

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

IN THE MATTER OF THE CLAIM OF

ELSA GARCIA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 1092

Decision No. CU - 6021

Counsel for claimant:

Bernard Sherl, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ELSA GARCIA for \$3,202,750 based upon the asserted ownership and loss of real and personal property and stock interests 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.

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) (1970).)

Claimant states that she owned various properties in Cuba jointly with her husband, a Cuban citizen. She describes her losses, with the asserted values of her interests, as follows:

1. Ranch "Finca Nanita, Moron, Camaguey:

| | | |
|-----------------|---------------|-------------|
| a. Land | \$450,000 | |
| b. Improvements | 621,500 | |
| c. Livestock | 382,500 | |
| d. Equipment | <u>48,000</u> | \$1,502,000 |

2. Residence, furnished 50,000

3. Unimproved land, Havana 49,000

4. Automobiles 5,000

5. Securities:

| | | |
|------------------------------|---------------|-----------|
| a. Global Ranch, S.A. | \$267,500 | |
| b. Global Construction, S.A. | 700,000 | |
| c. Global Commercial, S.A. | 38,250 | |
| d. Yumury Construction, S.A. | <u>12,500</u> | 1,018,250 |

6. Debts:

| | | |
|----------------------|--------------|----------------|
| a. Global Ranch | \$554,000 | |
| b. Global Commercial | 15,000 | |
| c. Bank Accounts | 4,500 | |
| d. Mortgage | <u>5,000</u> | <u>578,500</u> |
| | | \$3,202,750 |

On the basis of the evidence of record, the Commission finds that claimant owned certain property in Cuba, all as further discussed below.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

Based on the foregoing and the evidence of record, the Commission finds that claimant's interests in property in Cuba were taken by the Government of Cuba pursuant to the provisions of Law 989 and, in the absence of evidence to the contrary, that the taking occurred on December 6, 1961, the date on which the law was published.

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.

1. Ranch, Finca Nanita

a. Land:

Claimant states that this ranch was located in Barrio, Mabuya, Termino Municipal of Moron, Camaguey, that it consisted of approximately 3,000 acres of land, acquired for \$460,000 in four purchases as follows:

- A. 750 acres, November 18, 1954, for \$75,000
- B. 670 acres, May 28, 1956, "Emerita" for \$70,000
including sugar plantation thereon for \$40,000
- C. 35 acres, May 9, 1957, for \$5,000
- D. 1,500 acres, September 6, 1957, for \$270,000

The ranch was used as a cattle ranch, for dairy farming, growing of sugar cane and raising fruit. Approximately 450 acres were said to have been used for sugar growing, 30 acres for fruit groves and the remaining 2,520 acres for dairy farming and cattle breeding.

The Commission finds, on the basis of copies of deeds, as well as affidavits that claimant and her husband owned the above-described properties, fully paid. Claimant contended that the land values increased from \$460,000 to \$900,000. The record also includes an affidavit from the son of the seller of the 750 acres (A, above) to the effect that the price paid was \$95,000, rather than \$75,000. There is also an affidavit concerning the 1,500 acres (D, above) in which it is affirmed that approximately 1,485 acres were sold by the affiant's family for \$225,000. There are also affidavits expressing opinions that the entire ranch had a value of about \$3,000,000.

On the basis of the entire record, the Commission finds that the land had a value of \$435,000 and that claimant's interest was \$217,500.

b. Improvements:

The record includes a listing of the improvements, which the Commission finds were made, including items as irrigation systems, planting of grass, and trees, construction of houses, cattle pens, bridge, electric plant, pumping plant, roads and fencing. Claimant contended that the improvements costing approximately \$956,000 had increased by about 30% to \$1,243,000. No substantiation has been submitted for this position. The cost of such improvements on the 750 acres (A, above) are given as \$268,600, made in 1956, 1957 and 1958; those on the 670 acres (B, above) are shown as \$206,250, made in 1957 and 1958; and those on the last item (D, above) are shown as \$486,225, made in 1958. Thus a total cost of \$961,075 is shown. Some of these items (excepting grass and trees) are subject to depreciation at a rate of 2% per year, and after such depreciation, the value at the time of loss is found as \$905,631, in which claimant's interest was \$452,815.50.

c. Livestock:

Claimant has listed 2,041 animals with value per head, purchased about 1956, with a total cost of \$561,500 of which she states the herd increased to approximately 3,700 head with a value of \$765,000. Affidavits submitted refer to several thousand head of cattle; approximately 1,500 to 2,000 head

of livestock; and approximately 3,700 head of livestock. The method by which the asserted increase to \$765,000 is reached, is not shown.

