

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

IN THE MATTER OF THE CLAIM OF

CONRAD FRANCIS ELSNER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -4277

Decision No. CU - 5922

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was opened by the Commission on behalf of CONRAD FRANCIS ELSNER while he was absent from the United States. Subsequent to his return in September, 1968, he adopted this action and specified a claim in the amount of \$955,806.80 based upon the asserted ownership and loss of real property, personalty and a business interest. Claimant has been a national of the United States since his naturalization on July 6, 1920.

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 described his losses as follows:

(1) Rancho Products Corporation	\$500,000.00
(2) Piece of land, 268,404 square meters, acquired on April 5, 1945	125,000.00
(3) 2 plots of land in Almendares 1908.88 square vara	59,076.80
(4) 2 plots, 268,404 square meters "Parcelacion Taoro"	155,000.00
(5) House and home, 1940/1941	45,000.00
(6) Furnishings and fixtures of the home	<u>71,730.00</u>
	\$955,806.80

Rancho Products Corporation

The record includes copies of the two stock certificates issued by this corporation, one to claimant for 2,499 shares, and one issued to his spouse for one share endorsed in blank, representing capital of 250,000 pesos. Claimant's spouse acquired nationality of the United States by marriage on March 11, 1922. She died on June 4, 1964, devising and bequeathing her property interests to claimant. The Corporation engaged in canning fruit juices and similar products, was nationalized on October 26, 1960, pursuant to Law 851, and Resolution 3 thereunder. The record contains a copy of this Act of INRA (National Institute for Agrarian Reform) which had been charged with such actions through its Department of Industrialization.

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". 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.

Claimant has submitted a balance sheet for December 31, 1959, further discussed below, and which appears to show a net worth of \$310,225.80. Claimant has stated that sales had reached about over \$1,000,000 when the company was taken over; and also that it had monthly sales of \$150,000. He has stated that the real estate and machinery are undervalued on the balance sheet by about \$250,000 and thus he estimates his claim to be just at \$500,000. The record also includes a picture of the plant.

The balance sheet shows assets of \$447,439.82, including, among other things:

Land	\$103,906.40
Buildings	68,279.39
Machinery & Equipment	132,768.00
Inventories of Products and Materials	69,738.09

There is no evidence of record, however, which would warrant a finding of a greater value for the aforesaid items. The liabilities are shown on the balance sheet as \$137,214.02. A debt to the claimant shown thereon in the amount of \$1,766.97 has not been claimed. Accordingly, the

Commission finds that the net worth of the Corporation on the date of loss was \$310,225.80 and concludes that claimant suffered a loss in that amount within the scope of Title V of the Act.

Personalty

Claimant has submitted a detailed list of personal items and asserted values, of furnishings and fixtures in his house which he states was inventoried by Cuban inspectors and, shortly before leaving, taken over by the Cuban Government. Claimant states the items were acquired over a period of years and were really objects of art. The Commission finds that claimant was the owner of the personalty listed. On December 6, 1961, the Cuban Government published its Law 989 in its Official Gazette, which effectively confiscated all assets, personal property and real estate, rights, shares and stocks, bonds and securities of persons who left the country.

The Commission finds that the Cuban Government took title to this personalty on March 4, 1967, regardless that claimant remained in possession for a while thereafter.

Claimant states the values shown are "collectors" prices on the bid side. No evidence is of record in support of this statement, however. It totals \$71,730 which claimant states may be unimportant if certain items, as oil paintings, were found to be legitimate.

The Commission has considered this list, as well as evidence of value of similar properties, and considering the lack of support for many of the values ascribed to items, finds that the property listed had a value of \$8,820 and concludes that claimant suffered a loss in that amount within the scope of Title V of the Act.

Items (2) Through (5) of Claim Items

(2) Claimant states he acquired 268,404 square meters on April 5, 1945, by Notarial Document 105; that a spring was located thereon and plantings prepared. The Government it is said expropriated 8,000 square meters and claimant was allowed an indemnization of \$8,000. He has further

stated that the discovered water supply supplied Santa Fe and Baracoa with drinking water.

