

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

IN THE MATTER OF THE CLAIM OF

CONSTANCE S. PARDO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0978

Decision No. CU -5887

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 \$339,450.00, was presented by CONSTANCE S. PARDO based on the asserted loss of certain real and personal property 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.

Claimant asserts the following losses:

| | |
|--|---------------|
| 1) Residence at 19401 7th Avenue, Reparto Siboney, Marianao (occupied by claimant's daughter) | \$125,000.00 |
| 2) Residence at 21606 7th Avenue, also Reparto Siboney | 75,000.00 |
| 3) Office and residence at 671 Calle 19, corner A Street, Vedado, Havana | 50,000.00 |
| 4) Personalty used in connection with residence at 21606 7th Avenue, including two automobiles | 28,430.00 |
| 5) Equipment and furnishings of the offices at 671 Calle 19, Vedado | 52,120.00 |
| 6) 8,650 Cuban pesos | 8,650.00 |
| 7) Havana Biltmore Yacht & Country Club stock | <u>250.00</u> |
| | \$339,450.00 |

The record includes supporting evidence, further discussed below. On the basis thereof, the Commission finds that claimant owned certain items of real and personal property in Cuba. Pursuant to the community property laws of Cuba, all property acquired by either spouse during coverture is owned in equal shares by both spouses, except property acquired by gift or inheritance. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) Based upon the evidence of record, the Commission finds that claimant and her husband each owned a one-half interest in the properties subject of this claim as indicated hereafter.

Claimant's spouse acquired nationality of the United States in 1966, and died in 1967. As shown below, the properties subject of this claim were taken by the Government of Cuba prior to his naturalization in 1966. Accordingly, so much of the claim as may be based on his interest, must be and is denied as it is not within the terms of Section 504 of the Act which provides as follows:

(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 Commission finds that properties (1) and (2) above were taken on March 31, 1961, including the personalty (4) used in connection with item (2); that property (3) and the personalty therein item (5) were taken on December 6, 1961, pursuant to Cuban Law 989, published on that date.

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) Residence at 19401 7th Avenue, Marianao

This property is described as consisting of approximately 10,000 square meters of land, being several adjacent lots. The house was a 2-story brick and concrete structure. In the rear was a separate 2-floor building, with garage and the like. These structures included approximately 13 or 14 room spaces, and four baths. The record includes a series of photographs showing the improvements to the house and grounds since purchase in 1937. On this basis the Commission finds that the asserted valuation of \$125,000.00 is fair and reasonable and concludes that this property had such value on the date of loss. Accordingly, claimant's interest therein had a value of \$62,500.00.

2) Residence at 21606 7th Avenue, Marianao

This property was occupied by claimant and her husband. It was built in 1955, and furnished at that time. The house consisted of a one-story brick and concrete ranch type structure, with outside terraces, having approximately

twelve room spaces, and three baths. Claimant has also submitted a series of photographs of this property. On the basis of this record the Commission finds that the asserted valuation of \$75,000.00 for this property is fair and reasonable, and concludes that this improved real property had such value on the date of loss. Accordingly, claimant's interest therein had a value of \$37,500.00.

3) Office and residence at 671 Calle 19, Vedado

This property is described as 2-story, made of brick and concrete. The lower floor was used as a medical office by claimant's husband and the upper floor was a rented apartment. It contained about 19 room spaces with three baths and was purchased about 1945. The Commission finds that the asserted valuation of \$50,000.00 for this property is fair and reasonable, and concludes that it had such value on the date of loss. Accordingly, claimant's interest therein had a value of \$25,000.00.

4) Personalty used in connection with residence in item (2) above

Claimant has furnished a detailed listing of the personalty, including antiques, silver, crystal, appliances and the like, all valued by claimant at \$28,430.00, including \$6,000.00 for two automobiles.

The Commission finds that the antiques and similar properties are not depreciable and had a value of \$4,000.00 on the date of loss; various furnishings including lamps, linens and the like are found to depreciate at a rate of 10 per cent a year, and on the date of loss had a value of \$1,320.00; other furniture and appliances depreciates at a rate of 5 per cent a year and had a value of \$10,703.00 on the date of loss. Clothing, alone, is found to have had a value of \$400.00 on the date of loss.

As to the automobiles, the file does not contain substantiation of the asserted values. However, according to the 1961 Guide of the National Automobile Dealers Association the Dodge 4-door automobile had a value of \$2,825.00, and the Ford Fairlane had a value of \$1,485.00.

