$ 11,250.00
132,600 lbs.	of #2 Copper Scrap - - - - -	21,216.00
20,500 lbs.	Light Copper Scrap - - - - -	2,460.00
16,400 lbs.	Red Brass Scrap - - - - -	2,460.00
2,300 lbs.	Yellow Brass Scrap - - - - -	276.00
3,000 lbs.	Irony Brass - - - - -	180.00
1,300 lbs.	Aluminium Scrap - - - - -	260.00
2,300 lbs.	Dycast Scrap - - - - -	115.00
1,300 lbs.	Zink Scrap - - - - -	104.00
1,000 lbs.	Usable Copper Tubes - - - - -	250.00
18,000 lbs.	Baled Selected Rayon Cuts - - - - -	1,800.00
4,600 lbs.	Baled Underwear Cuts - - - - -	322.00
2,300 lbs.	of Colored and White Wipers packed in 100 lbs. bags - - - - -	299.00
	1 Lift Fork (5,000 lbs. capacity) - - - - -	1,350.00
	1 Scale (15,000 lbs. capacity) - - - - -	700.00
	1 Scale (2,500 lbs. capacity) - - - - -	90.00
	Small Tools and Accessories - - - - -	180.00
	1 Month Deposit for Rent - - - - -	100.00
	Bank Account of The Royal Bank of Canada -	3,450.00
	Cash in the Safety Box - - - - -	430.00
		<u>\$ 47,292.00</u>

LENGYEL & MALLIN

350 Tons	of Scrap Iron - - - - -	\$ 5,250.00
80 Tons	of Usable Material - - - - -	3,600.00
125 Tons	of Usable Material - - - - -	7,500.00
6 Tons	of #1 Cast Iron - - - - -	330.00
6,000 lbs.	of Mixed Metals - - - - -	420.00
	1 Scrap Iron Sheer - - - - -	700.00
	1 Truck Scale for 30,000 lbs. - - - - -	1,200.00
	2 Smaller Scales (2,500) lbs. - - - - -	180.00
	Oxygen Torch, Cutting Equipment, Gages, etc.	250.00
	1 Wooden Shack - - - - -	700.00
	Deposit with the Railroads for Rent - - -	150.00
	Bank Account with The Royal Bank of Canada	3,950.00
	Cash in the Safe Box - - - - -	260.00
		<u>\$ 24,490.00</u>

In determining the value of the two companies, the Commission finds that at the time of the intervention there were no liabilities; that their consolidated value was \$71,782.00 and the 40% interest of ALBERT M. MALLIN had a value of \$28,712.80.

The Commission further finds that claimant and his now deceased wife Cecilia nee Jaffe, a national of the United States by birth, were the joint owners of furniture, furnishing and personal effects located at No. 416 Calle 13, Vedado, Havana; that at the time of their departure on June 2, 1961 they left all their belongings in Havana; but that this property became subject to Law 989, enacted on December 6, 1961 by the Cuban Government, which confiscated all goods and chattels, rights, real estate, stocks and bonds of persons who left Cuba. The Commission therefore concludes that the aforesaid personal property was taken by the Government of Cuba on December 6, 1961. The evidence indicates that at the time of taking this personal property had a value of \$5,350.00

Pursuant to the community property laws of Cuba, claimant and claimant's wife had each a one-half interest in all property acquired during marriage from funds of marriage partnership, or from funds earned by the industry, salary or work of either of both spouses, and from the fruits thereof (see Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915).

Accordingly, ALBERT M. MALLIN and Cecilia Mallin suffered together a loss in the aggregate amount of \$34,062.80 or \$17,031.40 each. The record shows that Cecilia Mallin, a resident of Coral Gables, Florida, died intestate on October 12, 1965 and that she was survived by her husband and only son, the claimants herein. Under the laws of intestacy of the State of Florida, the estate of the deceased passed one-half to the husband and one-half to the son. Consequently, the Commission finds that the claim for the loss is presently held to the extent of \$25,547.10 by ALBERT M. MALLIN, and to the extent of \$8,515.70 by JAY MALLIN.

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.

ALBERT M. MALLIN

<u>FROM</u>	<u>ON</u>
August 17, 1961	\$21,534.60
December 6, 1961	4,012.50

JAY MALLIN

<u>FROM</u>	<u>ON</u>
August 17, 1961	\$ 7,178.20
December 6, 1961	1,337.50

In view of the foregoing, the Proposed Decision is amended to reflect the above findings, the following Certifications of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATIONS OF LOSS

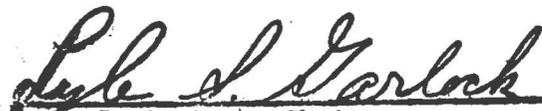
The Commission certifies that ALBERT M. MALLIN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1948, as amended, in the amount of Twenty-five Thousand Five Hundred Forty-seven Dollars and Ten Cents (\$25,547.10) with interest thereon at 6% per annum from the respective dates of the loss to the date of settlement; and

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The Commission certifies that JAY MALLIN 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 Eight Thousand Five Hundred Fifteen Dollars and Seventy Cents (\$8,515.70) with interest thereon at 6% per annum from the respective dates of the loss to the date of settlement.

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

MAY 26 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 amended 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).)

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

IN THE MATTER OF THE CLAIM OF

ALBERT M. MALLIN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0287

Decision No. CU-973
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PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$37,000.00, was presented by ALBERT M. MALLIN, and is based upon the asserted loss of interests in two partnerships, as well as the loss of certain personal property located in Cuba. Claimant has been a national of the United States since his naturalization on May 1, 1919.

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.

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) (Supp. 1967).)

With respect to that portion of this claim which is based upon a 40 per cent ownership interest in two partnerships doing business in Cuba, Mallin & Lengyel and Lengyel & Mallin, claimant has submitted his own statements. The record also contains documents deposited with a private depository in Havana, Cuba, which indicate that these partnerships existed. However, since claimant's assertions of the value and loss of the two partnerships were supported only by two undated and unsigned "financial statements", copies of which are contained in the record, claimant was requested by Commission letter of June 9, 1967, to submit additional evidence to establish ownership, loss and value of the two partnerships. In reply to this letter, claimant indicated that no financial records contemporaneous with loss were available.

A further portion of the claim is based upon ownership and loss of items of household furniture and clothing. Other than his own statements, claimant has submitted no evidence to establish ownership, loss and value of said personalty.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

JAN 17 1968

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on _____

Francis M. ...
Chief of the Clerks

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).)