

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

IN THE MATTER OF THE CLAIM OF

CARLAND E. BRUNMIER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0605

Decision No. CU 3862

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, originally in the amount of \$78,825.00, was presented by CARLAND E. BRUNMIER based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimant has been a national of the United States since birth.

Subsequently, it appeared from the record that claimant's wife, who stated that she had acquired nationality of the United States on February 15, 1968, owned a one-half interest in all of the property claimed herein. Pursuant to Section 504(a) of the Act, a claim "shall not be considered" unless the property involved was owned by a national of the United States on the date of loss and continuously thereafter until the date of filing with the Commission, which was December 17, 1965 in this case. In view of the foregoing, claimant's wife would not be an eligible claimant under Title V of the Act, and claimant was so advised. (See Claim of Sigridur Einarsdottir, Claim No. CU-0728, 25 FCSC Semiann. Rep. 45 (July-Dec. 1966).) Accordingly, this claim is deemed to be in the amount of \$39,412.50.

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 record includes a copy of a deed to the real property in question; an affidavit from the agent of claimant and his partner concerning the real property (farm), known as "El Cedro" in Alquizar, Cuba, and a related flower business; a report from abroad; affidavits from individuals having personal knowledge of the facts concerning claimant's property interests in Cuba; a copy of the partnership agreement, evidencing claimant's and his wife's jointly held one-half interest in the partnership property; as well as statements from claimant concerning this claim.

On the basis of the entire record, the Commission finds that claimant owned a 1/4 interest in certain real and personal property of the said partnership, and a 1/2 interest in certain other personal effects, described below, and a stock interest in a Cuban corporation, Instituto del Nino, S.A., which operated a private hospital in Cuba.

On December 6, 1961, the Cuban Government published Law 989, which confiscated all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimant, who had left Cuba prior to that date, and that his interests in all of the property claimed were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The Commission further finds that as a result of said action claimant sustained a loss of property within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Inasmuch as Instituto del Nino, S.A., was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined by Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of 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 previously that a stockholder in such a corporation is entitled to file a claim based upon his stock interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is

designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant has computed his original claim as follows:

BUSINESS INVENTORY-PARTNERSHIP

Farm	\$ 82,000.00
1 truck --International	2,000.00
1 truck--Fargo	1,200.00
1 tractor--Allis Chalmers (diesel)	2,500.00
1 tractor--Allis Chalmers (gasoline)	1,000.00
3 turbine pumps--8" 110 foot column	4,500.00
4 GM Diesel Pump Motors	12,000.00
1 plow--2 discs	500.00
2 large tractor type rotovators	1,500.00
Refrigerator for flower storage	2,000.00
Trays for gladioli bulbs	2,000.00
Gladioli bulbs in storage	12,000.00
Machine to select and grade bulbs	750.00
1 large grass cutter	500.00
Aluminum pipe and sprinkler system	6,000.00
Warehouse at the farm	5,000.00
Furniture at the flower deposit	300.00

TOTAL

\$ 135,750.00

HOUSE INVENTORY-PERSONAL

1 refrigerator--Philco	\$ 100.00
1 dining room set	600.00
1 living room set	400.00
Furniture for three bedrooms	300.00
Television set--Philco	50.00
Furniture--2 patios	100.00
2 lawn mowers--Jacobsen and Toro and garden tools	200.00
Colliers Encyclopedia, Harvard Classics and other books	200.00
Miscellaneous, glassware, cookingware, garage tools, etc.	200.00

Total

\$ 2,150.00

105 shares of stock in Instituto del
Nino, S.A.
1/2 interest in partnership property
above

8,800.00

67,875.00

TOTAL CLAIMED

\$ 78,825.00

As indicated above, however, the claim is deemed to be in the amount of \$39,412.50, representing claimant's one-half interest therein, the other one-half interest belonging to his wife, who is not eligible under Title V of the Act.

The Commission finds on the basis of all the evidence of record that the valuations most appropriate to the properties and equitable to the claimant are those set forth hereafter.

Partnership Property

Claimant has asserted that the farm, "El Cedro," had a value of \$82,000.00, and that the related equipment, warehouse, and other personal property connected with the partnership flower business, had an aggregate value of \$53,750.00, or a total of \$135,750.00 for all of the partnership properties.

The record shows that the real property consisted of land extending over an area of approximately 124 acres with structures thereon, and was not encumbered by a mortgage or other lien. It further appears that claimant and his partner, apparently a non-national of the United States, improved the property by erecting a barbed wire fence, the planting of 250 avocado trees, and the construction of a graded road through the center of the farm. In addition, the partnership expanded its activities by establishing a flower business. The evidence includes an affidavit, dated December 5, 1966, from the managing agent of the two partners, stating that he was offered \$100,000.00 for the farm, but rejected the offer "because cash at that time was of no value to invest in any venture."

Claimant has stated that the farm had three large and productive wells and was situated in one of the most fertile areas of Cuba. He has submitted an affidavit, dated August 2, 1968, listing each piece of machinery and other personal property associated with the partnership enterprises, including dates of acquisition and the cost for each item, aggregating the sum of \$57,290.00

Upon consideration of the entire record, the Commission finds that the valuations for the partnership properties as estimated by claimant are fair and reasonable, and concludes that on December 6, 1961, the date of loss, the aggregate value of all of the partnership properties was \$135,750.00, and that claimant's one-quarter interest therein had a value of \$33,937.50.

Household Effects

The sum of \$2,150.00 has been claimed as the value of the household effects, in which claimant's wife owned a one-half interest. In an affidavit, dated August 2, 1968, claimant has listed each item of such property, including the dates of acquisition and the cost for each item, aggregating the sum of \$3,855.00.

The Commission finds claimant's evaluations to be fair and reasonable, and concludes that the aggregate value of the household effects was \$2,150.00 on December 6, 1961, the date of loss, and that claimant's one-half interest therein had a value of \$1,075.00.

Stock Interest

Claimant has asserted that the 105 shares of stock in Instituto del Nino, S.A., which operated a private hospital, had a value of \$8,800.00. Apparently, no balance sheets or other such financial information is available. However, the record includes affidavits from Dr. Juan Manuel Viamontes, Treasurer of the corporation from 1956 to 1960, Dr. Teodosio Valledor, former professor of pediatrics at Havana University and former member of the Executive Board and medical staff of the hospital, and Mr. Pedro A. Villoldo, formerly attorney for the Cuban corporation from 1955, when it was organized, until February 1960, when he left Cuba. The two physicians have evaluated the 105 shares at \$8,800.00, whereas the attorney has stated that the stock had a value of \$9,000.00.

Upon consideration of the entire record, the Commission finds that the value of the 105 shares of stock in the Cuban corporation, Instituto del Nino, S.A., on December 6, 1961, the date of loss, was \$8,800.00, and concludes that claimant's one-half interest therein had a value of \$4,400.00.

Recapitulation

Accordingly, claimant's losses within the meaning of Title V of the Act may be summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Partnership Assets (1/4 interest)	\$33,937.50
Household Effects (1/2 interest)	1,075.00
Stock Interest (1/2 interest)	<u>4,400.00</u>
Total	<u>\$39,412.50</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.

CERTIFICATION OF LOSS

The Commission certifies that CARLAND E. BRUNMIER 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 Thirty-Nine Thousand Four Hundred Twelve Dollars and Fifty Cents (\$39,412.50) with interest thereon 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

SEP 11 1969

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).)