

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

IN THE MATTER OF THE CLAIM OF

EMANUEL J. GERLI
CATHERINE W. GERLI

Claim No. CU-0530

Decision No. CU-1778

Under the International Claims Settlement
Act of 1949, as amended

ORDER and AMENDED PROPOSED DECISION

By Proposed Decision of May 1, 1968, the Commission certified a loss to claimants in the amount of \$27,805.00, based upon the loss of real and personal property situated in Cuba, as follows:

Parcel I, about 12 acres	\$ 650.00
Residence and related buildings	8,000.00
Fixtures and personalty	16,155.00
Parcel II, about 20 acres	<u>3,000.00</u>
	\$27,805.00

Claimants objected to the amount certified by the Commission, stating that Parcel I had a value substantially in excess of the amount determined by the Commission. Claimants submitted new evidence relating to the value of Parcel I, consisting of an affidavit executed by Dr. Leonardo Cano, a Cuban Notary. Dr. Cano certifies that he was present at the time claimants purchased Parcel I, and that claimants paid \$6,000.00 cash for the then unimproved land. A similar statement from Mr. A. E. Waterton was also submitted.

Upon consideration of the newly submitted evidence, the Commission finds that the value of Parcel I on December 6, 1961, the date of loss, was \$6,000.00. Accordingly, it is

ORDERED that the Proposed Decision be, and it is hereby, amended as follows: The certification of loss as restated below will be entered, and the remainder of the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that EMANUEL J. GERLI and CATHERINE W. GERLI 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 Thirty-three Thousand One Hundred Fifty-Five Dollars (\$33,155.00) with interest thereon at the rate of 6% per annum from December 6, 1961 to the date of settlement.

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

26 JUN 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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, 32 Fed. Reg. 412-13 (1967).)

CU-0530

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IN THE MATTER OF THE CLAIM OF

EMANUEL J. GERLI
CATHERINE W. GERLI

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0530

Decision No. CU 1773

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 \$48,148.81 was presented by EMANUEL J. GERLI and CATHERINE W. GERLI, and is based upon the asserted loss of real and personal property situated in Cuba. Claimants have both been citizens 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.

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 assert that they owned two separate parcels of land located in Cuba. According to claimants, Parcel I of this land, approximately twelve acres, comprised Lot 26 of the distribution of Santa Ana Farm, Borough of Cuchilla Alta, Municipality of the Isle of Pines, Cuba, acquired by them in fee simple in November of 1958. Claimants state that this land was improved by a house, garage, water tank, electricity, and other personality incidental to a residence. Claimants described Parcel II as being 20 acres of unimproved rural land, consisting of the north half of Lot 9, Section 12, of the Hacienda Santa Fe, City of New Gerona, Isle of Pines, Cuba. Claimants state that this land was acquired by them in fee simple.

In support of their claim, claimants have submitted a photographic copy and translation of Instrument No. 537, a contract of Purchase and Sale. This instrument, dated November 21, 1958, recites that claimants are the purchasers of land, in fee, which is identical to that described above as Parcel I. The stated consideration is 650 pesos. The last page of Instrument No. 537 bears the signature and stamp of the Cuban Property Registrar and states that claimants' title to Parcel I had been recorded in Folio 135 of Volume 157 of the municipal register.

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With respect to Parcel II, claimants submitted a photographic copy, and a translation, of Instrument No. 78, a contract of Purchase and Sale dated April 1, 1959. This instrument states that claimants are the purchasers, in fee simple, of the land above described as Parcel II. The contract recites 3,000 pesos as full consideration. The final page of Instrument No. 78 bears the signature and stamp of the Property Registrar, who states that claimants' title had been recorded in Folio 1060 of Volume 125 of the municipal register.

The Commission finds that claimants have been the fee simple owners of the land described as Parcels I and II continuously from November 21, 1958, in the case of Parcel I, and from April 1, 1959 in the case of Parcel II.

Claimants have asserted that improvements were made, and that other personalty was either annexed to, or located on the land at 26 Santa Ana.

In support of these contentions, claimants have submitted affidavits, receipts, notices, statements, photographs and similar documentation, including an itemized list of personalty. The Commission finds that Parcel I was improved by a house and other fixtures usual to the use of such property, as well as personalty customarily used in such a residence; and that the claimants were the owners thereof. Claimants indicate that they have received reports from parties who remained in Cuba subsequent to claimants' departure, and that the general tenor of these reports shows that claimants' house, land and other property has either been sold or is being used by persons unknown to claimants. Claimants state that they have not consented to any such sale or use of their property.

On December 6, 1961, the Cuban Government published its Law 989 (Official Gazette XXIII No. 237 page 23705) which confiscated all assets, personal property and real estate rights, shares, stocks, bonds and securities of persons who had left the country.

The record shows that claimants were then resident in the United States. The Commission finds, in the absence of evidence to the contrary, that the subject real property, with improvements and personalty incident thereto, was taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989.

In arriving at the value of claimants' property, the Commission has considered all evidence of record including deed, bills, personal property receipts, affidavits and evidence available to the Commission of similar property in Cuba, and finds the properties had values as follows:

Parcel I, about 12 acres	\$ 650.00
Residence and related structures	8,000.00
Fixtures and other personal property	16,155.00
Parcel II, about 20 acres	<u>3,000.00</u>
	\$27,805.00

On the basis of all the evidence available, the Commission finds that claimants suffered a loss within the meaning of Title V of the Act on December 6, 1961, in the amount of \$27,805.00.

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 Claim of Lisle Corporation, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum on \$27,805.00 from December 6, 1961 to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that EMANUEL J. GERLI and CATHERINE W. GERLI 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 Seven Thousand Eight Hundred Five Dollars (\$27,805.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

MAY 1 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

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, 32 Fed. Reg. 412-13 (1967).)