

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

IN THE MATTER OF THE CLAIM OF

JAMES S. KNOPKE  
and  
HELEN KNOPKE

Claim No. CU -2390

Decision No. CU 5647

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Shapiro, Fried & Weil

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 amended amount of \$93,829.52, was presented by JAMES S. KNOPKE and HELEN KNOPKE based upon the asserted loss of interests in certain real and personal property in Cuba, including a stock interest in a Cuban corporation. Claimants have been nationals 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.

Claimants describe their losses as follows:

1) Improved realty at 37 Avenue between 212 and 218, Marianao	\$ 55,829.52
2) Stock interest in Tiendas Delta, S.A.	15,000.00
3) Furniture, furnishings, clothing, automobile, etc.	<u>23,000.00</u>
	\$ 93,829.52

The record shows that claimants, husband and wife, jointly owned certain real and personal property in Cuba, discussed in detail below. Claimants state that their properties in Cuba were taken by the Government of Cuba pursuant to Law 989.

On December 6, 1961, Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods and chattels, and other property rights of persons who left Cuba. The Commission finds that this law applied to claimants who had left Cuba before that date. In the absence of evidence to the contrary, the Commission finds that claimants' properties other than the stock interest in Tiendas Delta, S.A. were taken by the Government of Cuba on December 6, 1961. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The Commission further finds that Tiendas Delta, S.A. came within the scope of Cuban Law 1076 of December 5, 1962. Claimants have asserted that its assets were taken in 1962. The Commission finds that Tiendas Delta, S.A. was taken on December 5, 1962 and claimants thereby suffered a loss. (See Claim of Perkins Marine Lamp and Hardware Corporation, Claim No. CU-0232, 1967 FCSC Ann. Rep. 42.)

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,

CU-2390

including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

#### REAL PROPERTY

The evidence includes a copy of a deed, statements made by claimants to the Internal Revenue Service in connection with their tax deductions for Cuban losses, and an affidavit from the architect who supervised the construction of a house on the land in question. Based upon the foregoing, the Commission finds that claimants each owned a one-half interest in improved real property at Avenue 37, between 212 and 218, in Marianao, Havana, Cuba, which they used as their residence.

The record shows that the land was acquired in 1957 at a cost of \$11,000.00, the Cuban peso being on a par with the United States dollar. In 1958, the land was improved by the construction of a house consisting of 4 bedrooms and baths, living room, family room, dining room, kitchen, laundry, patio, and terraces. An affidavit from the architect who supervised said construction discloses that the aggregate cost of the structure, including landscaping and other outdoor improvements, was \$44,329.52. Claimants assert a loss of \$55,329.52, including the cost of the land.

On the basis of the entire record, including also photographs of the house, the Commission finds that the amount claimed is fair and reasonable, and that the value of the improved real property on December 6, 1961, the date of loss, was \$55,329.52. It is concluded that each claimant sustained a loss in connection therewith in the amount of \$27,664.76.

CU-2390

CONTENTS OF RESIDENCE

Upon completion of their home, claimants fully furnished it with various items of furniture, furnishings and other personal property. The record includes detailed lists of the items of property, showing the dates of acquisition and costs thereof. It also includes a copy of a list submitted to the Internal Revenue Service indicating the following as the lower of cost or market value of the items of property, apparently on December 6, 1961, the date of loss:

Furniture, household equipment, china, glassware, silverware, etc.	\$ 8,800.00
Clothing, bedding, linens, etc.	900.00
Rugs, television sets, record players, radios, books, etc.	1,900.00
Air-conditioner (five tons and duct work)	<u>1,200.00</u>
Total	<u>\$ 12,800.00</u>

Claimants' official claim form indicates a claim for \$21,000.00 for the loss of said personal property, including an automobile which is discussed hereafter. One of the lists shows that the approximate cost of the items of personal property, excluding the automobile, was \$16,600.00, that the replacement cost thereof would be \$32,400.00, and that the replacement cost less depreciation would be \$19,500.00, according to claimants. It is asserted, moreover, that the market values of the properties, apparently in 1961, were higher than the original costs. However, no evidence has been submitted to substantiate these assertions.

Based upon the entire record, the Commission finds that the aggregate value of the various items of personal property which constituted the contents of claimants' home in Cuba was \$12,800.00 on December 6, 1961, the date of loss. It is concluded that each claimant sustained a loss in the amount of \$6,400.00.

