

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

IN THE MATTER OF THE CLAIM OF

RICHARD D. BURFORD  
and  
CATHERINE L. BURFORD

Claim No. CU-0653

Decision No. CU - 6194

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, was presented by RICHARD D. BURFORD in the original amount of \$1,934,055.92, based on the asserted loss of 151.75 caballerias of land comprising a sugar plantation known as San Lorenzo de Viaro Colonia La Atomica in Sola, Camaguey, and other properties. 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.

The losses subject of this claim, after amendments and recomputations, are described as follows:

Part I:

Cane land: 43 caballerias at \$7,000	\$301,000.00	
Batey land: 4 caballerias at \$3,000	12,000.00	
Pasture land: 51.75 caballerias at \$5,000	258,750.00	
Undeveloped land: 13 caballerias at \$2,000	26,000.00	
Timber land - 40 caballerias at \$3,000	120,000.00	
Sepa (plant remaining after cutting) \$6.00 per 100 arrobas of cut cane - 2,800,000 arrobas	168,000.00	
Grass (on the pasture land) 51.75 caballerias at \$2,000	103,500.00	
Standing cane (ready for cutting) 2,800,000 arrobas at \$7.00 per 100 arrobas	196,000.00	
Standing timber - 40 caballerias at \$3,300	132,000.00	
Quota - negotiable contract from Florida Sugar Mill and Jaronu Sugar Mill 1,000,000 arrobas at \$5.00 per 100 arrobas	50,000.00	
Installations & Equipment - after depreciation	<u>249,064.20</u>	
		\$1,616,314.20

Part II:

(1) Clothing, depreciated	\$ 2,399.18	
(2) Buick automobile, depreciated	4,896.50	
(3) Store Inventory, depreciated	24,097.50	
(4) Lot at Puerto Piloto	500.00	
(5) Beach house and furnishings, depreciated	7,660.45	
(6) Agricultural machinery, depreciated	161,326.90	
(7) Livestock	254,340.00	
(8) Furniture and Furnishings, depreciated	14,256.83	
(9) Other household possessions, depreciated (the last two items were used in a house belonging to claimant's father)	4,051.55	
Monies Lost:		
(10) Life insurance	\$ 6,343.00	
(11) Home insurance	1,326.00	
(12) Robbery	20,000.00	
(13) Legal fees	16,000.00	
(14) Travel expenses	11,000.00	
(15) Currency	<u>5,580.00</u>	<u>60,249.00</u>
		<u>533,777.91</u>
		\$2,150,092.11

The record includes a Notarial Document reflecting ownership of the properties in Part I above, by claimant's predecessor, reports to the National Institute of Agrarian Reform in 1959, a report to the American Embassy in

May 1960, a report from abroad as well as affidavits and acknowledgments of persons having knowledge of the facts of ownership, including Mr. Burford's sister and mother. On the basis of this record, the Commission finds that RICHARD D. BURFORD was the sole owner of the properties above listed in Part I, having acquired them as a gift from his parents.

Further, the record includes affidavits of persons having knowledge regarding many of the properties in Part II, including a detailed affidavit from the claimant, RICHARD D. BURFORD, on the basis of which record the Commission finds that claimants were the owners of many of the items in Part II, further discussed below.

Under the community property law of Cuba, spouses acquire equal interests in property acquired during coverture (see Claim of Robert L. Cheaney, et ux., Claim No. CU-0915), but this does not apply to property acquired by gift. Accordingly, the Commission finds that CATHERINE L. BURFORD, the spouse of RICHARD D. BURFORD, has no interest in the property listed in Part I above; but that as to any certifiable items in Part II, she held equal interests, this property having been acquired during the marriage, by the industry of either or both spouses.

The Agrarian Reform Law of May 17, 1959, published in the Cuban Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided for the expropriation of rural properties. Regulations for carrying out the expropriation of such rural property were contained in Law 588, published on October 9, 1959. Based on evidence of record, the Commission finds that on October 26, 1959, the properties of RICHARD D. BURFORD listed in Part I above, and those under Part II designated as (3) Store inventory, (6) Agricultural machinery, and (7) Livestock, were in fact intervened or otherwise taken by the Government of Cuba.

The Commission further finds that on October 19, 1960, agents of the Government of Cuba physically took over those properties listed in Part II which are designated as (1) Clothing, (2) automobile, (4) and (5) lot, beach house and furnishings, as well as (8) and (9) furniture, furnishings and other household possessions.

CU-0653

The Commission therefore finds that claimants suffered certain losses within the scope of Title V of the Act. (See Claim of Council Bluffs Savings Bank, Claim No. CU-1290; and Claim of Jack Moss, Claim No. CU-0225, 25 FCSC Semiann. Rep. 52 [July-Dec. 1966].)

The items listed as "Monies Lost" will be discussed further below.

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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes a statement by the President of the National Executive Committee of the Association of Sugar Cane Plantation Owners of Cuba, concerning the value of land devoted to sugar cane cultivation, the value of sepa and of standing cane; the inventories of property submitted to INRA and the American Embassy, giving evaluations; affidavits of persons having personal knowledge of the properties, including that of claimant who managed this colonia and those of his parents (Claim No. CU-0092) and of his sister (Claim No. CU-0114), for fifteen years, and who has described the properties in detail.

