

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

In the Matter of the Claim of

RICHARD T. O'CONNELL

Claim No. CU -2901

Decision No. CU -5892

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on October 14, 1970.
Oral hearing requested.

Oral hearing held on September 30, 1971.

FINAL DECISION

Under date of October 14, 1970, the Commission issued its Proposed Decision certifying losses of the claimant in the amount of \$21,262.25 for the loss of a one-half interest in his residence and certain personal property therein at Miramar, Havana. All other items of the claim including other real property, interest in a business and bonds were denied for claimant's failure to meet the burden of proof.

At the hearing, claimant appeared on his own behalf and offered oral testimony. Subsequently, claimant submitted documentary proof and other competent evidence in support of his claim.

Upon consideration of claimant's testimony and the evidence submitted thereafter, and in light of the entire record, the Commission now makes the following findings:

1. Claimant and his wife owned an apartment building in the Biltmore section of Almendares which was taken by the Government of Cuba on November 15, 1960. At the time of loss the property had a value of \$75,000.00. The Commission finds that claimant suffered a loss in the amount of \$37,500.00 for his 1/2 interest.

2. Claimant and his wife owned a 1/2 interest in a partnership known as Santiago Reguera Canler Company which was taken on November 15, 1960. At the time of loss the value of a 1/2 interest was \$49,180.00. The Commission finds that claimant suffered a loss in the amount of \$24,590.00 for his 1/4 interest.

3. The Commission further finds that claimant was the owner of fourteen 5% First Mortgage Bonds of the Cuban Electric Company, Series D, due 1987 and of twenty, Series C, due 1980. The properties of the Cuban Electric Company were nationalized on August 6, 1960. At the time of loss the total amount of the unpaid indebtedness on claimant's bonds including principal and interest was \$34,000.00.

Claimant has also asserted a claim, in the amount of \$900.00, for the loss of six Cuban Electric Debentures, 4-1/2%, due 1985. Under Section 505(a) of the Act for such a debt to be certifiable it must constitute a charge on property which has been nationalized. These debentures did not constitute such a charge on property and, accordingly, this part of the claim is denied.

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>	<u>Date of Loss</u>
1. Residence and personalty Miramar, Havana	\$21,262.25	November 15, 1960
2. Apartment building Almendares, Marianao	37,500.00	November 15, 1960
3. Partnership	24,590.00	November 15, 1960
4. Bonds	<u>34,000.00</u>	August 6, 1960
	\$117,352.25	

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 as follows:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$ 34,000.00
November 15, 1960	<u>83,352.25</u>
	\$117,352.25


The Certification of Loss, as re-stated below, will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed.

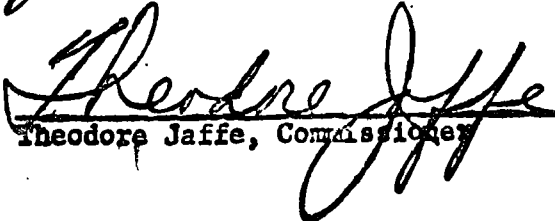
CERTIFICATION OF LOSS

The Commission certifies that RICHARD T. O'CONNELL 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 Seventeen Thousand Three Hundred Fifty-two Dollars and Twenty-five Cents (\$117,352.25) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 20 1971


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 those 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.

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

IN THE MATTER OF THE CLAIM OF

RICHARD T. O'CONNELL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2901

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5892

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by RICHARD T. O'CONNELL for \$557,690.00 based upon the asserted ownership and loss of real and personal property and business interests in Cuba. Claimant 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.

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).)

