

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

IN THE MATTER OF THE CLAIM OF

JENNIE M. FULLER
IRENE JEWETT (FULLER) MOSS
FRANCES RUTH FULLER
JEANNETTE OTIS (FULLER) HAUSLER
ANGELA GRACE (FULLER) LUTES
JEROME CAVERNO FULLER
FREDERICK JEWETT FULLER
LYNITA GAY FULLER

Claim No. CU-2803

Decision No. CU - 6199

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

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$408,982.00, was presented originally by William Otis Fuller and JENNIE M. FULLER, nationals of the United States since birth, based on the loss of certain real and personal property in Cuba. In addition, claim is made for the death of their son. William Otis Fuller died intestate in Florida on December 1, 1969. Upon his death, his property interests were inherited in equal shares by his wife and six children and by his granddaughter, the daughter of his deceased son, Robert Otis Fuller, who died on October 16, 1960. Accordingly, the six children and granddaughter have been substituted as party claimants in the place of the late William Otis Fuller.

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 following losses are asserted:

Plantation at Holguin, Cuba, consisting of 68.994 caballerias of land and improvements	\$358,982.00
Equipment, livestock and other items of personal property	<u>50,000.00</u>
Total	<u>\$408,982.00</u>

Claim is also made in an unstated amount for the death of Robert Otis Fuller, son of JENNIE M. FULLER and her late husband, William Otis Fuller.

The record shows that for a number of years prior to World War II JENNIE M. FULLER, her late husband, and other members of her family owned certain land in Holguin, Cuba. The claim of said relatives, Mr. and Mrs. Miles Chester Jewett, Claim No. CU-2804, will be decided on its own merits. The family operated a saw mill, raised cattle and crops and ultimately grew sugar cane.

On July 21, 1940, the family assets in Holguin, Cuba were transferred to a Cuban corporation, Cia. Agricola de Lewiston, S.A., expressly created for the purpose of carrying on the family business in Cuba. Originally, the total outstanding capital stock of the Cuban corporation was 355 shares but this was subsequently reduced to 235, distributed as follows: Mr. and Mrs. William Otis Fuller, 127 shares; and Mr. and Mrs. Miles Chester Jewett, 108 shares.

The Cuban corporation conducted its business until August 1959, when the Cuban National Institute of Agrarian Reform (I.N.R.A.) ordered the dissolution of the corporation. As of September 3, 1959, the Cuban corporation was formally dissolved, and its assets were distributed to its stockholders as follows: Mr. and Mrs. William Otis Fuller, 68.994 caballerias of land (1 caballeria equalling 33.162 acres); and Mr. and Mrs. Miles Chester Jewett, 58.730 caballerias of land. These land areas included improvements as indicated further below.

In December 1959, the late William Otis Fuller left Cuba, Mrs. Fuller remaining behind in Cuba. In February 1960 the I.N.R.A. authorities ordered Mrs. Fuller to exercise no further acts of ownership over the real property. She was permitted to remain at home, but could neither sell nor use any of the livestock without permission from the intervenor. Moreover, Mrs. Fuller was permitted to collect amounts due on behalf of the plantation, but was required to turn over the proceeds to agents of I.N.R.A. In June 1960, Mrs. Fuller could no longer perform even those ministerial acts.

On the basis of the entire record, the Commission finds that the entire plantation, including all of its improvements, as well as the livestock, personal belongings and other items of personal property situated on the plantation, were intervened or taken by the Government of Cuba in February 1960. In the absence of evidence to the contrary, the Commission finds that the taking occurred on February 15, 1960.

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.

Plantation

As noted above, the original claimants, William Otis Fuller and JENNIE M. FULLER, each owned a 1/2 interest in 68.994 caballerias of land and improvements in Holguin, Cuba. Upon his death on December 1, 1969, the late Mr. Fuller's 1/2 interest was inherited by the eight claimants herein in equal shares. Therefore, on February 15, 1960, the date of loss, Mrs. Fuller owned a 9/16 interest, and each of the other seven claimants owned a 1/16 interest.

