

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

IN THE MATTER OF THE CLAIM OF

MERCEDES MEDEROS COXE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0595

Decision No. CU 4483

Counsel for claimant:

Clark, Ladner, Fortenbaugh & Young...
By Peter O. Clauss, 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 \$547,141.82, was presented by MERCEDES MEDEROS COXE based upon the asserted loss of interests in certain real and personal property in Cuba. Claimant has been a national of the United States since August 14, 1914.

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 evidence establishes and the Commission finds that claimant inherited interests in certain real property in Cuba, discussed in detail below, pursuant to the will of her late father who died in 1917 and upon the death of her late mother, intestate, in 1950. The properties included urban realty in Havana and Marianao, and improved farms in rural areas of Cuba.

The Commission finds that the real properties in Havana and Marianao were within the purview of the Urban Reform Law, published in the Cuban Official Gazette on October 14, 1960. In the absence of evidence to the contrary, the Commission finds that said urban properties were taken by the Government of Cuba on October 14, 1960. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The Commission further finds that claimant owned a bank account in a Cuban bank with a balance of \$2,176.83, the Cuban peso being on a par with the United States dollar.

On December 6, 1961, Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, property rights, shares, stocks, bonds, bank accounts and other securities of persons who left Cuba. The Commission finds that this law applied to claimant who had left Cuba before that date. In the absence of evidence to the contrary, the Commission finds that claimant's bank account and her rural properties were taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966]; and Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, Id. at 53.)

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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes copies of documents filed with the Cuban authorities in connection with the estates of claimant's late father and mother, showing the distribution of their estates pursuant to the laws of Cuba; an affidavit, dated March 6, 1968, from a former Cuban lawyer and Notary Public (land records official), giving his expert opinion and that of claimant's brother, who managed the properties, on the values of claimant's inherited properties on the dates of loss; and pertinent statements from claimant and counsel with respect to this claim.

The properties in question consisted of five houses and lots in Havana; three farms located in Mariel, Alquizar and Bauta; and three parcels of land located in Jaruco, Havana and Marianao. The houses were constructed of brick and reinforced concrete and each one had two stories. They were located in good sections of Havana, as was one of the parcels of land. Another parcel of land was located on an inland waterfront in Jaruco, which land was once part of a farm that had been sold. The third parcel was located in an urban area and its size was 5,737 square meters. The farms had rich soil, were improved by houses and measured 1,532 acres (Mariel), 66-2/3 acres (Alquizar) and 38 acres (Bauta) in area.

Pursuant to the will of claimant's father, part of his estate was devised in trust for the benefit of claimant's mother who had a life estate therein; and the rest of his estate was devised to his four children in equal shares. Upon the mother's death, which occurred in 1950, the

property held in trust passed to the four children for life with the remainder interest to his grandchildren. Other provisions of his will limited the extent of the property to be held in trust and required the sale of property in order to give claimant's mother a cash legacy. Thus, some of the properties were sold, and subsequently other properties were acquired with some of the proceeds. The interests in the properties which were vested in claimant on the date of loss are indicated below with respect to each item of property.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are the appraisal of the property, set forth in the affidavit of the expert, dated March 6, 1968.

Urban Properties

The Commission finds that claimant's interests in the five urban houses and lots, and in the two urban parcels of land were as follows on the date of loss:

<u>Location of Property</u>	<u>Ownership Interest</u>	
	<u>Fee Simple</u>	<u>Life Estate</u>
525 Avenida de Espana, Havana	1/3 of 2/3	1/4 of 1/3
10 Maloja Street, Havana	1/3 of 1/4	1/4 of 3/4
12 Maloja Street, Havana	1/3 of 1/4	1/4 of 3/4
307 Fourth Street, Havana	1/3 of 1/5	1/4 of 4/5
634 San Martin Street, Havana	--	1/4
Havana (parcel of land)	1/3	--
Marianao (parcel of land)	1/3	--

Based upon the appraisals of these seven pieces of real property, the Commission finds that they had the values of \$76,825.00, \$25,000.00, \$25,000.00, \$53,670.00, \$31,260.00, \$18,000.00 and \$24,000.00, respectively, on October 14, 1960, the date of loss. Accordingly, the values of claimant's fee interests, which extended to only six of these seven pieces of property, were \$17,072.22 (525 Avenida), \$2,083.33 (10 Maloja), \$2,083.33 (12 Maloja), \$3,578.00 (307 Fourth), \$6,000.00 (Havana parcel) and \$8,000.00 (Marianao parcel).

