

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

IN THE MATTER OF THE CLAIM OF

RUTH GARDINER WARREN MONTALVAN

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2344

Decision No. CU  
5883

Counsel for Claimant:

William H. Greer, Jr., Esq.

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 RUTH GARDINER WARREN MONTALVAN in the amended amount of \$76,987.00 based upon the asserted loss of real and personal property, including a claim for a pension, in Cuba. Claimant, RUTH GARDINER WARREN MONTALVAN, 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 has described her losses as follows:

1) Improved realty	\$30,000.00
2) Personalty	9,755.00
3) Pension	<u>37,232.00</u>
Total	<u>\$76,987.00</u>

On the basis of the record, further discussed below, the Commission finds that claimant owned certain real and personal property in Cuba. Claimant left Cuba on May 21, 1961. The Commission finds that claimant's property in Cuba was taken by the Government of Cuba on May 31, 1961.

#### Real Property

The record includes a copy of the purchase document pursuant to which claimant acquired the improved real property at 17B #16409, Country Club, Marianao, Havana, Cuba.

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 record includes the claimant's affidavit concerning the payment for the property in 1955 of \$20,000, with a \$4,000 mortgage since liquidated, and repairs costing \$2,000. Additionally, the record includes the opinions of those familiar with the property, which has been described as a one-story house with foyer, living room, porch-dining room, kitchen, maid's room, three bedrooms, two baths, 2-car garage, on 1200 square meters.

On the basis of this record, and information as to value of similar properties in Cuba, the Commission finds that on the date of loss this improved realty had a value of \$30,000.

Personalty

The record includes an itemized list of the personalty subject of this claim, including year of acquisition and approximate cost. The Commission has held that while some articles such as silver are not subject to depreciation others such as furniture and appliances may be depreciated at 5% a year; furnishings, such as curtains, drapes, linens, at 10% a year; and clothing at 20% a year.

The Commission finds the personalty had the following values on the date of loss:

Items not subject to depreciation: Silver, etc.	\$1,750.00
Clothing: depreciated at 20% for 2 years	300.00
Drapes, curtains, etc.: depreciated at 10% for 6 years	100.00
Books: residual value	350.00
Other items depreciated 5%:	
for 16 years:	5.00
for 15 years:	7.50
for 13 years:	183.75
for 12 years:	320.00
for 11 years:	114.75
for 10 years:	225.00
for 7 years:	357.50
for 6 years:	2,394.00
for 5 years:	187.50
for 4 years:	<u>200.00</u>
	\$6,495.00

Accordingly the Commission finds that claimant suffered a loss in the said amount of \$6,495.00 with regard to the personalty.

Pension

It is asserted by claimant that subsequent to the death of her husband in 1950 she received a pension of 200.00 pesos per month from the Medical Insurance Plan to which all Cuban physicians contributed. It is further asserted that after May 1, 1961, no amounts on account of such pension right were received by claimant.

Although claimant has not been able to document this item of claim fully, on the evidence of record and evidence available in other pension claims before it, the Commission finds that claimant was entitled to a pension of \$200 a month.

Evidence available to the Commission indicates that Law No. 8 of May 22, 1951, published in the Cuban Official Gazette on May 29, 1951, created an institution to develop a plan to provide for members of the medical profession in case of unemployment or death.

The institution of Medical Insurance has been intervened by the revolutionary Government of Cuba.

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 (BANSESCU). Information available to the Commission shows that retired employees continued to receive monthly pension benefits from said bank until their departure from Cuba. Thereafter, the benefits remained unpaid. As noted above, claimant left Cuba on May 21, 1961. On the basis of the evidence of record, the Commission finds that from May 31, 1961, and thereafter, the Government of Cuba refused to transfer any pension benefits to 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 property within the purview of Section 503(a) of the Act. Accordingly, the Commission finds that claimant's claim for the loss based upon such taking in the instant claim arose on May 31, 1961.

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 48 amounts to 15.5133 times \$2,400, the yearly sum of the annuity. Since on May 31, 1961, claimant was 48 years of age, the value of her discounted annuity on that date amounted to \$2,400 (the peso being on a par with the United States dollar) times 15.5133, or \$37,231.92, and the Commission finds that claimant sustained a loss within the purview of Title V of the Act in that amount.

RECAPITULATION

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

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Real Property	May 31, 1961	\$30,000.00
Personal Property	May 31, 1961	6,495.00
Pension	May 31, 1961	<u>37,231.92</u>
		<u>\$73,726.92</u>

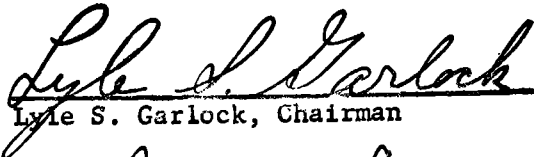
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

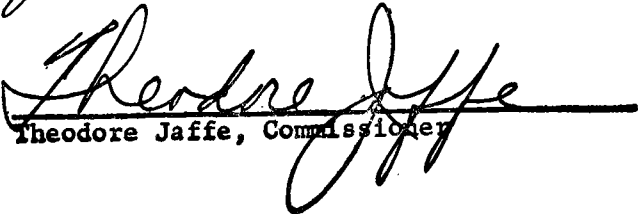
CERTIFICATION OF LOSS

The Commission certifies that RUTH GARDINER WARREN MONTALVAN sustained 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 Seventy-three Thousand Seven Hundred Twenty-six Dollars and Ninety-two Cents (\$73,726.92) with interest thereon at 6% per annum from May 31, 1961 to the date of settlement.

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

OCT 7 1970

  
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, 32 Fed. Reg. 412-13 (1967).)