Document No. 70, pursuant to which the Cuban corporation was dissolved, sets forth the assessed valuations for the several parcels of land and improvements that were distributed to the original two claimants as follows:

<u>Parcel No.</u>	<u>Area of Land (caballerias)</u>	<u>Assessed Value</u>
D	23.909	\$ 53,795.25
E	5.336	12,006.00
F	33.786	76,018.50
G	5.000	11,250.00
H	<u>0.963</u>	<u>2,166.75</u>
Totals	68.994	\$155,236.50

The Commission notes that assessed valuations invariably are much lower than fair market values. The evidence in this case includes an inventory filed with I.N.R.A. authorities on September 3, 1959, when the Cuban corporation was dissolved. That inventory sets forth the fair market values of the properties in question. Those valuations are relied upon by claimants.

It further appears that said valuations are supported by affidavits from: Silvestre Pina, former President of the National Executive Committee of the Association of Sugar Cane Owners of Cuba; Benjamin H. Leon, former

bookkeeper for the Cuban corporation during the entire period of its existence; Juan Fernando Alvarez, former employee of the Cuban Treasury Department at the branch office at Holguin, Cuba; and Benjamin Santiesteban, former manager of the Holguin, Cuba branch of the Bank of Nunez. Further support for the valuations appearing in the inventory is found in the letter of April 6, 1966 from the late William Otis Fuller to the Internal Revenue Service. The record shows that tax deductions were allowed for the Cuban losses sustained by the deceased and JENNIE M. FULLER.

Based upon the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimants are those set forth in the inventory that was presented to the I.N.R.A. authorities.

Accordingly, the Commission finds that claimants' valuations are fair and reasonable. The Commission therefore finds that the values of the real properties on February 15, 1960, the date of loss, were as follows:

68.994 caballerias of land	\$311,495.00
Improvements on the land	<u>47,487.00</u>
Total	<u>\$358,982.00</u>

Equipment, Livestock and Other Personal Property

On the basis of the entire record, including the inventory filed with I.N.R.A. authorities and detailed lists of the equipment, livestock and other items of personal property, the Commission finds that claimants' valuations are fair and reasonable. The Commission therefore finds that the aggregate value of the equipment, livestock and other items of personal property on February 15, 1960, the date of loss, was \$50,000.00.

The losses herein sustained on February 15, 1960 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Plantation	\$358,982.00
Personal property	<u>50,000.00</u>
Total	<u>\$408,982.00</u>

Since JENNIE M. FULLER owned an 8/16 interest in the properties herein and succeeded to a 1/16 interest, aggregating 9/16, she sustained a loss in the amount of \$230,052.37. The other seven claimants succeeded to losses aggregating \$178,929.63, as follows:

IRENE JEWETT (FULLER) MOSS	\$ 25,561.38
FRANCES RUTH FULLER	25,561.38
JEANNETTE OTIS (FULLER) HAUSLER	25,561.38
ANGELA GRACE (FULLER) LUTES	25,561.38
JEROME CAVERNO FULLER	25,561.37
FREDERICK JEWETT FULLER	25,561.37
LYNITA GAY FULLER	<u>25,561.37</u>
Total	<u>\$178,929.63</u>

Death Claim

Claim is made for the death of Robert Otis Fuller, son of the late William Otis Fuller and of JENNIE M. FULLER, as a result of his execution on October 16, 1960, by the Government of Cuba. Robert Otis Fuller was also survived by his daughter, LYNITA GAY FULLER. In a detailed narrative accompanying the official claim form, the original claimants stated in pertinent part as follows:

. . . On October 15, 1960, the son of the undersigned, Robert Otis Fuller, ex U. S. Marine, was placed on trial in Santiago de Cuba for counter-revolutionary activities, Harvey Summ, State Department Officer being present. He was executed on the following day. Jennie M. Fuller left Cuba on the 17th of October 1960.

The record includes in support of this part of the claim, copy of a Report of the Death of an American Citizen dated at Santiago de Cuba, Cuba, October 19, 1960, and signed by G. H. Summ, American Consul. This document recites that Robert Otis Fuller was executed by a firing squad on October 16, 1960.

