

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

IN THE MATTER OF THE CLAIM OF

PATRICIA O'DONOGHUE DE BROCH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2927

Decision No. CU -1175

Counsel for claimant:

Connolly, Frey, Eschmann & La Pasta
Samuel Herman, Esq.

AMENDED PROPOSED DECISION

This claim was presented by PATRICIA O'DONOGHUE DE BROCH in the amount of \$1,452,500.00 and is based upon the asserted loss of real and personal property in Cuba. By Proposed Decision dated February 7, 1968, the Commission denied the claim for the reason that claimant had not established the ownership, loss and value of the property, subject of the claim.

Claimant, through counsel, has submitted evidence pertaining to the property, which includes a residence known as La Coronela in Marianao, Havana, other real property, and personalty, such as household furnishings, personal effects, stock interests and bonds. The matter has been considered and the Proposed Decision is hereby amended.

Real Property

The record now includes a copy of a Contract of Purchase and Sale, dated December 23, 1955, whereby claimant purchased, as her separate property with inherited funds, the aforesaid Coronela, with an existing building thereon; as well as letters and affidavits from persons with personal knowledge of her ownership of this realty. On the basis of the entire record, the Commission finds that claimant herein was the sole owner of the improved real property known as La Coronela, located in Marianao section of Havana, Cuba.

Claimant has asserted that when Coronela was purchased in 1955, the consideration paid therefor was \$75,000.00; that extensive repairs and renovation of the improvements were completed in the years subsequent to purchase; and that expenditures for such improvements increased the value of the property in a sum in excess of \$250,000.00. Claimant has submitted in addition to the contract of purchase and sale, and the abovementioned letters and affidavits, a series of photographs of the property which show the renovation and repairs to the improvements, described by claimant as made subsequent to purchase in 1955.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). In the absence of evidence to the contrary, the Commission finds that the subject real and personal property was taken by the Government of Cuba on October 14, 1960, pursuant to said Urban Reform Law.

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.

The 1955 Contract of Purchase and Sale discloses that the tract of land known as Coronela consisted of approximately 14,000 square meters of land. Affiants and claimant have referred to the tract as a "city block" and have submitted detailed descriptions of the improvements located on the land. Such improvements to the land included lawns, trees, shrubbery and gardens, a swimming pool and patio areas. The improvements on the land at the time of loss also included a two-story Spanish colonial type mansion with tile roof, containing eight bedrooms, living and dining rooms, as well as auxiliary rooms for the employees. The property was protected by a wall around the lot, with driveways and gates.

The Commission has considered this record, as well as evidence available to the Commission concerning the value of similar real property in Havana, Cuba, and finds that the most equitable basis for evaluating the subject real property is the data furnished by claimant, including purchase with subsequent renovation and repair, and the evidence available to the Commission concerning the value of similar properties in Havana, Cuba.

The Commission has also considered depreciation of the improvements on the land, but finds however, that at the time of loss the improvements made by claimant had substantially increased the value of the entire property, both land and improvements. Thus, the Commission finds that the land and improvements of Coronela had a total value of \$300,000.00 at the time of loss; and concludes that claimant suffered a loss in that amount within the meaning of Title V of the Act as a result of the taking of said real property by the Government of Cuba on October 14, 1960.

This leaves for reconsideration portions of the claim asserted by claimant for loss of personal property located at Coronela, on her husband's farm and in storage, and for loss of stock interests in Cuban corporations, bonds issued by the Government of Cuba and business enterprises of Cuba and the United States. The claim originally included the asserted loss of certain farms and houses in the Havana Province in which claimant's husband,

Leon Broch y Franca, assertedly had ownership interests. The record discloses, however, that subsequent to filing the instant claim those portions of the claim based on ownership interests in the real and personal property assertedly inherited or owned by claimant's husband, were withdrawn.

Personal Property

The claimant has submitted her affidavit and the affidavits of others concerning the furnishings and personal effects located at Coronela and other personalty located in storage in Havana, Cuba. The list furnished includes personalty at Coronela with an asserted value of \$87,275.00; property in storage valued at \$41,130.00; property at her husband's farm, valued at \$3,750.00; and jewelry valued at \$5,800.00.

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

Based upon the evidence of record, the Commission finds that claimant and her husband, Leon Broch y Franca, were the joint owners of the afore-said personal property; that the personal property at Coronela was taken on October 14, 1960 by the Government of Cuba when Coronela was taken, that the property in storage and the property at the farm was taken on December 6, 1961 pursuant to Law 989.

