

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

IN THE MATTER OF THE CLAIM OF

AURORA ZALDUONDO BOTIFOLL

Claim No. CU-2076

Decision No. CU -393

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered October 4, 1967. No hearing requested.

Hearing on the record held October 20, 1971.

FINAL DECISION

The Proposed Decision on this claim, based on the loss of unimproved and improved real property, personal furnishings, stock interests in Cuban entities and mortgage bonds, denied it in its entirety for claimant's failure to sustain the burden of proof.

Subsequent to the issuance of the Proposed Decision claimant submitted some evidence. The Commission is also in receipt of a report from abroad concerning some of the real property.

Since claimant's husband is not a national of the United States any interest he had in the asserted losses is not certifiable under the Act.

Unimproved land, No. 2480
Unimproved land, No. 2481
Improved property, No. 209

The Commission now finds that claimant was the owner of a 1/2 interest in 40% of 1,414.01 square meters of undeveloped land in Vedado, Havana known as property number 2480, and in 1,355.89 square meters known as property number 2481. Claimant was also the owner of a 1/2 interest in her residence known as Calle 8, number 209, Vedado, Havana. All three realties were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. At the time of loss claimant's 1/2 interest in the three properties was \$19,699.09, \$5,320.00 and \$17,500.00, respectively.

Furnishings of Residence, No. 209

Claimant has asserted a loss in the amount of \$26,250.00 for the furnishings, furniture and personal effects in her home. She relies on the affidavit of her insurance broker who attests that he issued to claimant a \$30,000.00 household comprehensive policy on this residence. The policy has not been submitted. It is not known what the policy covered, and it would be unrealistic to find that it was limited to the personal property in the home. The only probative evidence in support of this part of the claim is a bill for the electric fixtures having a depreciated value of \$1,880.00. The Commission finds that claimant suffered a loss in the amount of \$940.00 for her 1/2 interest therein on December 6, 1961 the date of loss.

Bonds

In our decision entitled Claim of Kentucky Home Mutual Life Insurance Company (Claim No. CU-1339, which we incorporate here by reference) we held that the properties of Cuba Northern Railway Company were ^{naturalized} naturalized by the Government of Cuba on October 13, 1960 and that this type of claim is compensable to American nationals under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per \$1,000.00 bond of \$682.56 including interest to October 13, 1960. The Commission finds that claimant owned a one-half interest in five Cuba Northern Railway First Mortgage bonds of a total original face value of \$5,000.00.

On the basis of evidence in the record, the Commission finds that this claimant comes within the terms of the Kentucky Home decision; that she was an American national at the requisite time; that she and her husband were joint owners of five of these aforementioned bonds since prior to October 13, 1960; and that claimant suffered a loss in the amount of \$1,706.40.

Improved Realty at Varadero Beach;
Inmobiliaria Luboarza, S.A.

Claimant states that the Varadero Beach property was owned by the corporation, Inmobiliaria Luboarza, S.A., that she and her husband were the sole stockholders; and that it was purchased for \$19,900.00. The affidavit of Mr. Malaret, an insurance broker, attests to the ownership in the corporation and

avers that the property was valued at \$150,000.00 in 1959. The affidavit of Jose Pelleya concerning ownership as value has also been considered. A claim has also been asserted for further loss of the assets of this corporation and is hereby denied. The Varadero Beach property apparently belonged to the corporation. The item based on corporation has not been established by probative evidence and these items of claim remain denied.

Confecciones Shelly Pam, S.A.

In support of this part of the claim there has been submitted an affidavit of the Vice President and General Manager of said corporation attesting to ownership by claimant's husband of paid shares in the amount of \$15,000.00 and that the Corporation was indebted to said husband in the amount of \$5,000.00. The Commission finds that there is no evidence to establish the number of outstanding shares, the assets of the corporation and its net value. The burden of proof has not been met and, accordingly, this part of the claim remains denied.

Compania Petrolera Cubana Independiente, S.A.