(3) claimant asserts that through his late wife's will, he inherited two plots on 84th Street in Ampliacion de Almendares, measuring 1,908.88 square vara; that before the fall of Batista it was worth 35.00 pesos per vara; that claimant converted it to a parking lot at an expense of \$1,811, but that it was expropriated on October 8, 1964.

(4) Claimant states that by Notarial Document No. 324, two pieces of land were combined into one parcel measuring 268,404 meters, representing a new undertaking called "Parcelacion Taoro"; that it was then parcelled into farm lots of not less than 2,000 varas; that entrance portals were built at a cost of \$17,000; that after the Government of Cuba took it over, it was used for cattle and poultry.

(5) Claimant asserts that his home was built from brick and jaimanita stone, costing \$75,000 during 1940/1941; that upon his wife's death it was considered communal property; that the Government of Cuba valued it for tax purposes at \$45,000, which he accepted and paid. He states that at one time he needed money for the canning factory and borrowed \$20,000 repaying same by instalments of \$168.80 and enclosed a document described as a receipt for \$50.61, indicating that the mortgage was thus paid off by October 28, 1966. He also states that the public document confirming his ownership was withheld by the Banco Nacional Inspector when he left Cuba.

The Commission has attempted to assist claimant in establishing his asserted ownership of these items. By letter of October 10, 1968, forms were forwarded to him for completion, by which the Commission might proceed to attempt to obtain such evidence. At that time claimant was informed of the stringent budgetary limitations imposed on the Commission, greatly reducing the staff. Claimant did not utilize

the suggested forms, however. The Commission did recover for him documentation which he had left in a private depository. These were transmitted to claimant on December 4, 1968, with the suggestion that he return any documents, with translations, which might support the claim.

Thereafter, claimant submitted various documents, without translations, which could not be readily identified with the several items of claim. On several occasions it was brought to claimant's attention that such supporting evidence was desirable. By letter of August 3, 1970, the Commission commented on each item of claim and pointed out that support was not found for items (2) through (5). Documents submitted by claimant were returned for translation. Again claimant was provided with blank forms for requesting the Commission's assistance in obtaining evidence as to the several items. Even if forwarded at this time, it is not certain that any report would be received. However, claimant returned the blank forms to the Commission with his letter of August 19, 1970 and stated that these items would be left to later generations to straighten out.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included

in each claim. Thus, the Commission finds that claimant has not met the burden of proof in that he has failed to establish with regard to items (2) through (5), ownership of rights and interests in property which was nationalized, expropriated, or otherwise taken by the Government of Cuba. Accordingly, the Commission is constrained to deny these portions of the claim and they are hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of these portions of the claim.

Recapitulation

Claimant's losses may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
Rancho Products Corporation	October 26, 1960	\$310,225.80
Personalty	March 4, 1967	<u>8,820.00</u>
		\$319,045.80

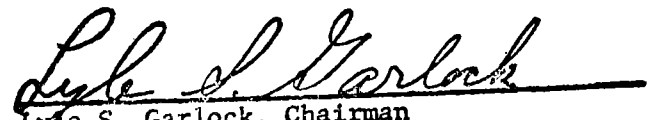
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim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

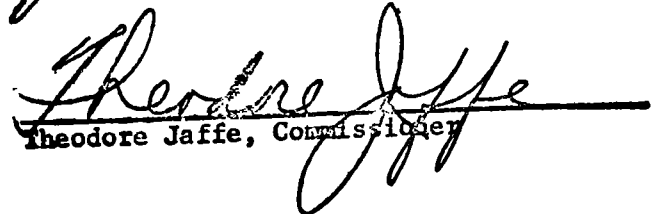
CERTIFICATION OF LOSS

The Commission certifies that CONRAD FRANCIS ELSNER 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 Three Hundred Nineteen Thousand Forty-Five Dollars and Eighty Cents (\$319,045.80) with interest at 6% per annum from the dates of loss to the date of settlement.

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

22 OCT 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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).)