Claimant describes his losses as follows:

(1) Residence at 121 Second Street, Miramar (including personalty valued at \$16,591.00)		\$ 50,000.00
(2) Rented home at 316 - 18th Street, Miramar, Marianao		65,000.00
(3) Vacation home, San Miguel de los Banos, in Matanzas (including personalty valued at \$8,000.00)		35,000.00
(4) 4-story store and apartment building at 111-113 Ursula Street, La Vibora, Havana		85,000.00
(5) 3-story store and apartment building at 504 - 102nd Street, Biltmore, Almendares, Marianao		75,000.00
(6) Interest in Santiago Reguera Canler Company		49,180.00
(7) Bonds issued by Cuban Electric Company	\$36,475.00	
Interest from April 1960 to December 31, 1966	<u>14,285.00</u>	50,760.00
(8) Income lost to January 1, 1967 on (1) above	\$21,300.00	
on (2) above	26,200.00	
on (4) above	44,000.00	
on (5) above	<u>56,250.00</u>	<u>147,750.00</u>
		\$557,690.00

(1) 121 Second Street
Miramar, Havana

The record includes several affidavits from persons who state their knowledge of claimant's ownership of this improved realty, as well as the personalty therein. In addition claimant has submitted copy of his letter of April 12, 1961 to the American Embassy concerning the property. On the basis of the record, which also includes a telephone bill addressed to claimant at that address, the Commission finds that claimant and his spouse, pursuant to the community property law of Cuba, each owned a half interest in this property. Claimant married his spouse in 1947, and states that he

purchased the property in 1953. Albertina O'Connell, however, is a Cuban national and therefore her interest is not within the jurisdiction of the Commission. Accordingly, so much of the claim, on this and other items, as is based on her interest must be and hereby is denied.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

Claimant has stated that he brought his family out of Cuba in July, 1960, that the property was rented, and that in November, 1960, it was taken over by agents of the Cuban Government. Accordingly, based on this record, the Commission finds that claimant's interest in the property at 121 Second Street, Miramar, was taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and in the absence of evidence to the contrary, that the taking occurred on November 15, 1960. Further, the Commission finds that the personal property in the house was also taken by the Government of Cuba on November 15, 1960.

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.

Claimant states he purchased this property in 1953 for \$27,500.00 and thereafter made repairs and alterations which increased the value to \$35,000.00. He has described the lot as 20 by 30 meters, and the house as having 9 rooms, the structure being a one-story house with a split level rear, composed of cement and brick having a flat roof. The ground floor is described as having a living room, foyer, guest room and bath, an inner hall,

enclosed patio; the upper rear having three bedrooms, a hall and bath; the lower rear having a dining room, kitchen, servant's room and bath, rear and side patios. He also submitted photographs which show portions of the property. He has asserted the monthly rentals as \$300.00.

On the basis of this record, and considering evidence available to the Commission as to the values of similar properties in Cuba, the Commission finds that on the date of loss this improved realty, with a 9-room house having usual utilities, had a value of \$32,700.00 and concludes that claimant suffered a loss in the amount of \$16,350.00 within the scope of Title V of the Act, as a result of the taking of this property by the Government of Cuba.

With respect to the personalty in the property, claimant has submitted a list of furniture and fixtures with values representing his estimated replacement value of the furniture, totaling \$16,591.47. The Commission however has held that replacement values refer to replacement in kind. It appears from the record which includes invoices, shipping documents and the like, that the average date of acquisition of this personalty was 1954, thus having an age of 6 years at the time of loss. The Commission has determined that apart from antiques not subject to depreciation, furniture and appliances must be depreciated at a rate of 5 per cent per annum; and furnishings including drapes, lamps, clothing, must be depreciated at 10 per cent per year. Accordingly, the Commission finds that the personalty at 121 Second Street, owned by claimant and his spouse, had a value of \$9,824.50 on the date of loss, and that claimant thereby suffered a loss of \$4,912.25 within the meaning of Title V of the Act.

With respect to the claim for rental income lost, claimant has not established that any rent was due for the period up to November 15, 1960, and after that date the property belonged to the Government of Cuba. However, the Commission has provided for interest on the certifiable loss, as further set out below. Accordingly this item of claim is denied.

