

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

**IN THE MATTER OF THE CLAIM OF**

EDNA A. VALENTINE PAUL PHILLIPS  
JAMES MARQUETTE PHILLIPS, JR.  
MICHAEL CARR PHILLIPS and  
EILEEN MACVEANEY PHILLIPS,  
Individually and as Mother  
and Natural Guardian of  
ELIZABETH PHILLIPS and  
KATHLEEN PHILLIPS, Minors

Claim No. CU -2495

Decision No. CU 3932

**Under the International Claims Settlement  
Act of 1949, as amended**

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 \$2,100,250.00, was presented originally by EDNA A. VALENTINE PAUL PHILLIPS, a national of the United States since birth, based upon the asserted ownership and loss of certain real and personal property in Cuba.

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.

The record shows that on April 19, 1960, the date of loss found herein as indicated below, all of the claimed real and personal property was owned jointly, pursuant to the community property laws of Cuba, by the original claimant and her late husband, JAMES MARQUETTE PHILLIPS, a national of the United States from birth until his death on May 8, 1966. Mrs. Phillips had filed this claim on her own behalf on the basis of a will of her deceased husband, purporting to leave all his property to her. It appears, however, that the will was never admitted to probate. Accordingly, for the purpose of this decision, the Commission holds that the deceased died intestate, a domiciliary of Florida.

Under the laws of descent and distribution of Florida, the property of a person who died intestate is inherited by his widow and children in equal shares. The records show that on May 8, 1966, the date of death, the deceased husband of the original claimant was survived by his widow, Mrs. Phillips, and three children, JAMES MARQUETTE PHILLIPS, JR., MICHAEL CARR PHILLIPS and PETER GUNN PHILLIPS, all being nationals of the United States since birth. The Commission, therefore, finds that on May 8, 1966, Mrs. Phillips owned a 5/8 interest and each of the three said children owned a 1/8 interest in this claim.

It further appears that PETER GUNN PHILLIPS died on November 28, 1966, also a domiciliary of Florida. Upon his death, his widow, EILEEN MACVEANEY PHILLIPS, and his two minor children, ELIZABETH PHILLIPS and KATHLEEN PHILLIPS, all three of whom have been nationals of the United States since birth, inherited in equal shares his 1/8 interest in this claim.

Accordingly, the two surviving sons of the late JAMES MARQUETTE PHILLIPS, and the widow and two minor children of the late PETER GUNN PHILLIPS have been added as party claimants, the shares of all the claimants being as follows:

EDNA A. VALENTINE PAUL PHILLIPS	5/8 interest
JAMES MARQUETTE PHILLIPS, JR.	1/8 interest
MICHAEL CARR PHILLIPS	1/8 interest
EILEEN MACVEANEY PHILLIPS	1/24 interest
ELIZABETH PHILLIPS, a minor	1/24 interest
KATHLEEN PHILLIPS, a minor	1/24 interest

The evidence includes a copy of a deed, reports from sources abroad, statements from the deceased, JAMES MARQUETTE PHILLIPS, to the Department of State and from his widow to the Commission concerning this claim, as well as extracts from local Florida newspapers, dated May 9, 1966, referring to some of the property in Cuba which is the subject of this claim. On the basis of the entire record, the Commission has found as stated above, that the late JAMES MARQUETTE PHILLIPS and his wife, EDNA A. VALENTINE PAUL PHILLIPS, owned certain real and personal property in Oriente Province, Cuba, and a 50% stock interest in Taco Bay Lumber Company, S.A., a Cuban corporation in Oriente Province, Cuba.

On April 19, 1960, the Cuban Government expropriated all of the foregoing property including the property owned by the Taco Bay Lumber Company, S.A., pursuant to Resolution No. 2375-E-60, under the Agrarian Reform Law of 1959.

Since the Taco Bay Lumber Company, 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 previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in the expropriated assets of the Cuban corporation within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission finds that as a result of said expropriation by the Government of Cuba, the late JAMES MARQUETTE PHILLIPS and his widow sustained losses within the meaning of Title V of the Act, and to which losses of said deceased all of the claimants herein succeeded, as indicated above.