AUTOMOBILE

The record establishes and the Commission finds that claimants jointly owned a 1956 Chevrolet sedan. Claimants assert that the automobile cost approximately \$3,600.00 and that its market value on the date of loss was \$1,500.00.

The Commission finds on the basis of the National Automobile Dealers Used Car Guide as of October 1961 that the value of claimants' automobile was \$800.00 on December 6, 1961, the date of loss. Therefore, each claimant sustained a loss in the amount of \$400.00.

STOCK INTEREST

On the basis of the evidence of record, the Commission finds that claimants jointly owned 150 shares of stock in Tiendas Delta, S.A., a Cuban corporation operating a department store. It further appears that the Cuban corporation had 450 shares of capital stock outstanding on December 5, 1962, the date of loss, so that claimants jointly owned a one-third interest therein.

Since Tiendas Delta, S.A. was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The evidence includes an affidavit, dated January 23, 1970, from the former president of Tiendas Delta, S.A., who attests to his ownership of a one-third interest therein and to the nature and values of the assets and liabilities of the corporation on the basis of notations and recollection.

CU-2390

The asserted valuation of a one-third interest in the corporation, \$15,000.00, is supported by an affidavit, dated December 23, 1964, from the other stockholder owning a one-third interest. Apparently, no other evidence concerning the value of a stock interest in Tiendas Delta, S.A. is available.

On the basis of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimants is that shown by the affidavit of the former president of Tiendas Delta, S.A.

That affidavit shows the assets and liabilities of Tiendas Delta, S.A. as follows:

Cash and Merchandise on Hand	\$ 40,000.00
Furniture and Fixtures	6,000.00
Accounts Receivable	10,000.00
Rent Deposits	<u>1,000.00</u>
	Total
	<u>\$ 57,000.00</u>
Liabilities	<u>\$ 15,000.00</u>

Accordingly, the Commission finds that the value of Tiendas Delta, S.A. or the excess of its assets over its liabilities on December 5, 1962, the date of loss, was \$42,000.00. Therefore, a one-third interest in this Cuban corporation had a value of \$14,000.00. It is concluded that each claimant sustained a loss in the amount of \$7,000.00.

CASH

Claimants assert the loss of cash in the amount of \$2,000.00. However, claimants neither asserted this item as a loss in their tax returns nor have they submitted any evidence to support this portion of their claim. Under date of February 3, 1970, Mr. JAMES S. KNOPKE stated that "no documentary evidence is available to us to support" this portion of the claim.

The Commission finds that claimants have failed to meet the burden of proof with respect to the portion of their claim for the loss of cash. Accordingly, this portion of the claim is denied.

RECAPITULATION

The claimants' losses within the meaning of Title V of the Act are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>JAMES S. KNOPKE</u>		
Real Property	December 6, 1961	\$27,664.76
Contents of Residence	December 6, 1961	6,400.00
Automobile	December 6, 1961	400.00
Stock Interest	December 5, 1962	<u>7,000.00</u>
	Total	<u>\$41,464.76</u>

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>HELEN KNOPKE</u>		
Real Property	December 6, 1961	\$27,664.76
Contents of Residence	December 6, 1961	6,400.00
Automobile	December 6, 1961	400.00
Stock Interest	December 5, 1962	<u>7,000.00</u>
	Total	<u>\$41,464.76</u>

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>JAMES S. KNOPKE</u>	
December 6, 1961	\$34,464.76
December 5, 1962	7,000.00
<u>HELEN KNOPKE</u>	
December 6, 1961	\$34,464.76
December 5, 1962	7,000.00

CERTIFICATIONS OF LOSS

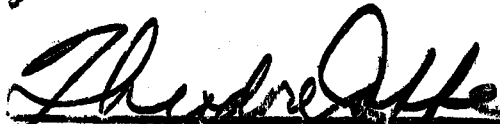
The Commission certifies that JAMES S. KNOPKE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-one Thousand Four Hundred Sixty-four Dollars and Seventy-six Cents (\$41,464.76) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and


The Commission certifies that HELEN KNOPKE 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-one Thousand Four Hundred Sixty-four Dollars and Seventy-six Cents (\$41,464.76) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

AUG 6 1970

  
Leo S. Carlock, 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].)