The Commission has adopted a depreciation rate of 10% per annum on household furnishings except items such as antiques, paintings, and silver generally not subject to depreciation. The personalty was acquired by gift or purchase at various times from about 1940 through 1959. Claimant has not indicated the consideration paid for purchased items. Additionally, some of the items on the lists were apparently acquired from the families of claimant and her husband for which it is difficult to set precise evaluations.

Of the listed \$132,155.00 not including jewelry, the Commission finds that items totaling \$44,600.00 at Coronela, \$36,130.00 in storage, and \$1,750.00 at the farm are not subject to depreciation. Other items consisting of clothing valued at \$2,000.00 are subject to depreciation at a rate of 20% per year. The remaining items, household furnishings, are subject to depreciation at a rate of 10% a year. The Commission finds that the furnishings had an average age of five years, and the clothing had an average age of two years. Thus the Commission finds that the personalty had the following values on the date of loss:

Antiques, silver, china			
Coronela	October 14, 1960	\$44,600.00	
Storage	December 6, 1961	36,130.00	
Farm	December 6, 1961	<u>1,750.00</u>	\$ 82,480.00
Furnishings depreciated at 10% for 5 years			
Coronela	October 14, 1960	\$21,337.50	
Storage	December 6, 1961	<u>2,500.00</u>	\$ 23,837.50
Clothing depreciated at 20% for 2 years			
Farm	December 6, 1961		<u>\$ 1,200.00</u>
			\$107,517.50

Thus, the Commission finds that on the dates of loss the personal property at Coronela, that in storage and at the farm had a total value of \$107,517.50; and concludes that claimant suffered a loss in the amount of \$53,758.75 for her one-half interest in the personalty.

Claimant has not shown where her jewelry was located and how the Government of Cuba effected a taking, and accordingly this item of claim is denied.

The husband of claimant, Leon Broch y Franca, owner of a one-half interest in the aforesaid property, in accordance with the Community Property Laws of Cuba, was not a national of the United States at the time of loss, or when this claim was filed. In order for the Commission to favorably consider a claim filed under Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking;

and (2) that the claim arising as a result of such nationalization has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing claim with the Commission. (See the Claim of Joseph Dallos Hollo, Claim No. CU-0101, 25 FCSC Semiann. Rep. 46 [July-Dec. 1966].)

Accordingly, while Leon Broch y Franca has not asserted a claim herein for loss of his one-half interest in the subject personal property, the claim was based upon the total value of all property included in the claim. Thus, the claim asserted herein for loss of personal property owned by Leon Broch y Franca, to the extent of a one-half interest, is hereby denied.

Bonds and Debentures

Claimant has submitted, through counsel, certain receipts from her Cuban broker, Balsa de la Habana, dated in 1951 to 1953, disclosing that she purchased the following debentures or bonds:

- (1) On October 30, 1951, Debentures of Compania Cubana de Electricidad, 4 1/2%, 1985, nominal value \$10,000.00;
- (2) On October 16, 1952, First Mortgage Bonds of Compania Cubana de Electricidad, 4 1/2%, 1980, nominal value \$15,000.00;
- (3) On October 17, 1952, Bonds of the Republic of Cuba, Public Debt, 4%, 1950-1980, nominal value \$5,000.00;
- (4) On August 13, 1953, Bonds of the Republic of Cuba, Public Debt, 4%, 1950-1980, nominal value \$5,000.00; and
- (5) On August 13, 1953, First Mortgage Bonds of Cia Cubana de Electricidad, 4 1/2%, 1980, nominal value \$4,000.00.

Evidence has not been submitted which would establish that claimant was the sole owner of the aforesaid securities. The Commission concludes that the presumption enunciated under the Community Property laws of Cuba must prevail; and that claimant and her husband, a nonnational of the United States, owned respective one-half interests in such debentures or bonds.

The Commission finds that with respect to the mortgage bonds of Compania Cubana de Electricidad (Cuban Electric Company), claimant owned a one-half interest in such bonds; and that the total value of such bonds is \$19,000.00, or the face value of the bonds. The Commission has previously

held that such bonds are compensable for the reason that the bonds, issued by a corporation which was incorporated in the United States, were secured by property located in Cuba and which was taken by the Government of Cuba on August 6, 1960. (See Claim of Frederick Snare Corporation, Claim No. CU-2035.) Accordingly, the Commission concludes that claimant suffered a loss in connection with these mortgage bonds in the amount of \$9,500.00 within the meaning of Title V of the Act.