The Commission finds that on the date of loss the value of the animals taken, considering depletion and increases, was \$561,500, and claimant's interest therein was \$280,750.

d. Equipment:

The equipment which the Commission finds was on the ranch included trucks, tractors, flat beds, a weighing station and two automobiles purchased in 1957 and 1958. The cost is given as \$96,800. The Commission finds that the flat beds and weighing station depreciated at 5% per annum and the vehicles at 15% per annum. Thus the residual value on the date of taking was \$60,980, in which the claimant's interest was \$30,490.

It may be noted that claimant claimed a tax loss of \$1,580,906 in connection with this cattle ranch and was allowed a loss of \$800,000.

2. Residence and Furnishings

On the basis of the record, including a report from abroad, and affidavits, the Commission finds that claimant and her husband owned a furnished residence at Vista Allegre Corner to Felipe Poey, Vibora, Havana.

It appears that the plot was of about 510 square meters, which claimant states was purchased for \$12,000. It is further stated that \$2,000 was expended for architect's plans, and \$45,000 in construction of the 2-story house, plus \$3,000 for a well and water tank. The record includes photographs of this house, and on the basis of the entire record, the Commission finds that this improved realty had a value of \$62,000 in which claimant's interest was \$31,000.

Furnishings of the residence are listed with a total cost of \$28,000 purchased in 1950. The Commission finds, however, that this property was subject to depreciation, and after application of appropriate depreciation factors, the residual value on the date of loss is found to have been \$12,600 in which claimant's interest was \$6,300.

3. Unimproved Land

Claimant contends that in 1959 she and her husband purchased a parcel of land in Havana for \$32,000, (\$18,000 cash and a \$14,000 mortgage) intended for another residence. The Commission finds, however, that the evidence of record is insufficient to permit a certification of loss in this respect. Accordingly, the Commission concludes that claimant has failed to sustain the burden of proof in this instance, and this item of claim is denied.

Further, it is said that in 1959, claimant and her husband, in connection with a business venture, purchased forty corner lots in Pinar Del Rio for approximately \$80,000. Similarly as above, the record is devoid of evidence such as deeds, nor has a request for evidence resulted in a report which would substantiate this item of claim. However, it appears that claimant's husband claimed a tax loss of \$80,000 in connection with investment realty and for which Internal Revenue Service allowed a loss of \$64,000. The Commission finds that pursuant to the Community Property Law of Cuba, claimant and her husband owned equal interests in such property, and accordingly, concludes that claimant suffered a loss of \$32,000 in connection with these lots.

4. Automobiles

The Commission finds that claimant and her spouse owned three automobiles, (apart from any associated with the operation of Finca Nanita), described as a 1958 Cadillac costing approximately \$9,000, a 1958 Chrysler Imperial costing approximately \$8,000 and a 1958 Buick costing approximately \$5,000, for which claimant contends the fair market value was \$10,000. Considering appropriate depreciation, the Commission finds that claimant's evaluation is fair and reasonable, and concludes that she suffered a loss of \$5,000 in this respect.

5. Securities

Claimant as stated above asserts her half-interests in corporate losses as follows:

| | | |
|---------------------|---------------|-------------|
| Global Ranch | \$267,500 | |
| Global Construction | 700,000 | |
| Global Commercial | 38,250 | |
| Yumury Construction | <u>12,500</u> | \$1,018,250 |

It is noted that claimant and her husband asserted tax losses of \$295,000 in connection with three of the entities, excepting Global Commercial, and that \$187,500 was allowed by Internal Revenue Service, \$93,750 for the benefit of claimant.

a. Global Ranch:

The record shows that 70 shares were issued, 35 to the Garcias and 35 to the Robledo spouses, who were not to become the owners thereof until certain loans to them had been repaid. It is averred, by the claimant's former Cuban attorney, that said loans were not repaid and that the Garcias were the sole owners of this entity.

Since Global Ranch, S.A. was organized under the laws of Cuba, it does not qualify as a corporate national of the United States as defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation it has been held that an American stockholder owning an interest in such a corporation may file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

On the basis of the entire record, including a notarial document of 1951 and a contemporary affidavit by the claimant's former Cuban attorney, the Commission finds that claimant owned 50% of Global Ranch, S.A., and that she sustained a loss in connection with this interest.

Claimant summarizes her evaluation of this entity as follows:

| | |
|--|------------------|
| Land, about 44 caballerias | \$440,000 |
| Improvements, costing \$522,000 value increased by 30% to | 678,000 |
| Livestock, costing \$330,000 herd increased to a value of | 475,000 |
| Equipment | <u>50,000</u> |
| | \$1,643,000 |
| Less loans due to claimant and spouse | <u>1,108,000</u> |
| Equity | \$ 535,000 |
| Claimant's one-half being valued at \$267,500 | |

Claimant has listed individually the expenditures for land, sugar plantations, improvements and livestock, in addition to which she states that approximately \$100,000 was expended during 1951 to 1958 for operating expenses and equipment. Thus, she totals the expenditures for the corporation by herself and husband at \$1,228,000, of which \$70,000 was treated as capital and \$1,158,000 as a loan. Of this she says \$50,000 was repaid and that \$1,108,000 was still due.