With respect to the values of claimant's life estates in the portions of the properties held in trust, the Commission has adopted the Makehamized mortality table used by the United States Treasury Department in connection with the collection of gift and estate taxes. (See Claim of Richard Franchi Alfaro and Anna Alfaro, Claim No. CU-0048, 1967 FCSC Ann. Rep. 71.) Pursuant to that method of valuation, a life estate in property of a person aged 65-1/2 years, claimant's date of birth being January 15, 1895, is valued at 32.803% of the estate. Since the encumbered properties had the values of \$6,402.08 (525 Avenida), \$4,687.50 (10 Maloja), \$4,687.50 (12 Maloja), \$10,734.00 (307 Fourth) and \$7,815.00 (634 San Martin), the values of claimant's life estates were \$2,100.07, \$1,537.64, \$1,537.64, \$3,521.07 and \$2,563.55, respectively, on October 14, 1960, the date of loss.

Rural Properties

The Commission finds that claimant's interests in the three farms and in the rural parcel of land were as follows on the date of loss:

<u>Location of Property</u>	<u>Ownership Interest</u> <u>Fee Simple</u>
Farm in Mariel	13/30
Farm in Alquizar	1/3
Farm in Bauta	1/3
Jaruco (parcel of land)	100%

Based upon the appraisals of these four pieces of real property, the Commission finds that they had the values of \$500,000.00 (Mariel), \$400,000.00 (Alquizar), \$300,000.00 (Bauta) and \$40,000.00 (Jaruco). Accordingly, the values of claimant's fee interests therein were \$216,666.58, \$133,333.33, \$100,000.00 and \$40,000.00, respectively, on December 6, 1961, the date of loss.

Bank Account

As noted above, claimant owned a bank account with a value of \$2,176.83, which the Commission finds was its value on December 6, 1961, the date of loss.

Recapitulation

The Commission concludes that claimant sustained the following losses within the meaning of Title V of the Act:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
House & lot (525 Avenida)	Oct. 14, 1960	\$ 17,072.22
House & lot (10 Maloja)	Oct. 14, 1960	2,100.07
House & lot (12 Maloja)	Oct. 14, 1960	2,083.33
House & lot (307 Fourth)	Oct. 14, 1960	1,537.64
House & lot (634 San Martin)	Oct. 14, 1960	2,083.33
Havana parcel	Oct. 14, 1960	1,537.64
Marianao parcel	Oct. 14, 1960	3,578.00
Farm (Mariel)	Oct. 14, 1960	3,521.07
Farm (Alquizar)	Oct. 14, 1960	2,563.55
Farm (Bauta)	Oct. 14, 1960	6,000.00
Parcel (Jaruco)	Oct. 14, 1960	8,000.00
Bank Account	Dec. 6, 1961	216,666.58
	Dec. 6, 1961	133,333.33
	Dec. 6, 1961	100,000.00
	Dec. 6, 1961	40,000.00
	Dec. 6, 1961	2,176.83
Total		<u>\$542,253.59</u>

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), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
October 14, 1960	\$ 50,076.85
December 6, 1961	<u>492,176.74</u>
Total	<u>\$542,253.59</u>

CERTIFICATION OF LOSS

The Commission certifies that MERCEDES MEDEROS COXE 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 Five Hundred Forty-two Thousand Two Hundred Fifty-three Dollars and Fifty-nine Cents (\$542,253.59) with interest thereon at 6% per annum from October 14, 1960 on \$50,076.85, and from December 6, 1961 on \$492,176.74, to the date of settlement.

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

12 FEB 1970

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).)

CU-0595