In support of this part of the claim a statement, in Spanish, has been submitted which appears to reflect that claimant's husband had subscribed to 226,950 shares of stock of this corporation at the nominal value of \$1.00 per share and that this corporation was taken in July, 1961. The Commission finds that there is no evidence to establish the number of outstanding shares, the nationality of all the shareholders, and the value at the time of loss. Accordingly, this part of the claim also remains denied.

Claimant has submitted a letter from the Royal Bank of Canada dated April 24, 1964 which lists assets as reported by the Havana Branch on November 15, 1956, concerning claimant's husband's declaration of worth. Some of the assets listed are items claimed herein. However, this statement, by itself, does not establish such parts of the claim.

As to all other items of this claim, only unsupported statements have been submitted. Accordingly, all such items remain denied.

Recapitulation

The losses of claimant are summarized as follows:

<u>Items</u>	<u>Value (1/2 interest)</u>	<u>Date of Loss</u>
Property 2480	\$19,699.09	December 6, 1961
Property 2481	5,320.00	December 6, 1961
Residence	17,500.00	December 6, 1961
Personal property of residence	940.00	December 6, 1961
Bonds	<u>1,706.40</u>	October 13, 1960
	\$45,165.49	

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 claim it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
December 6, 1961	\$43,459.09
October 13, 1960	<u>1,706.40</u>
	\$45,165.49

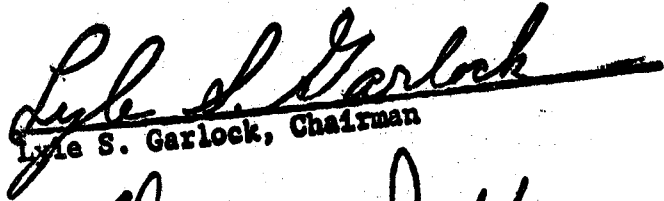
Accordingly, the following Certification of Loss will be entered, and in all other respects the Proposed Decision, as amended herein, is affirmed.

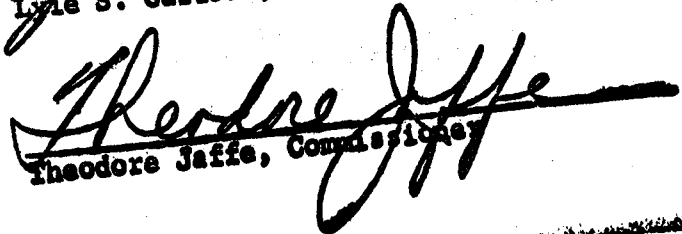
CERTIFICATION OF LOSS

The Commission certifies that AURORA ZALDUONDO BOTIFOLL 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 Forty-Five Thousand One Hundred Sixty-Five Dollars and Forty-Nine Cents (\$45,165.49) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 20 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.

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OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

AURORA ZALDUONDO BOTIFOLL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2076

Decision No. CU **393**

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 \$560,608.18, was presented by AURORA ZALDUONDO BOTIFOLL and is based upon the asserted loss of realty, improvements, personalty, stock interests in assorted Cuban entities, and mortgage bonds. Claimant has been a national of the United States since her naturalization on March 14, 1924.

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).)

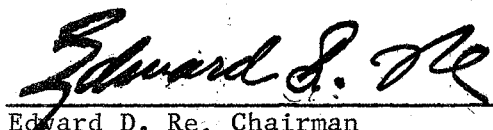
Claimant avers ownership interests in certain real property, improvements and personalty located in Cuba, stock interests in various Cuban enterprises, and five mortgage bonds, which property was assertedly confiscated subsequent to August 22, 1960. Other than claimant's statements, the record contains no evidence concerning ownership, loss or value of the real and personal property, subject of this claim.

By Commission letter of May 31, 1967, claimant was advised as to the type of evidence proper for submission to establish the instant claim under the Act. No evidence in response to this correspondence has been received to date. On July 28, 1967, claimant was invited to submit the suggested evidence within 45 days from that date, and she was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

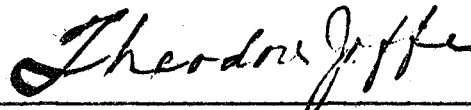
The Commission finds that claimant has not met the burden of proof in that she has failed to establish ownership of rights and interests in property which was nationalized, appropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby 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 4 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, 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).)