There is no evidence of record to establish that the debentures of the Compania de Electricidad were secured by property in Cuba which was nationalized or otherwise taken by the Government of Cuba. Pursuant to Section 505(a) of the Act, debts due from American concerns may not be allowed unless they constituted charges on property which was nationalized or otherwise taken by the Government of Cuba. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.) Accordingly, the Commission finds that this portion of the claim for loss of the aforesaid debentures must be and is hereby denied.

With respect to the 4% Bonds of the Public Debt of Cuba, 1950-1980, in the total face amount of \$10,000, the Commission finds that claimant owned a one-half interest in such bonds; and that the Government of Cuba defaulted on the service of these bonds on May 1, 1961. The Commission has held that failure of the Government of Cuba to make the obligated payment constituted a taking of the property of the bondholder within the meaning of the Act. (See Claim of Clemens R. Maise, Claim No. CU-3191, 1967 FCSC Ann. Rep. 68.) Accordingly, the Commission finds that claimant suffered a loss in the amount of \$5,000.00, within the scope of Title V of the Act, as a result of the actions of the Government of Cuba.

Other Items

A portion of this claim has been asserted for the loss of stock interests in Ferrocarriles Unidos de la Habana, Compania Internacional de Envases, S.A. and an interest in "Rancho Boyeros, Habana, 11%", not otherwise described in the claim.

On several occasions the Commission suggested the submission of appropriate evidence to establish the ownership, loss and value of the stock or bond interests in question. To date, no such evidence has been filed. It may be noted that Ferrocarriles Unidos de la Habana appears to have represented a British investment.

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) (1969).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portions of the claim based upon the asserted ownership, loss and value of the aforesaid stock or bond issue of the enterprises in question. Accordingly, the Commission is constrained to affirm the denial of this portion of the claim.

RECAPITULATION

Claimant's losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Coronela	October 14, 1960	\$300,000.00
Personalty at Coronela	October 14, 1960	32,968.75
Personalty in storage	December 6, 1961	19,315.00
Personalty at farm	December 6, 1961	1,475.00
Cuban Electric 1st Mortgage		
Bonds	August 6, 1960	9,500.00
Republic of Cuba Public Debt		
Bonds	May 1, 1961	<u>5,000.00</u>
		<u>\$368,258.75</u>

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 respective dates 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 as follows:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$ 9,500.00
October 14, 1960	332,968.75
May 1, 1961	5,000.00
December 6, 1961	<u>20,790.00</u>
	<u>\$368,258.75</u>

The following certification of loss will be entered and the remainder of the Proposed Decision is affirmed.

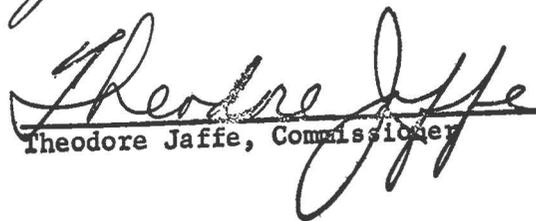
CERTIFICATION OF LOSS

The Commission certifies that PATRICIA O'DONOGHUE DE BROCH 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 Three Hundred Sixty-eight Thousand Two Hundred Fifty-eight Dollars and Seventy-five Cents (\$368,258.75) with interest at 6% per annum thereon from respective dates of loss to the date of settlement.

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

22 OCT 1970


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 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).)

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

IN THE MATTER OF THE CLAIM OF

PATRICIA O'DONOGHUE DE BROCH

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2927

Decision No. CU 1175

Counsel for claimant:

Connolly, Frey, Eschmann &
La Pasta
By: Edward J. Connolly, Esq.

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 \$1,452,500.00, was presented by PATRICIA O'DONOGHUE DE BROCH and is based upon the asserted loss of an interest in certain real and personal property and in certain corporations which were assertedly taken by the Government of Cuba. Claimant stated that she has been a national of the United States since her birth in the United States.

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).)

Claimant states that she owned certain property in her own right and had an ownership interest in other property, and that all of the subject property which was located in the Provinces of Pinar del Rio, Havana and Oriente was taken by the Government of Cuba.

By Commission letter of August 18, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. In a letter dated September 25, 1967, counsel for claimant requested an extension of time. The Commission in a letter dated September 29, 1967, granted an extension of forty-five (45) days and advised counsel that if the evidence was not received within that period of time, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests by a national of the United States in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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

FEB 7 1968

Edward S. Re

Edward S. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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).)

CU- 2927