

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

IN THE MATTER OF THE CLAIM OF

JUDITH F. WILLIAMS BAIZAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0670

Decision No. CU

3059

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 \$133,312.00, was presented by JUDITH F. WILLIAMS BAIZAN, and is based upon the asserted loss of real and personal property situated in Cuba. Claimant has been a national 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.

Section 502(1) of the Act defines the term "national of the United States" as (A) a natural person who is a citizen of the United States, or (B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens.

The facts as set forth in the instant claim are best presented in chronological order.

In 1952, Ernesto and Gabriel Baizan, brothers and both Cuban citizens, formed a partnership according to Cuban law. In 1954, claimant and Ernesto Baizan were married. Claimant took up domicile with her husband in Cuba, although she retained her United States citizenship. In December 1957, Ernesto and Gabriel Baizan organized a Cuban corporation, "Pinturas Coast, S.A." The corporation issued 1,000 shares of common stock with a par value of \$100.00 per shares. Each brother took 500 shares of the stock, paying for these shares out of the capital of the partnership. Whether full par value was paid for the stock is unclear from the record. It appears that the partnership was then dissolved, with the corporation taking over the partnership assets and business. At no time since the date of incorporation has claimant directly owned any of the shares issued by Pinturas Coast, S.A.

In 1958, claimant and her husband acquired two adjoining lots of land in Havana, and during 1959 they caused a house to be constructed thereon. Title to the house and land was vested in Ernesto Baizan. Household furnishings, objects d'art, automobiles and other personalty was situated on the land or in the house itself. According to claimant, some of this personalty had been owned by her prior to her marriage. The land, house and other personal property was located at Quintana and Sixth Streets, Aldabo, Havana, Cuba. The property had been mortgaged.

Claimant states that she and her children left Cuba in June 1960, and that her husband came to the United States in November of that year. Claimant further asserts that Gabriel Baizan left Cuba some six months after his brother's departure.

Under the community property laws of Cuba, a party bringing property into a marriage retains his sole title to that property absent a valid prenuptial agreement providing otherwise. A spouse retaining sole rights may dispose of the property as he sees fit, and property purchased exclusively with the money of one spouse, or acquired in exchange for other property vested in one spouse, belongs solely to that spouse, even if the property was acquired during coverture. (Articles 1396-1400, Civil Code of Cuba.) Property acquired during the marriage become the property of both spouses in equal parts, and the fruit of solely-owned property (rents, dividends, interest, etc.), but not the solely-owned property itself, also becomes a part of the marriage community property. (Articles 1401-1407, Civil Code of Cuba.) The rights inherent with the ownership of capital stock issued by a corporation are deemed to be personal property rights. (Article 335 et. seq., Civil Code of Cuba.)

Applying the appropriate law to the instant facts, it become clear that

1. at the time of her marriage in 1954, claimant acquired no interest in the property of the Baizan brothers' partnership;

2. claimant acquired no interest in either the assets or common stock of Pinturas Coast, S.A., inasmuch as neither the assets nor the funds, if any, used to acquire the stock were a part of the marriage community property;

3. claimant acquired a one-half interest in 50% of the income of the corporation, since a spouse is entitled to the fruits of separately-owned property;

4. claimant is entitled to 100% of the value of the property brought by her into the marriage; and

5. claimant acquired a one-half community interest in the house, land, and other non-corporate personalty upon which the claim is based.

After a thorough review of all of the evidence of record, the Commission finds that claimant's interest in the claimed property is as follows:

A. Personalty Brought into Marriage by claimant, 100%

Dining room furniture	\$ 60.00	
Dark room equipment	100.00	
Refrigerator	103.00	
Sterling silverware	100.00	
3 sets crystal	20.00	
Books	75.00	
Typewriter	40.00	
Silver Dollar collection	<u>40.00</u>	\$ 538.00

B. One-half of Property Acquired During Marriage

House and lots, net, after mortgage	\$4,166.76	
Personalty, less <u>A</u> above	<u>1,826.00</u>	5,992.76

C. One-half of 50% Interest in Income and Retained Earnings of

Pinturas Coast, S.A. from organization until March 31, 1960, per balance sheet	\$10,868.54	
 from April 1, 1960 until August 9, 1961, estimated, based on average monthly earnings of \$1,811.42	<u>9,057.10</u>	<u>\$19,925.64</u>
		<u><u>\$26,456.40</u></u>

The record contains a copy of a Cuban newspaper notice dated August 4, 1961. The notice states that "Pinturas Coast, S.A." would be intervened unless the owners of the corporation appeared at the offices of the Ministry of Labor within five (5) days. As stated, the owners of the corporation had left Cuba by May 1961. Therefore, the Commission concludes that the loss with respect to the retained earnings of the corporation occurred on August 9, 1961, in the amount of \$19,925.64.

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

As the record shows, by December 1960, claimant and her family were resident in the United States. The Commission finds, in the absence of evidence to the contrary, that claimant's interest in the non-corporate real and personal property claimed, in the total amount of \$6,530.76, was taken by the Government of Cuba on December 6, 1961, pursuant to the provisions of Law 989.

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 loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum on \$19,925.64 from August 9, 1961, and on \$6,530.76 from December 6, 1961, to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JUDITH F. WILLIAMS BAIZAN 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-Six Thousand Four Hundred Fifty-Six Dollars and Forty Cents (\$26,456.40) 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

SEP 11 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 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).)

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