- (2) 316 - 18th Street, Miramar
- (3) Home at San Miguel de los Banos
- (4) Apartment building in La Vibora

Claimant has stated that these properties were acquired by Mrs. O'Connell through "anticipated inheritance", by deed, prior to the death of her father, in 1953. He has submitted excerpts from a document he describes as a Notarial Record showing liquidation of Compania Territorial Betina, S.A., a company said to have been owned by Mrs. O'Connell's father. He has also submitted portions of the will of said Santiago Reguera, father of Mrs. O'Connell.

Under the community property law of Cuba, inherited property remains separate from the community property. The Commission finds that the record does not establish by probative evidence that claimant acquired an ownership interest in such properties. The Commission finds also that claimant has not established any entitlement to rental income. Accordingly, claim as to these properties, and any personalty involved, must be and hereby is denied.

- (5) Apartment building at
504 - 102nd Street, Biltmore

Claimant has stated that he purchased this property in 1953, when it consisted of a ground and second floor; and that thereafter two floors were added at a cost of \$40,000.00. He has described the property in detail and further asserted the rental as \$600.00 per month. However, the record is devoid of probative evidence of ownership which would permit the Commission to certify that he suffered a loss in connection with this property. The record reflects that detailed suggestions were made to claimant by letter of August 10, 1967, at which time the Commission also offered to attempt to obtain evidence for the claimant, and sent him appropriate forms for completion and return to the Commission. A form of follow-up letter was sent him on October 20, 1967. There is no certainty that any effort made by the Commission at this time would result in a report. The matter of ownership was also referred to in Commission letter of August 27, 1968. Similarly, claimant has not established entitlement to any rental income from this property. Accordingly, claim based on this item must be and is denied.

(6) Santiago Reguera Canler Company

Claimant asserts a 50 per cent interest in this entity, which he values at \$9,180.32. He has explained the dissolution of the original company and the formation of the new in 1950. The company was dedicated to the distribution of oil products and lubricants, as well as allied products. He has submitted various documents concerning shipments to Mr. Santiago Reguera Canler; an untranslated 1954 provisional balance signed by him and S. Reguera; a letter of December 7, 1948 which he cites as the basis for his calculation of loss. There is also a listing of some accounts receivable arising in 1957, 1958 and 1959.

However, claimant relies for evidence of his ownership, on a letter of Pennsylvania Petroleum Products Co., which recites that claimant was equal partner with his brother-in-law. The Commission finds, however, that this letter, unsupported by probative evidence, does not provide a basis for a finding that claimant owned a one-half interest in this entity at the time of any loss by actions of the Government of Cuba. An untranslated, unsigned copy of a paper which is apparently a special power, and concerned the predecessor of the claimed partnership, does not assist in such a finding.

In the absence of probative evidence of ownership at the time of loss, the Commission is constrained to and does deny this item of claim.

(7) Cuban Electric Company bonds

Claimant has asserted the purchase of a number of Cuban Electric Company mortgage bonds and debentures, for which he claims market value. He has described the securities as bearer and has listed the numbers of them. He has submitted some evidence as to market quotations for such bonds. He has not submitted, however, evidence of his ownership of such bonds. This was also touched upon in the Commission's letter of August 10, 1967. In the absence of such evidence the Commission is constrained to and does deny this item of the claim.

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.

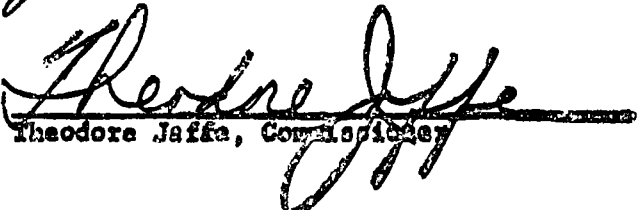
CERTIFICATION OF LOSS

The Commission certifies that RICHARD T. O'CONNELL 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 Twenty-one Thousand Two Hundred Sixty-two Dollars and Twenty-five Cents (\$21,262.25) with interest at 6% per annum from November 15, 1960 to the date of settlement.

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

OCT 14 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. 31.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)