Section 503(b) of the Act provides as follows:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of

the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

The Commission has held that in a disability claim under Section 503(b) of the Act, it must be established, inter alia, that the disability was the proximate result of actions by the Government of Cuba in violation of international law. (See Claim of Julio Lopez Lopez, Claim No. CU-3259.) The same considerations apply to a claim for death.

Information available to the Commission shows that Robert Otis Fuller and another American were arrested on October 15, 1960 in Santiago, Cuba. They and two Cuban nationals also captured were charged with promoting an uprising of armed individuals against the powers of State. It further appears that at a trial held at 4:00 P.M. on October 15, 1960 at which the American Consul was present and at which Robert Otis Fuller had legal counsel who is said to have done the best he could, the defendants admitted their guilt. The trial before a Revolutionary Tribunal, which has also been referred to as a court-martial, resulted in findings of guilty.

Thereafter the two Cuban nationals were sentenced to thirty years imprisonment each while both Americans were sentenced to death, although one of the Cubans had reportedly been pointed out as being the group leader. After appeals which were heard immediately after the trial and lasted about five minutes the sentences were upheld. It further appears that the defense counsel both at the trial and during the appeal strongly argued that it was unjust to ask for or mete out greater punishment for the Americans than for the Cubans. The executions of the two Americans were carried out on October 16, 1960.

It is universally recognized that a State has inherent authority to punish persons within its jurisdiction who are convicted of violating its criminal laws. Moreover, it is not unusual for a State to decree death upon conviction of counter-revolutionary activities.

However, it clearly appears, and this is substantiated by the argument of the defense counsel, that the Americans were executed because of their

nationality and in the face of evidence that two Cubans were at least equally guilty. The Commission therefore must consider whether the sentence inflicted upon Robert Otis Fuller was in violation of international law.

It is pointed out (V Hackworth, Digest of International Law (1943) 606) that "The rule of international law is well settled that an alien who has been taken into custody by the authorities of a state is entitled to receive from those authorities just and humane treatment, regardless of the offense with which he is charged, and that failure to accord such treatment renders the state liable in damages. The Research in International Law, Harvard Law School, in connection with the Draft Convention on Jurisdiction With Respect to Crime, stated in article 12:

In exercising jurisdiction under this Convention, no State shall prosecute an alien who has not been taken into custody by its authorities, prevent communication between an alien held for prosecution or punishment and the diplomatic or consular officers of the State of which he is a national, subject an alien held for prosecution or punishment to other than just and humane treatment, prosecute an alien otherwise than by fair trial before an impartial tribunal and without unreasonable delay, inflict upon an alien any excessive or cruel and unusual punishment, or subject an alien to unfair discrimination. (29 A.J.I.L. Supp. (1935) 596-597,)"

Moreover, Mr. Edwin M. Borchard has discussed this matter in his treatise "Diplomatic Protection of Citizens Abroad". In Section 142 in discussing the civil rights of an alien he states that whereas an alien must submit to proceedings brought in accordance with law on a charge that an offense has been committed, the proceedings must be regular and conducted in good faith and in accordance with law and forms of civilized justice, and "must not be arbitrary or unnecessarily harsh or discriminate against the alien on account of his nationality."

Further, he points out that on various occasions claims have been successfully prosecuted by the Department of State or allowed by international commissions on grounds including "punishment disproportionate in severity to the offense charged."

Mr. Borchard continues, in Section 44 of his treatise (f.2), to point out that "Any discrimination against the alien, e.g., a graver punishment

than that inflicted upon nationals, prejudicial irregularity in judicial proceedings, violation of treaties or international law, constitutes a denial of justice and opens the right to diplomatic interposition."

It is noted moreover that the United States protested the trial and sentence in a note to the Cuban Foreign Ministry on November 11, 1960 (see Whiteman, Digest of International Law, Volume 8 at p. 719). In the note, a protest was made to the conduct of the Fuller trial with the assertion that basic humanitarian standards were not observed and discrimination was clearly evident in the sentences passed. The protest further asserted that defendants in a criminal case are entitled to certain fundamental, humanitarian rights in connection with a trial, particularly when the ultimate penalty, death, may be imposed. In the Fuller trial, there was stated to have been wholly inadequate time to prepare an appeal since the Appeals took place less than one hour after the verdict. Protest was also made to the general manner in which the trial was conducted with long political harangues and a "Roman Circus atmosphere" surrounding the trial.

