

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

IN THE MATTER OF THE CLAIM OF

LUCILLE KATHERINE DAVIS BURKE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2284

Decision No. CU-
4539

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by LUCILLE KATHERINE DAVIS BURKE, for \$22,083.84, based upon a retirement pension assertedly due from the Government of Cuba. Claimant has been a national of the United States since her 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.

It is asserted by the claimant that she was entitled to two pensions, one from the Caja del Seguro de los Trabajadores Azucareros and another from the Caja Nacional der Retiro del Transporte Terrestre, hereafter referred to as Sugar Retirement Fund and Transportation Workers' Retirement Fund, respectively.

On the basis of evidence submitted by claimant, the Commission finds that the Sugar Retirement Fund and the Transportation Workers' Retirement Fund awarded and paid to claimant 61.68 and 15.00 pesos per month, respectively, or a total of 920.16 pesos per annum, as a widow's pension. The Commission also finds that beginning with March 1, 1959, no payments on account of such pension had been received by claimant.

The Sugar Retirement Fund was established by Law No. 20 of March 27, 1941, and amended by Law No. 4 of November, 1948, Law-Decrees No. 586 of December 17, 1952, No. 711 of February 27, 1953 and No. 1239 of January 1, 1954, Decree No. 3394 of September 5, 1949, and Law-Decree No. 1959 of January 25, 1955.

The Transportation Workers' Retirement Fund was regulated by Law-Decree No. 1457 of June 3, 1954, as amended by Law-Decrees No. 1645 of August 14, 1954, No. 1955 of January 25 and No. 2064 of January 27, 1955; Law Decrees No. 1605 of August 12, 1954 and No. 991 of June 24, 1953.

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information also shows that retired employees received their monthly retirement benefits (pensions) from the Banco de Seguros Sociales de Cuba up to the time of their departure from Cuba. After their departure from Cuba the benefits remained unpaid. On the basis of evidence of record the

Commission finds that the Government of Cuba refused to transfer any pension benefits, which became due on and after March 1, 1959, to the claimant, who was then residing in the United States.

In our decision entitled the Claim of A. M. Joy de Pardo (Claim No. CU-1906 which we incorporate herein by reference), we held that the refusal of the Government of Cuba to transfer retirement benefits to claimant constituted a taking of her property within the purview of Section 503(a) of the Act. Therefore, the Commission finds that claimant's claim for the loss based upon such taking in the instant claim arose on March 1, 1959.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, the value of the annuity for a person of the age of 57 amounts to 12.7679 times the yearly sum of the annuity. Since on March 1, 1959, claimant was 57 years of age, the value of her discounted annuity on that date amounted to \$920,116 (the peso being on a par with the United States dollar) times 12.7679 or \$11,748.51.

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.

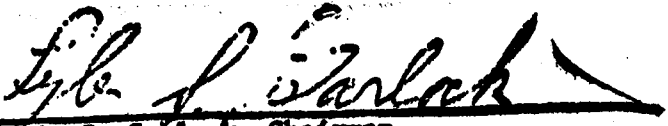
CU-2284


CERTIFICATION OF LOSS

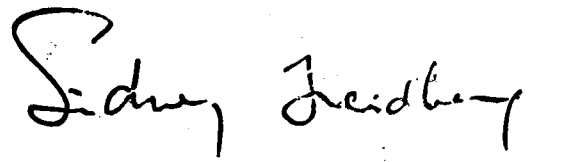
The Commission certifies that LUCILLE KATHERINE DAVIS BURKE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eleven Thousand Seven Hundred Forty-Eight Dollars and Fifty-one Cents (\$11,748.51) with interest thereon at 6% per annum from March 1, 1959, to the date of settlement.

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

MAR 4 1970


Lyle S. Carlock, Chairman


Theodore Jaffe, Commissioner


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).)