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

IN THE MATTER OF THE CLAIM OF

MARJORIE S. HEARST

Under the International Claims Settlement Act of 1949, as amended

Claim No.CU-3016

Decision No.CU 5740

Counsel for claimant: Aaron, Aaron, Schimberg & Hess
By Thomas S. Eisner, Esquire

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 $67,429.35, was presented by MARJORIE S. HEARST based upon the asserted loss of certain real and personal property 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 record includes copies of original deeds evidencing ownership of the real property claimed herein; affidavits from individuals having personal knowledge of the facts; copies of income tax returns showing the allowance of the properties in Cuba as deductions; and a detailed list of the various items of personal property in question.

On the basis of the entire record, the Commission finds that claimant and her late husband, Jack Hearst, a national of the United States since birth, jointly owned certain real and personal property in Cuba. Upon his testate death on October 23, 1962, his 1/2 interests in the properties were devised to claimant and his three foster children, who are the natural children of claimant by a prior marriage. The record shows that prior to the filing of this claim, the three children, nationals of the United States since birth, assigned their interests in the claim to their mother, the claimant. Accordingly, the Commission finds that claimant is the sole owner of this claim.

On December 6, 1961, the Cuban Government published Law 989, which confiscated all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to claimant and her late husband, who had left Cuba prior to that date, and that their real and personal property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The Commission further finds that as a result of said action claimant and her late husband sustained losses of property within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

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 asserted the following losses:

Land and buildings on the Isle of Pines, Cuba		$50,553.12
Various items of personal property		16,876.23
	Total	$67,429.35

In support of her valuations, claimant has submitted affidavits from individuals who are familiar with the properties and the values thereof, including one affidavit from a former owner of one item of real property herein. Additionally, claimant has filed copies of tax returns indicating that she and her late husband had claimed $67,429.35 as a deduction on account of the Cuban losses herein. It appears from correspondence from the Internal Revenue Service that $62,177.66 was allowed as a tax deduction. The disallowed portion included $1,201.69 for certain property acquired after December 31, 1958, barred by the tax statutes, and $4,050.00 in order to reflect the actual market values of the properties as of December 31, 1958.

The record shows that the properties consisted of the following:

(a) 2 items of real property, having an aggregate area of about 8 acres, and improved by two homes containing certain personal property.

(b) Real property, having an area of 2,696.64 square meters, improved by a gasoline service station with appropriate structures and equipment.

Upon consideration of the entire record, the Commission finds that the values asserted by claimant with respect to the items of real property are fair and reasonable. (See Claim of Lucia W. Mendoza, Claim No. CU-3219.) Accordingly, the Commission finds that the aggregate value of the real properties herein on December 6, 1961, the date of loss, was $50,553.12.

An examination of the list of personal property indicates that the 71 items therein are subject to depreciation. It appears that claimant is asserting losses on the basis of original costs. Moreover, it is noted that the Internal Revenue Service disallowed the claimed tax deductions by $4,050.00 in order to reflect actual market values. However, the correspondence from the Internal Revenue Service does not indicate whether the items of real property or personal property or both were the subjects of such disallowance. On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that the items of personal property should be depreciated to reflect values as of December 6, 1961, the date of loss, as follows:

Miscellaneous items	10%
Furniture, Gas station equipment, other equipment and electrical fixtures	5%
Garden equipment, outboard motor, pots and pans, electric fans, small appliances and fishing equipment	10%
Station wagon	15%

Accordingly, the Commission finds that the items of personal property had values on December 6, 1961, the date of loss, as set forth below. Shipping and other charges, shown separately on the list, have been included as part of the purchase prices. The numbers in parentheses correspond to those used by claimant in preparing the list of personal property.

Miscellaneous items - depreciated at 10% per year for 5 years in absence of dates of purchase (1) 50% of $3,000.00 -	$ 1,500.00
Items depreciated at 5% per year for 7 years (5, 6, 10, 11, 13, 15 through 30, 32, 36, 39, 52, 54) 65% of $5,670.42 -	3,685.77
Items depreciated at 5% per year for 6 years (7, 37, 40 through 42, 44 through 46, 56, 58 through 64, 70) 70% of $4,049.14 -	2,834.40
Items depreciated at 5% per year for 5 years (9, 47, 66) 75% of $614.65 -	460.99
Items depreciated at 5% per year for 3 years (2) 85% of $41.15 -	34.98
Items depreciated at 10% per year for 7 years (14, 31, 33 through 35, 49 through 51, 53) 30% of $968.86 -	290.66
Items depreciated at 10% per year for 6 years (8, 38, 43, 55, 57, 71) 40% of $525.81 -	210.32
Items depreciated at 10% per year for 5 years (65, 67, 68) 50% of $193.57 -	96.79
Items depreciated at 10% per year for 4 years (4, 48) 60% of $508.72 -	305.23

Items depreciated at 10% per year for 3 years (3, 69) 70% of $103.91 -		72.74
Ford station wagon depreciated at 15% per year for 3 years (12) 55% of $1,200.00 -		660.00
	Total	$10,151.88

Claimant's losses are summarized as follows:

Real property		$50,553.12
Personal property		10,151.88
	Total	$60,705.00

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 MARJORIE S. HEARST 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 Thousand Seven Hundred Five Dollars ($60,705.00) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

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

AUG 19 1970

Lyle S. Garlock

Lyle S. Garlock, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)