

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

IN THE MATTER OF THE CLAIM OF

GARNETT PLANK
and
LOIS PLANK

Claim No. CU - 2250

Decision No. CU 5411

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

Svanas & Svanas

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$24,665.00, was presented by GARNETT PLANK and LOIS PLANK based upon the asserted loss of certain real and personal property in Cuba. Claimants have been nationals of the United States at all pertinent times.

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.

Claimants assert the following losses:

Improved property at Nueva Gerona, Isle of Pines	\$10,000.00
2,500 bushels of cucumbers shipped January to March 1959	5,000.00
2,800 bushels of cucumbers, representing the 1960 crop	5,000.00
Various items of personal property	4,450.00
Shares of stock in a Cuban corporation	<u>215.00</u>
TOTAL	24,665.00

The evidence of record includes an original deed, a number of bills and receipts, and affidavits from claimants. On the basis of the entire record, the Commission finds that claimants each owned a one-half interest in certain real and personal property at Nueva Gerona, Isle of Pines, Cuba.

On December 6, 1961, the Cuba Government published Law 989, which effected confiscation of 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 claimants who had left Cuba prior to that date, and that their interests in the properties were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989, except as noted below. The Commission further finds that as a result of said action claimants sustained losses 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].)

IMPROVED REAL PROPERTY

The record establishes and the Commission finds that claimants purchased certain farm land in Nueva Gerona, Isle of Pines, Cuba on December 14, 1957. It further appears from the record that claimants improved the land by the construction of a one-story wooden house, containing four rooms. Claimants state that the land cost \$5,000.00 and that the improvements had a value of \$5,000.00.

The record shows that the land was purchased for 4,134 Cuban pesos, equivalent to \$4,134.00, the Cuban peso being on a par with the United States dollar. Claimants state that they have no documentary evidence to support their assertion that the improvements had a value of \$5,000.00.

Upon consideration of the entire record and the values of similar properties, the Commission finds that on December 6, 1961, the date of loss, claimants' improved real property had a value of \$7,000.00.

CUCUMBERS

Claimants state that they had leased about 40 acres of farm land in the same area as their real property for the purpose of producing cucumbers. It is asserted that between January and March 1959 claimants shipped 2,500 bushels of cucumbers to a certain produce dealer in Florida, and that the cucumbers were never received by the dealer because Cuban authorities took them. Claimants further state that they had left Cuba on November 10, 1960 and at that time there were about 2,800 bushels of cucumbers ready for harvest.

Claimants have submitted statements and receipts from the produce dealer in Florida relating to shipments of cucumbers prior to the one being claimed. It further appears that those previous shipments had been paid for by the produce dealer. However, the record contains no evidence to support the portion of the claim for the shipment of 2,500

bushels of cucumbers to Florida and the unharvested 2,800 bushels.

Moreover, it appears from the record that the payments made with respect to the earlier shipments included the period December 1958 to March 1959. When this fact was brought to the attention of counsel for claimants, counsel responded by letter dated September 22, 1969 that the claimed shipment for \$5,000.00 occurred in December 1959. However, in a joint affidavit dated October 17, 1969, claimants stated that "during the period of January 1959 through March 1959," they had shipped approximately 2,500 bushels of cucumbers to the produce dealer in Florida. In any event, the record contains no corroborating evidence with respect to this portion of the claim.

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).)

The Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of the claim based upon the shipment of 2,500 bushels of cucumbers and an unharvested crop equivalent to 2,800 bushels of cucumbers. The evidence does not establish that claimants shipped the 2,500 bushels of cucumbers, as asserted; that the shipment was taken by the Government of Cuba; and that it had a value of \$5,000.00. Nor does the evidence establish that claimants' property, owned or leased, had an unharvested crop of cucumbers with a value of \$5,000.00 when their property was taken. Accordingly, this portion of the claim is denied.

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VARIOUS ITEMS OF PERSONAL PROPERTY

The record shows and the Commission finds that claimants jointly owned certain items of personal property maintained on the premises of their real property in Nueva Gerona, Isle of Pines, Cuba. Claimants have submitted a certified list of the items of personal property showing the approximate dates of purchase and costs thereof.