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 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. The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

#### Real and Personal Property

On the basis of the evidence of record, the Commission finds that the real property in Oriente Province owned by JAMES MARQUETTE PHILLIPS, hereafter called the deceased, and his widow extended over an area of 1,072 caballerias (approximately 33,162 acres per caballeria). Situated on this property were buildings, including furniture, fixtures and other personalty therein, as well as farm machinery, sawmill equipment, rolling stock, dense forests with approximately 30 million board feet of stumpage (standing timber), and certain mineral deposits in the land. The record establishes

that no mortgages or other liens encumbered the property, except that the deceased had granted timber rights to 4,400,000 board feet of stumpage to the Taco Bay Lumber Company, S.A.

The record includes statements of the deceased to the Department of State in 1960 concerning the value of said property, statements from individuals having personal knowledge of the facts, and evidence contained in the related claim of the stockholder owning the other 50% interest in the Taco Bay Lumber Company, S.A. (Claim No. CU-2517).

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimants are those hereinafter described.

1. Structures

Based upon a detailed list prepared by the original claimant, supported by reports from abroad and statements of the deceased, the Commission finds that the values of the structures on April 19, 1960, the date of loss, were as follows:

Two homes	\$ 20,000.00
Light Plant	5,000.00
Dock	1,500.00
Store building	3,000.00
Sawmill building	3,000.00
Five farm houses at \$850.00 each	4,250.00
Five warehouses at \$1,000.00 each	5,000.00
Total	<u>\$ 41,750.00</u>

2. Personalty

Based upon the foregoing evidence relating to the structures, the Commission finds that the values of the various items of personalty on the date of loss were as follows:

Furniture and furnishings in the two homes	\$ 10,000.00
Light plant and sawmill equipment	12,500.00
Trucks, tractors, jeep and spare parts	33,500.00
Miscellaneous farm equipment	2,500.00
Total	<u>\$ 58,500.00</u>

3. Land and Stumpage

Based upon reports from abroad, statements of the deceased to the Department of State, and the opinion of an expert contained in the related Claim No. CU-2517, the Commission finds that out of the 1,072 caballerias of land, 300 caballerias were fit only for mining purposes and that the deceased had granted leases with respect to 30% of the mining property. The Commission has held that the lessee of land containing minerals is entitled to claim the minerals under Title V of the Act. (See Claim of Howard E. Holtzman, et al., Claim No. CU-2168.) In the absence of evidence to the contrary, the Commission finds that only 70% of the value of the land containing minerals should be allowed in this case.

Accordingly, the Commission finds that the values of the land and stumpage were as follows on the date of loss:

300 caballerias of land fit for mining, less 30%=210 caballerias, at \$400.00 per caballeria	\$ 84,000.00
772 caballerias of land at \$1,250.00 per caballeria	965,000.00
30,000,000 board feet of stumpage, less 4,400,000 board feet granted to the Taco Bay Lumber Company, S.A., at \$15.00 per 1,000 board feet	<u>384,000.00</u>
Total	<u>\$1,433,000.00</u>

Taco Bay Lumber Company, S.A.

The record shows that the deceased and another stockholder of this Cuban corporation (Claim No. CU-2517) each invested \$55,000.00 to form the Cuban entity on November 11, 1955. This sum of \$110,000.00 was accounted for as follows (the Cuban peso being on a par with the United States dollar):

Bulldozer	\$ 20,000.00
6-wheel drive logging truck	9,000.00
Saws, axes, tools, etc.	1,000.00
Sawmill with 500 board feet daily capacity	14,000.00
Reserve for fuel	3,000.00

Reserve for common labor	5,000.00
Reserve for corporate formation, etc.	3,000.00
Cost of stumpage (4,400,000 board feet)	<u>55,000.00</u>
Total	<u>\$110,000.00</u>

Upon consideration of the entire record, the Commission concludes that on April 19, 1960, the date of loss, the bulldozer, the logging truck, the various tools and the sawmill had depreciated to the extent of 22%, at the rate of 5% per annum customarily applied by the Commission to such property. Accordingly, the Commission finds that said assets of the Cuban corporation had an aggregate value of \$34,320.00 on the date of loss.