Accordingly, the value of this personal property is found as \$20,733.00 and claimant's one-half interest therein was \$10,366.50.

5) Equipment and furnishings of the offices at 671 Calle 19, Vedado

Claimant has submitted a listing of the properties in the several rooms used as offices, as well as a general description of consulting and treating equipment used in a dermatologist specialist's office.

The Commission finds that on the date of loss, this personalty had a residual value of \$39,090.00, and that claimant's interest therein amounted to \$19,545.00.

6) Cuban currency

Part of the claim is based on the asserted loss of the value of Cuban currency in the amount of 8,650 pesos. It appears that an attempt was made to deposit this with a private depository in Cuba, but it was returned to claimant in Florida, in 1961.

On August 4, 1961 there was published in the Official Gazette Law 963, which ordered a currency exchange to be carried out on August 6 and 7, 1961. The law provided that after August 7, 1961, old currency was to be null and of no value. Article XI of Law 963 declared that all currency which, at the time of promulgation, was outside the territory under the jurisdiction of the Cuban State, was to be null and of no legal force.

This currency being outside the jurisdiction of the Cuban State, the Commission holds that claimant's Cuban peso notes became automatically null and of no legal effect on August 4, 1961, the date of the promulgation of Law 963. (Claim of Betty G. Boyle, CU-3473.)

The Commission finds that the value of these Cuban peso notes was \$8,650.00 and that claimant suffered a loss of \$4,325.00 in connection with her one-half interest.

7) Havana Biltmore Yacht and Country Club

The Commission has found that the Havana Biltmore Yacht and Country Club was intervened by the Government of Cuba on March 19, 1960. (See Claim of Arman E. Becker, Jr., Claim No. CU-1094.)

Claimant herein (and her spouse) owned one share of stock in that Cuban corporation which was a membership interest in the Country Club with the

right to use the Club's facilities, but with no interest in the Club's physical assets. The Commission holds that claimant's right of membership alone also constituted property within the meaning of Section 502(3) of the Act, and that upon the intervention of the Club by the Government of Cuba, claimant sustained a loss within the scope of Title V of the Act.

Upon consideration of all the evidence of record, including the Becker claim, the Commission finds that the value of the membership interest in the Country Club should be measured by the investment or cost of membership. The record shows that claimant values the investment at \$250.00. Accordingly, the Commission finds that the value of this interest in the Country Club on March 19, 1960, the date of loss, was \$250.00, and claimant's one-half interest had a value of \$125.00.

Recapitulation

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

| <u>Item</u> | <u>Date of Loss</u> | <u>Value</u> |
|--|---------------------|---------------|
| 1) 19401 7th Avenue | March 31, 1961 | \$ 62,500.00 |
| 2) 21606 7th Avenue | March 31, 1961 | 37,500.00 |
| 3) 671 Calle 19 | December 6, 1961 | 25,000.00 |
| 4) Personalty used at 21606 7th Avenue | March 31, 1961 | 10,366.50 |
| 5) Personalty at 671 Calle 19 | December 6, 1961 | 19,545.00 |
| 6) Cuban currency | August 4, 1961 | 4,325.00 |
| 7) Havana Biltmore Yacht & Country Club | March 19, 1960 | <u>125.00</u> |
| | | \$159,361.50 |

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 as follows:

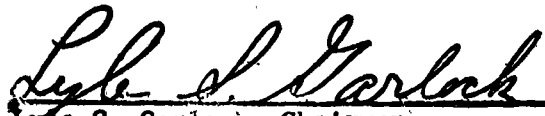
| <u>FROM</u> | <u>ON</u> |
|------------------|------------------|
| March 19, 1960 | \$ 125.00 |
| March 31, 1961 | 110,366.50 |
| August 4, 1961 | 4,325.00 |
| December 6, 1961 | <u>44,545.00</u> |
| | \$159,361.50 |

CERTIFICATION OF LOSS

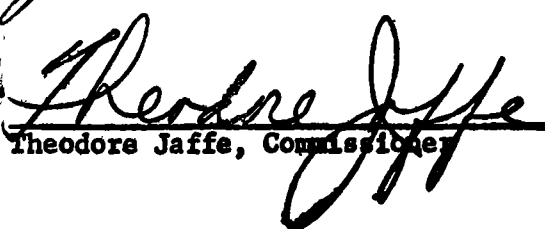
The Commission certifies that CONSTANCE S. PARDO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Fifty-nine Thousand Three Hundred Sixty-one Dollars and Fifty Cents (\$159,361.50) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

APR 21 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).)