Based upon the entire record and upon application of approximate depreciation for said items of personal property, the Commission finds that claimants' personal properties had the following values on December 6, 1961, the date of loss:

Washing machine, freezer, air-conditioner, stove, and refrigerator, acquired about June 1955, depreciated at 5% per year for 6 1/2 years	\$877.50
Furniture acquired in January 1956, depreciated at 5% per year for 6 years	875.00
Silverware	90.00
Screens acquired in May 1957, depreciated at 5% per year for 4 1/2 years	113.75
Dishes and glasses acquired in December 1956, depreciated at 5% per year for 5 years	225.00
Cooking utensils and linens acquired in June 1955, depreciated at 10% per year for 6 1/2 years	175.00
Outboard motor, acquired in March 1950, depreciated at 15% per year would result in complete depreciation of the property. Salvage value found to be	25.00
Tractor, acquired in April 1959, depreciated at 15% per year for 2 1/2 years	567.50
1953 Chevrolet truck acquired in October 1958 (copy of bill on file), depreciated at 15% per year for 3 years	412.50
Machinery and tools acquired in April 1959, depreciated at 5% per year for 2 1/2 years	<u>962.50</u>
TOTAL	\$4,098.75

SHARES OF STOCK

The record establishes and the Commission finds that claimants jointly owned 115 shares of stock in Minimax Super-Mercados, S. A., a Cuban corporation. The Commission has found that this Cuban corporation was intervened by the Government of Cuba on September 1, 1960, and that the value of one share of stock therein on the date of loss was \$1.0023. (See Claim of Libby Holman Reynolds, Claim No. CU-1384.) Accordingly, the Commission finds that the value of claimants' 115 shares of stock in the intervened Cuban corporation was \$115.26.

Claimants' losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Improved Real Property	December 6, 1961	\$ 7,000.00
Items of Personal Property	December 6, 1961	4,323.75
Shares of Stock	September 1, 1960	<u>115.26</u>
	TOTAL	\$11,439.01

It is concluded that GARNETT PLANK and LOIS PLANK sustained losses in the amounts of \$5,719.51 and \$5,719.50, respectively.

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>
<u>GARNETT PLANK</u>	
September 1, 1960	\$ 57.63
December 6, 1961	<u>5,661.88</u>
TOTAL	<u><u>\$5,719.51</u></u>

<u>LOIS PLANK</u>	
September 1, 1960	\$ 57.63
December 6, 1961	<u>5,661.87</u>
TOTAL	<u><u>\$5,719.50</u></u>

CERTIFICATION OF LOSS

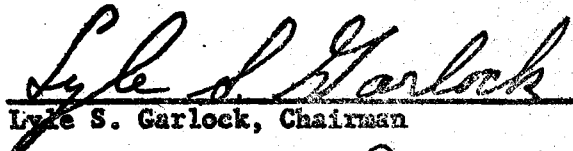
The Commission certifies that GARNETT PLANK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Thousand Seven Hundred Nineteen Dollars and Fifty-one Cents (\$5,719.51) with interest at 6% per annum from September 1, 1960 on \$57.63, and from December 6, 1961 on \$5,661.88 to the date of settlement; and

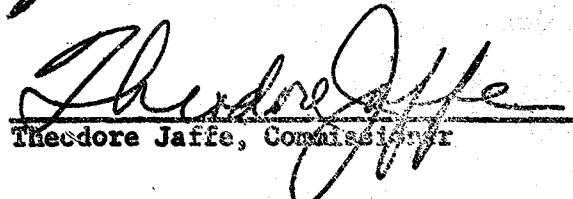
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The Commission certifies that LOIS PLANK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Thousand Seven Hundred Nineteen Dollars and Fifty Cents (\$5,719.50) with interest at 6% per annum from September 1, 1960 on \$57.63 and from December 6, 1961 on \$5,661.87 to the date of settlement.

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

JUL 29 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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).)

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