In the absence of evidence to the contrary, the Commission finds that the reserves for fuel and labor, aggregating \$8,000.00, had been exhausted and had no value on the date of loss. The Commission further finds that the expenses involved in forming the Cuban corporation, in the amount of \$3,000.00 did not constitute an asset of the Cuban corporation on the date of loss and particularly in view of the other stockholder's allegations in her suit against the deceased, which resulted in a judgment in her favor, that she was induced to invest her money in the Cuban corporation by "false representations".

Based upon the evidence of record, including the evidence in the related Claim No. CU-2517, the Commission finds that the value of 1,000 board feet of stumpage, involved in this portion of the claim, on the date of loss was \$15.00. Accordingly, the Commission concludes that the value of 4,400,000 board feet of stumpage was \$66,000.00 on the date of loss.

Accordingly, the values of the Cuban corporation's assets on April 19, 1960, the date of loss were as follows:

Bulldozer, logging truck, tools, etc., and sawmill	\$ 44,000.00
Less depreciation	<u>9,680.00</u>
Net Value	\$ 34,320.00
Stumpage (4,400,000 board feet at \$15.00 per 1,000 board feet)	<u>66,000.00</u>
Total assets	<u><u>\$ 100,320.00</u></u>

The Commission, therefore, finds that the value of a 50% interest in the Cuban corporation's assets was \$50,160.00.

Recapitulation

Accordingly, the Commission finds that the aggregate losses sustained in this case on April 19, 1960 were as follows:

Structures	\$ 41,750.00
Personalty	58,500.00
Mineral land	84,000.00
Other land	965,000.00
Stumpage	384,000.00
50% interest in the Taco Bay Lumber Company, S.A.	<u>50,160.00</u>
	<u><u>\$1,583,410.00</u></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.



CERTIFICATION OF LOSS

The Commission certifies that EDNA A. VALENTINE PAUL PHILLIPS succeeded to and 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 Nine Hundred Eighty-Nine Thousand Six Hundred Thirty-One Dollars and Twenty-Five Cents (\$989,631.25) with interest at 6% per annum from April 19, 1960 to the date of settlement; and

The Commission certifies that JAMES MARQUETTE PHILLIPS, JR., succeeded to and 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 One Hundred Ninety-Seven Thousand Nine Hundred Twenty-Six Dollars and Twenty-Five Cents (\$197,926.25) with interest at 6% per annum from April 19, 1960 to the date of settlement; and

The Commission certifies that MICHAEL CARR PHILLIPS succeeded to and 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 One Hundred Ninety-Seven Thousand Nine Hundred Twenty-Six Dollars and Twenty-Five Cents (\$197,926.25) with interest 6% per annum from April 19, 1960 to the date of settlement; and

The Commission certifies that EILEEN MACVEANEY PHILLIPS succeeded to and 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 Sixty-Five Thousand Nine Hundred Seventy-Five Dollars and Forty-Two Cents (\$65,975.42) with interest at 6% per annum from April 19, 1960 to the date of settlement; and

The Commission certifies that EILEEN PHILLIPS, as mother and natural guardian of ELIZABETH PHILLIPS, a minor, succeeded to and 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 Sixty-Five Thousand Nine Hundred Seventy-Five Dollars and Forty-Two Cents (\$65,975.42) with interest at 6% per annum from April 19, 1960 to the date of settlement; and

The Commission certifies that EILEEN PHILLIPS, as mother and natural guardian of KATHLEEN PHILLIPS, a minor, succeeded to and 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 Sixty-Five Thousand Nine Hundred Seventy-Five Dollars and Forty-One Cents (\$65,975.41) with interest thereon at 6% per annum from April 19, 1960 to the date of settlement.

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

SEP 24 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Feidberg*

Sidney Feidberg, 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).)