The record includes copies of deeds with translations and photographs of various improvements, as well as affidavits. Additionally the record includes copy of a letter of September 13, 1965 from The Royal Bank of Canada transmitting the last information available concerning the former assets and liabilities of Global Ranch, which were transcribed from a statement reportedly made to the former Moron branch, signed by the company. This information as of September 30, 1958 is set out below (the Cuban peso being on a par with the dollar):

| <u>Assets</u> | | <u>Liabilities</u> | |
|---------------------|------------------|-----------------------|---------------|
| Accounts Receivable | \$2,166 | Loans due The Royal | |
| Cash | 1,730 | Bank of Canada | \$25,000 |
| Livestock | 241,740 | Accounts Payable | 5,592 |
| Cane Liquidations | 12,500 | Shareholders' Account | 1,108,767 |
| Furniture and | | Apparent Surplus | 330,548 |
| Fixtures | 9,790 | Capital Paid Up | <u>70,000</u> |
| Cane Colonias | 201,229 | | \$1,539,907 |
| Machinery and | | | |
| Equipment | 44,599 | | |
| Land and Buildings | <u>1,026,153</u> | | |
| | \$1,539,907 | | |

Considering the entire record, and the undetailed loss allowed by Internal Revenue Service, of which claimant's counsel states a compromise was involved, the Commission finds that the 1958 balance sheet represents the losses of claimant sustained by the taking by the Government of Cuba. On this basis the net worth of Global Ranch is found as \$400,548, of which claimant's interest was \$200,274.

b. Global Construction:

Claimant states that this corporation was formed in 1956, that she and her spouse contributed \$100,000 in cash and construction equipment valued at \$100,000; that the other stockholder contributed \$200,000; that at the time of loss the corporation had an account receivable of \$2,700,000 due from the Cuban Government, in addition to equipment valued at \$100,000, resulting in an asserted value of \$2,800,000 with claimant's interest valued at \$700,000.

The Commission reminded claimant by letter of July 8, 1968 that no evidence had been submitted in support of this item of claim. Thereafter counsel submitted affidavit of claimant's husband setting out that Global Construction was owned by him and claimant to the extent of 50%; that they invested \$200,000 in cash and equipment; that the corporation was engaged in discharging construction contracts for the Government of Cuba, including an aqueduct, a drainage project, a road, and a contract for the Board of Education in amount of \$6,000,000 and after completion thereof, the Cuban Government was indebted to Global Construction for \$2,700,000 plus a deposit of 10% on a performance bond in amount of \$600,000. The gist of this information is repeated in an affidavit by the former Secretary of Global Construction who states he has knowledge of an agreement between the Housing Commission of Cuba and Global Construction pursuant to which the latter was to construct homes for the Cuban Government in Pinar del Rio; and that the construction activities were performed by Global Construction and related subsidiary corporations.

However, no documentation was offered in support of these affirmations, and further suggestions were made by Commission in its letter of October 4, 1968. No further documentation has been received other than a copy of the ruling of the Internal Revenue Service, which indicates that the interest of claimant and her spouse was included in the \$187,500 allowed them for tax losses claimed in the amount of \$295,000 in connection with three entities. There is no indication as to how much was allowed for claimant's asserted one-quarter interest in this entity.

The Commission is constrained to hold that claimant has not sustained the burden of proof in this matter in that she has not submitted evidence upon which the Commission could make a finding of loss in an amount supported by the record. Accordingly this item of claim is denied.

c. Global Commercial

It is not clear why claimant did not assert a tax loss in this connection. However, it is stated that this corporation was formed in 1954 or 1955 with claimant and her spouse owning 45% of the stock; that in 1958 they loaned the corporation \$30,000; that when the corporation's assets were confiscated it had a value of \$170,000 represented by a receivable from the Cuban Government in that amount; and that claimant's 22.5% interest had a value of \$38,250.

In this case also no evidence had been submitted other than the letter from The Royal Bank of Canada of September 13, 1965. Counsel was reminded of this in the Commission letter of July 8, 1968. Thereafter the affidavit of claimant's spouse was submitted stating that this corporation performed work pursuant to contracts with the Cuban Government; that at the time of confiscation the Cuban Government owed it \$170,000 for work performed; and in addition to investing in the stock, he and claimant had loaned the corporation \$30,000 which was still due. The affidavit, however, is not supported by probative evidence. Additional suggestions were made to counsel in letter of October 4, 1968.