The Commission has considered this matter in depth and concludes that the imposition of the punishment of death upon the two American nationals, including Robert Otis Fuller, for the same crime for which two Cuban nationals were sentenced to thirty years imprisonment, was clearly a discrimination directed to persons alien to the Republic of Cuba, being disproportionate to the punishment meted out to the Cuban nationals, and constituted a denial of justice and thus a violation of international law for which the Government of Cuba may be held accountable within the scope of Title V of the International Claims Settlement Act of 1949, as amended.

The Commission must now determine to whom the Government of Cuba is accountable in this matter. Miss Marjorie M. Whiteman in her work on "Damages in International Law" (Vol. I, at p. 640) states that a claim for death by wrongful act is made not for the benefit of the estate, but for the benefit of the surviving dependents. As Miss Whiteman also points out (supra, 639), it must be shown not only that the respondent State has committed a wrong,

but that the individual claimant has suffered pecuniary loss or injury. The record discloses that whereas Robert Otis Fuller was divorced, he was survived by a daughter, LYNITA GAY FULLER, then almost six years old, to whom the decedent owed the parental obligations of support and education during her minority (and see supra, 649). The Commission therefore finds that on October 16, 1960, the said LYNITA GAY FULLER, a national of the United States since birth, suffered a loss within the meaning of Title V of the Act.

Accordingly, so much of the claim of JENNIE M. FULLER, and the heirs of William Otis Fuller, Deceased, as is based on the death of Robert Otis Fuller, is denied.

There remains for determination the extent of the indemnity which LYNITA GAY FULLER is entitled to have certified in her favor.

In recent times, Miss Whiteman states (supra, 660), foreign offices and arbitral tribunals have generally estimated the indemnity in death cases on the basis of the worth to the claimant of the expected contributions of the person for whose death an indemnity is claimed. The Commission has considered the prior income of Robert Fuller and his age and finds that the expected contributions for his daughter from the time of his death to the date of her majority would amount to the fair and reasonable amount of \$20,000.00. Accordingly, the Commission concludes that LYNITA GAY FULLER suffered a loss in this amount on October 16, 1960, within the meaning of Title V of the Act.

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.

CERTIFICATIONS OF LOSS

The Commission certifies that JENNIE M. FULLER succeeded to and 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 Two Hundred Thirty Thousand Fifty-two Dollars and Thirty-seven Cents (\$230,052.37) with interest at 6% per annum from February 15, 1960 to the date of settlement;

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The Commission certifies that IRENE JEWETT (FULLER) MOSS succeeded to and 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-five Thousand Five Hundred Sixty-one Dollars and Thirty-eight Cents (\$25,561.38) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that FRANCES RUTH FULLER succeeded to and 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-five Thousand Five Hundred Sixty-one Dollars and Thirty-eight Cents (\$25,561.38) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that JEANNETTE OTIS (FULLER) HAUSLER succeeded to and 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-five Thousand Five Hundred Sixty-one Dollars and Thirty-eight Cents (\$25,561.38) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that ANGELA GRACE (FULLER) LUTES succeeded to and 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-five Thousand Five Hundred Sixty-one Dollars and Thirty-eight Cents (\$25,561.38) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that JEROME CAVERNO FULLER succeeded to and 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-five Thousand Five Hundred Sixty-one Dollars and Thirty-seven Cents (\$25,561.37) with interest at 6% per annum from February 15, 1960 to the date of settlement;

The Commission certifies that FREDERICK JEWETT FULLER succeeded to and 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-five Thousand Five Hundred Sixty-one Dollars and Thirty-seven Cents (\$25,561.37) with interest at 6% per annum from February 15, 1960 to the date of settlement; and

The Commission certifies that LYNITA GAY FULLER succeeded to and 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-five Thousand Five Hundred Sixty-one Dollars and Thirty-seven Cents (\$45,561.37) with interest at 6% per annum on \$25,561.37 from February 15, 1960 and on \$20,000.00 from October 16, 1960, to the date of settlement.

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

MAY 19 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 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).)

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