Additionally, the record includes statements from officers of the Florida Industrial Corp. of New York (which operated a sugar mill at Florida, Camaguey) and of the American Sugar Refining Company of New Jersey (whose Cuban subsidiary Central Cunagua, S.A., operated sugar mills at Jaronu and Cunagua). These statements set out the number of arrobas of cane supplied by the Burford Colonias to these mills.

CU-0653

Further, claimant has supplied a detailed description of the properties referred to in Part II of this claim. The Commission has also considered photographs and other evidence of record as to the values of similar properties in Cuba.

On the basis of this record the Commission finds that the asserted values of the properties so far discussed in this decision are fair and reasonable and concludes that claimants suffered the following losses in connection with the taking of their properties by the Government of Cuba on October 26, 1959 and October 19, 1960:

RICHARD D. BURFORD	October 26, 1959	\$1,616,314.20
	October 26, 1959	219,882.20
	October 19, 1960	16,882.25
CATHERINE L. BURFORD	October 26, 1959	219,882.20
	October 19, 1960	16,882.25

There remain for consideration the items listed under "Monies Lost."

Item (10) refers to two life insurance policies, Nos. 1090790 and 1050625, with the Confederacion de Canada. Claimant states that these were cancelled in 1960 because having been paid with Cuban pesos, the insurance company would not convert them to continue payments in dollars, while the company was not permitted to operate in Cuba. Item (11) refers to two policies on two houses of claimant's father and their contents (partly owned by claimant), and he contends they were also cancelled.

Claimant has not shown however, that these policies were due and that the proceeds were taken by the Government of Cuba. Accordingly, these items of claim are denied.

As to Item (12), claimant avers that on March 8, 1959 he was forced at gunpoint by representatives of the Cuban Government to sign and forfeit a check in the amount of \$20,000, which represented money due from the Central Florida Sugar Mill. The Commission finds that the proceeds of this check were taken by the Government of Cuba on March 8, 1959, and that claimants thereby suffered a loss in the amount of \$20,000 within the scope of Title V of the Act.

CU-0653

(13) Legal fees, and (14) Travel expenses: The claim for legal fees is in the amount of \$16,000 for counsel in incidents covering personal harassment and confiscation of property, particularly in connection with a suit brought to challenge the taking of the Colonia Quince (CU-0114). The Commission has determined however that no specific provision is made in the statute for the inclusion in certifications of loss for attorneys fees or other expenses incurred by claimants in pursuing claims, and has held that such expenditures do not come within the purview of the Act. (See Claim of E. R. Squibb & Sons Inter-American Corporation, Claim No. CU-2469.) Moreover, the travel expenses were incurred through a period of time in dealing with the Government of Cuba, and its labor unions. The Commission holds that these expenditures do not represent properties taken by the Government of Cuba. Accordingly, these items of claim are denied in their entirety.

(5) Currency: The record establishes that claimant had delivered 5,580 pesos to the American Embassy in Havana on October 20, 1960. Subsequently, upon the closing of the United States Embassy in Havana, this and other funds deposited with the Embassy were turned over to a private depository. Cuban Law 963 of August 4, 1961, effected a currency exchange, the old currency to be surrendered on August 6 and 7, 1961. Amounts over 200 pesos were placed in special accounts. By Law 964 of August 9, 1961, the balance of the special accounts over 10,000 pesos passed to the State Treasury.

In the absence of evidence to the contrary, the Commission finds that claimant's fund of 5,580 pesos was taken by the Government of Cuba on August 9, 1961, the date Law 964 was effective, and further, that the 5,580 pesos had a value of \$5,580, and concludes that claimants sustained a loss in that amount within the meaning of Title V of the Act.

CU-0653

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>
RICHARD D. BURFORD	March 8, 1959	\$ 10,000.00
	October 26, 1959	1,836,196.40
	October 19, 1960	16,882.25
	August 9, 1961	<u>2,790.00</u>
		\$1,865,868.65
CATHERINE L. BURFORD	March 8, 1959	\$ 10,000.00
	October 26, 1959	219,882.20
	October 19, 1960	16,882.25
	August 9, 1961	<u>2,790.00</u>
		\$ 249,554.45

CERTIFICATIONS OF LOSS

The Commission certifies that RICHARD D. BURFORD 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 Million Eight Hundred Sixty-five Thousand Eight Hundred Sixty-eight Dollars and Sixty-five Cents (\$1,865,868.65) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

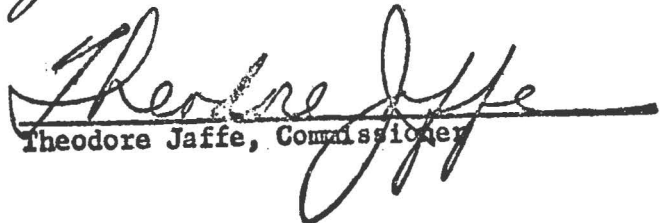
CU-0653

The Commission certifies that CATHERINE L. BURFORD 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 Two Hundred Forty-nine Thousand Five Hundred Fifty-four Dollars and Forty-five Cents (\$249,554.45) 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 Proposed  
Decision of the Commission

MAY 19 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 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 (1970).)

CU-0653