The above-mentioned letter of The Royal Bank of Canada transmits information available concerning the former assets and liabilities of Global Commercial, which were transcribed from a statement reportedly made to the former Havana branch, signed by the company. This information as of December 31, 1957, is set out below (the Cuban peso being on a par with the dollar):

| <u>Assets:</u> | | <u>Liabilities</u> | |
|---------------------------------|--------------|--------------------------|---------------|
| Accounts Receivable | \$50,042 | Accounts Payable | \$2,581 |
| Cash | 4,775 | Accrued Expenses | 9,719 |
| Advance Payments | 854 | Reserve for Depreciation | 105 |
| Furniture and Fixtures | 445 | Capital Paid Up | <u>50,100</u> |
| Deficit (Excess withdrawals) | <u>6,389</u> | | \$62,505 |
| | \$62,505 | | |

Examination of this balance sheet indicates that the assets total \$56,116, that the liabilities total \$12,405, and that the capital had been depleted by \$6,389 to a balance of \$43,711. However, even if it be found established that claimant's interest was 22.5%, this above balance sheet is considered too remote from the asserted date of loss, particularly considering that the amounts claimed as assets of the corporation, and the debt assertedly due to claimant and her spouse resulted apparently from transactions subsequent to 1957.

The Commission is constrained to hold that claimant has not sustained the burden of proof in this matter in that she has not submitted evidence upon which the Commission could make a finding of loss in an amount supported by the record. Accordingly this item of claim is denied.

d. Yumury Construction:

It is asserted that this corporation was formed in 1957, that claimant and her husband contributed \$25,000 to the capital, and that at the time of confiscation, her interest had a value of \$12,500. Here also no evidence had been submitted in support of the contentions. Thereafter claimant's spouse submitted his affidavit in which he stated that he and claimant purchased jointly a 16-2/3% interest in Yumury for \$25,000; and that at the

time of confiscation their interest had a value of \$25,000 at least. Further suggestions on stock interests were made in the Commission letter of October 4, 1968. No further documentation has been received other than the aforesaid copy of the ruling of the Internal Revenue Service indicating that the undescribed interest of claimant and her spouse was included in the \$187,500 allowed them for tax losses claimed in the amount of \$295,000 in connection with three entities. There is no indication as to how much was allowed for the asserted interest in Yumury.

The Commission is therefore constrained to hold that claimant has not sustained the burden of proof in this matter in that she has not submitted evidence upon which the Commission could make a finding of loss in an amount supported by the record. Accordingly this item of claim is also denied.

6. Debts

a. Global Ranch

Claimant has asserted that the debt due to her and her spouse from Global Ranch was in the amount of \$1,108,000. The Commission finds that in fact Global Ranch was indebted to claimant and that such debt is certifiable under the Act (see Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966]). Considering the balance sheet set out above, the Commission finds that claimant's statement of the debt is correct and that she sustained a loss of \$554,000 in this connection.

b. Global Commercial; c. Bank Accounts; d. Mortgage:

Claimant has asserted a debt of \$15,000 due her from Global Commercial; bank accounts in the amount of \$4,500 in the Bank of Chambas and Bank of Nunez; and a one-half interest in a \$10,000 loan secured by a mortgage on confiscated property. These were mentioned in the Commission's letter of July 8, 1968 to counsel. Claimant's spouse has affirmed their existence in his affidavit of August 28, 1968, but no probative evidence has been offered in support. This was again referred to in the Commission's letter of

October 4, 1968. Claimant thereafter stated that she has no bank statements or data as to the mortgage; that information may be obtained from the banks in Cuba, and that the mortgagee in Cuba would be able to verify the mortgage transaction.

Nevertheless, the Commission has previously received information that the Government of Cuba will not furnish information as to bank balances; and further, it does not appear that the mortgagee would be willing to be contacted nor does the Commission have the facilities to undertake independent investigation in Cuba. The Commission finds that claimant has not sustained the burden of proof with respect to these items and accordingly they are denied.

Recapitulation

Claimant's losses within the scope of Title V of the Act are summarized as follows:

| | | |
|--------------------|------------------|-------------------|
| 1. Finca Nanita: | | |
| Land | \$217,500.00 | |
| Improvements | 452,815.50 | |
| Livestock | 280,750.00 | |
| Equipment | <u>30,490.00</u> | \$981,555.50 |
| 2. House | \$ 31,000.00 | |
| Furnishing | <u>6,300.00</u> | 37,300.00 |
| 3. Unimproved Land | | 32,000.00 |
| 4. Automobiles | | 5,000.00 |
| 5. Securities: | | |
| Global Ranch | | 200,274.00 |
| 6. Debts | | |
| Global Ranch | | <u>554,000.00</u> |
| | | \$1,810,129.50 |

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.

CERTIFICATION OF LOSS

The Commission certifies that ELSA GARCIA 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 Million Eight Hundred Ten Thousand One Hundred Twenty-Nine Dollars and Fifty Cents (\$1,810,129.50) with interest 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

JAN 6 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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).)