

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

IN THE MATTER OF THE CLAIM OF

PAUL V. GEMBORYS

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1078

Decision No. CU -5897

Appeal and objections from a Proposed Decision entered October 14, 1970.  
No hearing requested.

Hearing on the record held on August 11, 1971

FINAL DECISION

On October 14, 1970 the Commission issued its Proposed Decision on this claim which had been asserted for the loss of a 10% interest in a sugar cane plantation known as "Colonia Bueno" and of an investment of \$10,000 in a cattle ranch in Mayari, both in Oriente Province, Cuba.

The Proposed Decision denied the claim for the reason that the record did not establish that claimant owned any interest in the 10 percent part of "Colonia Bueno", and for the further reason that the evidence did not establish the nature of the \$10,000 investment in the cattle ranch in Mayari.

Claimant objects to the Proposed Decision and contends that he was the co-owner of the 10 percent interest in the plantation under the community property law of Cuba; and that the investment of \$10,000 represented a loan to his in-laws for the purchase and development of the cattle ranch.

Full consideration having been given to claimant's objections and to a newly submitted affidavit executed by Jose Bueno, claimant's brother-in-law, the Commission finds the following:

The 10 percent interest was inherited by claimant's wife, Virginia, from her father Jose Guillermo Bueno in 1948. Under the community property law of Cuba this inherited property did not constitute joint property of both spouses,


but remained the separate property of claimant's wife during marriage. At the time of the loss of this property in 1962 claimant's wife was not a national of the United States and the claim for the loss of this property cannot be considered here.


The investment of \$10,000 in the cattle ranch in Mayari was a loan which claimant had granted to his in-laws, Concepcion, Carlos and Jose Bueno bearing a yearly interest of 8 percent. Under Section 502(3) of the Act debts are within the scope of the statute if they are owed by the Government of Cuba, by an enterprise which has 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 shows that the \$10,000 loan was a debt owed by three individuals and that it was not secured by a mortgage or any other charge on the property in question. Consequently, this loan, or investment, does not come within the scope of Title V of the Act.

For the foregoing reasons the Proposed Decision, denying the claim is hereby affirmed.

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

**AUG 18 1971**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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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 \$30,000.00, was presented by PAUL V. GEMBORYS and is based upon the loss of asserted interests in a sugar cane plantation and an investment in a cattle ranch. Claimant stated he has been a national of the United States since birth. Claimant's spouse, Virginia J. Gemborys, is said to have become a national of the United States on May 1, 1967.

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) (1969).)

Claimant bases his claim on an asserted participation with his spouse in a 10 per cent interest in a sugar cane plantation, "Colonia Bueno" at Palma Soriano, Oriente, which interest she is said to have inherited in 1948 from her father, Jose Guillermo Bueno. This 10% interest is valued by claimant at \$20,000. Further, claim is based on an asserted \$10,000 investment in a cattle ranch "Mayari" at Mayari, Oriente. He states the properties were taken in March 1962.

In support of the asserted ownership, there has been submitted a statement by the brother of Virginia J. Gemborys who declares that claimant and his wife were the co-owners of the sugar cane plantation; and that they had contributed \$10,000 to the ranch "Mayari."

There is also of record a copy of a document of January 1, 1956 wherein Virginia Bueno Sosa, as a co-owner of the colony in a 10% proportion,

authorized certain other persons to administer her interests, and further she added capital of \$8,000 for this purpose. In exchange the others were to make monthly payments to her. Claimant is not mentioned therein.

Under the community property law of Cuba, property acquired prior to marriage, or property inherited by either party did not become community property. There is nothing of record to establish that claimant acquired any interest in the 10 per cent part of "Colonia Bueno" inherited by his wife in 1948. Moreover, even if her citizenship were of record, it is asserted that the property was taken in 1962, and in such case the loss could not be certified as she was not a United States national on that date.


With respect to the Mayari investment, the record shows that claimant once owned a farm at El Caney. He stated, however, that he sold this for \$13,000 (consisting of \$8,000 for the farm, \$4,000 for cattle, and \$1,000 for a jeep) and invested \$10,000 in Mayari, leaving \$3,000 with his brother-in-law. He further remarks that a Castro law took bank accounts. However, apart from a statement of the brother-in-law, declaring that the investment was made, there is no other evidence of a probative nature to establish the nature of this investment, whether it represented an ownership interest, or a debt, nor the value of any loss he may have suffered in this connection. Neither is there any evidence of a bank account.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests 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

OCT 14 1970

  
Lyle S. Garlock, Chairman

  
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).)